



Permanent Mission of Brazil to the United Nations
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OHCHR REGISTRY

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The Permanent Mission of Brazil to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and, with reference to its Note Verbale n. 180, of 18th February 2010, has the honour to enclose herewith relevant information for the preparation of a study on the rights of the child in the context of migration, pursuant to Human Rights Council resolution 12/6. This information can be made available on the OHCHR website.

The Permanent Mission of Brazil in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, April 30th, 2010

To the
Office of the United Nations High Commissioner for Human Rights
Geneva



**Permanent Mission of Brazil to the United Nations
Chemin Louis Dunant 15, 1202
Geneva, Switzerland**

Subject: Human rights of migrants: migration and children's rights

This note aims at answering the inquiry from the United Nations Office of High Commissioner for Human Rights on challenges and best practices on child protection in the context of migration.

Brazil has traditionally been a country of immigrants and received about five million immigrants until the 1940s. Although this course has been reversed and the country currently sends large amount of Brazilians abroad, Brazil is still the destination of thousands of immigrants, mostly from neighboring countries. Brazil has officially about one million foreigners, representing approximately 0.4% of the population living in the country (150-200 000 irregularly).

The status of the foreigner in Brazil is regulated by the Federal Constitution and by the Law No. 6.815/80, called the Foreign Nationals Act. The Foreign Nationals Act is considered outdated by many experts, having been adopted during the military regime when the main concern was national security and control, and not human rights of these individuals.

The new Foreign Nationals Act, under discussion in the Congress, should provide greater flexibility for obtaining visas and for the regularization of foreigners in the country. The main objective of the new law is to safeguard the civil and fundamental rights of immigrants, offering them a treatment in accordance with Brazil's international commitments in the field of human rights. It also intends to modernize the immigration control system and to eliminate barriers, especially between neighboring countries.

The Constitution enunciates, in its Article 5, that "All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property". Article 227 states that: "It is the duty of the family, the society and the State to ensure children and adolescents, with absolute priority, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom and family and community life, as well as to guard them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression". Paragraph 1 also determines that the State shall promote full health assistance programmes for children and adolescents, the participation of non-governmental entities being allowed.

The Statute of Children and Adolescents (Law n° 8,069, July 13, 1990), in its art. 3, adds that "the child and adolescent enjoy all the fundamental rights inherent to the human person and, by law or other means, are ensured of all opportunities and facilities so as to entitle them to physical, mental, moral, spiritual and social development, in conditions of freedom and dignity".

In addition, Brazil ought to respect, in these matters, conventions, treaties, pacts, ratified by the country and incorporated into the domestic legal system, such as the Convention on Private

International Law of Havana which states that aliens belonging to any of the Contracting States shall enjoy, in the territory of others, the same civil rights to which nationals are entitled (Article 1).

Moreover, Brazil, as a signatory country of the Convention on the Rights of the Child, ratified in 1990 (Decree 99.710 of 21 January 1990 that enacts the Convention on the Rights of the Child. Federal Official Gazette, Executive Power, Brasilia, 22 Nov 1999, Section I, page 22256.), also pledges a rightful treatment to migrants in order to assure the right to family life. Article 10 highlights that "children whose parents live in different States shall have the right to periodically maintain personal relations and direct contact with both, except in special circumstances".

Likewise, the International Covenant on Civil and Political Rights, 1962, enacted by Decree n° 592 of 06/07/1992 and since then in force, states in its article 24:

1. Every child shall have the right to protection measures due to his/her minor condition on the part of the family, society and State, without any form of discrimination on the grounds of color, gender, language, religion, social or **national origin**, economic or birth situation.

In case of failure of public authorities or denial of services to foreign children on the grounds of illegal immigration, Courts have decided in favor of the child. By taking a position regarding a writ of mandamus filed by the Public Prosecutor's Office of the State of Santa Catarina because of a refusal on the part of a public school to enroll undocumented Argentinean children, the prosecutors have argued that "It is not about advocating the permanence of undocumented aliens in the country. The concern here is that, in view of such irregular status, they (the parents) should be the ones deemed liable to get punished, not their children, who most of the times are not aware of the obscure and unadvisable situation they are going through". The judge of the case has also followed this understanding.

The National Plans of Human Rights, launched by the Government of Brazil in different administrations over time, have reaffirmed a point-blank concern with the immigration phenomenon. The Programs are organized from a perspective that Human Rights must guide the state policies. (PNDH I, enacted by Decree n° 1.904 of 13 May 1996, PNDH II, enacted by Decree n° 4.229 of 13 May 2002, and PNDH III, enacted by Decree n° 7.037 of 21 December 2009).

Hence, we have recovered some directives on the issue, which have been implemented and guided and qualified Brazil's actions with regard to the phenomenon:

62. To create specialized divisions in police forces to combat forced labor, with particular attention to children, adolescents, foreigners and Brazilian migrants.
164. To develop programs and campaigns with a view to regularizing the status of aliens in the country.
165. To adopt measures to hinder and punish violence and discrimination against foreigners in Brazil and against Brazilian migrants abroad.
166. To propose a draft legislation establishing the Refugees' Statute.
167. To establish protection policy for human rights of foreign communities.
168. To establish protection policy for human rights of Brazilian communities abroad.
169. To revise the Statute of Aliens/Foreigners, through the deliberation of the draft legislation 1813/91 by Congress.
255. To develop programs and campaigns with a view to regularizing the status of aliens in the country, in conformity with reciprocal treatment.

256. To adopt measures to hinder and punish violence and discrimination against foreigners in Brazil and against Brazilians abroad.

257. To establish policies of promotion and protection of human rights of Brazilian communities abroad and foreign communities in Brazil.

258. To propose the draft of a new legislation on immigration and naturalization, ruling the legal status of aliens in Brazil.

The outline of a National Program designated to promote and protect the right of children and adolescents to family and community life reflects the unmistakable decision of the Federal Government to give priority to this issue, with a view to formulating and implementing state policies to ensure their rights through an integrated way in articulation with other government programs. In this sense, family life can be fully enjoyed in a migration context, especially when the choice to migrate is driven by the search of better opportunities.

The National Plan to Promote and Protect the Right of Children and Adolescents to Family and Community Life outlines the need to improve and consolidate national and international procedures of adoption of children and adolescents. This will contribute to better regulate the actions of foreign entities concerning international adoption and to reduce cases of unlawful mediation in international adoption.

In July 2009, the President signed a decree that allowed the regularization of about 50 thousand irregular migrants, especially Chinese, Argentineans, Bolivians and Uruguayans. The new act allows the individuals to apply for a two-year residence permit for foreigners who have irregularly entered Brazil until 1st February 2009. Ninety days before the end of the permit, the migrant will be able to request a permanent stay to the Brazilian authorities. The regularization allows better protection of labour rights.

The Decree, in regularizing the situation of parents with illegal alien status in Brazil, will also contribute to a better standard of living for migrants children because they will enjoy easier access to public services of health care, work and education.

The Government of Brazil, through the National Secretariat for the Promotion of the Rights of Children and Adolescents (SNPDCA) and the National Council of the Rights of Children and Adolescents (CONANDA), is designing the first Decennial Plan for the Promotion and Protection of the Rights of Children and Adolescents. The Plan is intended to drive the actions of the Federal Government and other government branches in formulating and implementing state policies for children and adolescents. In this regard, actions concerning the subject of this note will also be addressed.

Through the above mentioned legislative and institutional measures, the Government of Brazil promotes the human rights of migrant children, especially by providing school and other public services. Besides that, Brazil has also devoted efforts to combat prejudice and discrimination against migrants. These actions take place without prejudice to the need for a better assessment of the phenomenon and the collection of data on life conditions of migrants in an effort to better state policies addressing the matter.