**REPORT ON HUMAN RIGHTS VIOLATIONS AT INTERNATIONAL BORDERS: TRENDS, PREVENTION AND ACCOUNTABILITY**

**PROFESSOR CLAUDIA LOUREIRO**

**FEDERAL UNIVERSITY OF UBERLANDIA - BRAZIL**

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**1. THE VENEZUELAN MIGRATORY FLOW TO BRAZIL**

Within the purposes of the Report to be prepared by the Special Rapporteur on the Human Rights of Migrants, it is possible to highlight some measures adopted by Brazil in 2021, under the justification of the need to contain the pandemic.

These measures were adopted with the goal of controlling, reducing or preventing the arrival of immigrants in Brazil to avoid the spread of the coronavirus in Brazil.

It is important to highlight, in this context, that in recent years, one of the largest migratory flows to Brazil comes from Venezuela, a situation that still prevailed in 2021. The displacement of Venezuelan citizens towards Brazil is due to the serious degradation of human rights of citizens in their country of origin, which intensified with the worsening of the economic and social crisis in Venezuela, a situation that began in 2015 and continues until the present moment [[1]](#footnote-1).

Due to the forced displacement of Venezuelans, Brazil launched Operation Hosting, managed by the Armed Forces and the United Nations High Commissioner for Refugees - UNHCR and which has 13 shelters, 11 of them in Boa Vista and 2 in Pacaraima, with about 6.3 thousand people, including 2.5 children and adolescents [[2]](#footnote-2).

Even with the structure of Operation Hosting in Brazil, it is estimated that about 1.5 Venezuelans are living on the streets, since the structure created by the Brazilian government is not enough to face the situation.

The large number of Venezuelans living in Brazil, about 32 thousand, has been causing waves of hate speech and xenophobic behavior. By the way, it is worth noting that the governor of the state of Roraima, in Brazil, before the pandemic, had already requested authorization from the Brazilian Supreme Court to close the borders, which was not authorized [[3]](#footnote-3).

In this sense, the Brazilian State must have due diligence not to use the pandemic as a reason to trigger the closing of borders, in order to contain the Venezuelan migratory flow to Brazil. Therefore, the measures should be adopted to contain the pandemic and not to indirectly contain the migratory flow.

In this regard, the Inter-American System of Human Rights has published two documents in order to guide the States to respect human rights when adopting emergency and exceptional measures to contain the pandemic. In this sense, the Inter-American Commission on Human Rights issued Resolution 20/2020 [[4]](#footnote-4) and the Inter-American Court of Human Rights published Declaration 01/2020 [[5]](#footnote-5), both having as their main idea the preservation of human rights in the adoption of emergency and exceptional measures to contain the pandemic.

In Brazil, the question is whether the restrictive measures to the entry of migrants were adopted in accordance with the criteria of reasonableness and proportionality, or if they were used only to indirectly contain the entry of immigrants in Brazil.

For the context of this report, the following measures in Brazil stand out: a) Ordinance No. 655, dated June 23, 2021, adopted by the Brazilian Federal Government; b) Ordinance No. 657, dated October 2, 2021, adopted by the Brazilian Federal Government; and c) Ordinance No. 25/2021, dated August 17, 2021, adopted by the Executive Director of the Federal Police.

The aforementioned measures will be analyzed below.

**2. RESTRICTIVE MEASURES ON BRAZILIAN BORDERS IN TIMES OF COVID-19**

**2.1 Ordinance 655/2021, of the Federal Government of Brazil**

The Ordinance [[6]](#footnote-6) provides for exceptional and temporary restrictions on the entry of foreigners of any nationality into the country, as recommended by the National Health Surveillance Agency - NHSA, considering the declaration of a public health emergency of international concern by the World Health Organization on January – WHO, 30, 2020, due to human infection with the coronavirus - SARS-CoV2 (covid-19).

According to Article 4 of Ordinance 655/2021, the restriction does not apply to people in a situation of vulnerability, arising from migration flow caused by humanitarian crisis, under the terms of the sole paragraph, of Law no. 13,684, of June 21, 2018.

Therefore, the Ordinance under study closed the borders, but made an exception for people in a vulnerable situation, due to a migratory flow caused by a crisis. This applies to the situation of Venezuelans at he borders, as expressly provided for in Law 13.684/2018.

The issue that deserves to be highlighted is the discretionary act of the Brazilian government in characterizing the situation of vulnerability resulting from a migration flow caused by a humanitarian crisis.

In the case of Venezuelans, this situation has already been recognized, but what about other cases of immigrants from other regions, such as Africa, when there is no recognition of the vulnerability resulting from migration flow caused by humanitarian crisis?

It is in these cases that the Ordinance can be used to curb the entry of other immigrants in Brazil and not to contain the pandemic.

In this sense, the Administrative Rule affected the human right to migrate of other immigrants coming from other regions of the world, whose vulnerability, resulting from the migratory flow, due to a humanitarian crisis was not recognized by the Brazilian government.

**2.2 Ordinance nº 675, October 2, 2021, of the Federal Government of Brazil**

Later, the Brazilian Federal Government issued another Administrative Rule, No. 657/2021 [[7]](#footnote-7), prohibiting the entry into Brazil of foreign travelers coming from or traveling through the United Kingdom of Great Britain and Northern Ireland, the Republic of South Africa, and the Republic of India.

The Ordinance also did not apply to the execution of cross-border humanitarian actions, previously authorized by the local health authorities, as well as to the execution of emergency assistance measures for the reception and regularization of migrants, nor to people in a vulnerable situation as a result of a migratory flow caused by a humanitarian crisis, according to article 5, §2, items II and V.

At first, the Ordinance under analysis seemed to be in accordance with the preservation of human rights, as well as within the criteria of reasonableness and proportionality. However, the same comment made in relation to the Ordinance previously analyzed remains, since the exceptions apply to cases in which the Brazilian government recognizes a situation of vulnerability due to a migration flow caused by a humanitarian crisis, which is a discretionary act by the state.

Thus, in the case of Brazil, Venezuelans were outside the ban on entering Brazilian territory, which did not apply to immigrants in a vulnerable situation due to a migration flow caused by a humanitarian crisis.

Therefore, indirectly, the Ordinance under analysis was edited to close Brazil's borders to immigrants in a generic and unreasonable manner, without respecting the criteria of reasonableness and proportionality established by the Inter-American Human Rights System, as explained above.

**2.3 Ordinance 25/2021 of August 17, 2021, issued by the Executive Director of the Federal Police**

The Ordinance [[8]](#footnote-8) in question extended the deadline for the regularization of the migratory status within the Federal Police due to the pandemic scenario and due to the fact that there is a large amount of immigrants needing to regularize their migratory status.

The Ordinance, therefore, gave more time for immigrants to go to the Federal Police and exercise their right to request the regularization of their migratory status such as, for example, renewing the refugee request protocol.

In this case, the Ordinance is in line with the prevalence of human rights and the fundamental rights of immigrants in Brazil.

**3. CONCLUSION**

As it was possible to realize, Brazil issued legislative measures in 2021 that affected the mobility of immigrants across borders, prohibiting them from entering Brazil, due to the pandemic, excepting only Venezuelans, due to the 2018 law having considered said situation as one of vulnerability, arising from migratory flow and humanitarian crisis.

It was also possible to verify that such measures were disproportionate, since they extended to other immigrants, from other regions of the world, who were not covered by the recognition of vulnerability made by the Brazilian government.

In this sense, although the measures provided the exception for Venezuelans, they removed from the scope of protection other immigrants of other nationalities and regions of the world, which configures excess in the adoption of exceptional measures by the Brazilian government, which ran away from the criteria of reasonableness and proportionality, contrary to guidance from the Inter-American Human Rights System.

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