

**Report to the Third Review of Federative Republic of Brazil
by the UN Human Rights Committee - 138th session**

**RELEVANT UPDATES AND CONSIDERATIONS ON
BRAZILIAN MIGRATION POLICIES**

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A. Introduction:

1. Conectas Direitos Humanos¹ is a leading Brazilian non-governmental organization based in São Paulo, Brazil. We work to protect and expand the rights of all, especially for the most vulnerable. Conectas was accorded consultative status with the United Nations in 2006, and, since February 2022, it has been an observer of the Convention- UN Climate Change Framework.
2. Ação Social Franciscana is a civil society organization created by the Franciscan Province of the Immaculate Conception of Brazil in 2000 to professionalize the social services provided by Franciscans in the country. At the local level, it directly assists around 2,000 people in the states of São Paulo and Rio de Janeiro, with daily activities for children outside school hours and early childhood care, attention and protection for seniors, socio-educational and nutritional activities for homeless people, shelter and social inclusion for immigrants, and actions to defend the rights and improve public policies for these groups.
3. This document is an alternative report for the Brazil's review by the UN Human Rights Committee during its 138th session. Considering the List of Issues, the State report and its Written Replies to List of Issues, Conectas examines Brazil's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyze Brazil's fulfillment of the rights to freedom of association, assembly, and expression and unwarranted restrictions on human rights defenders (section B).

¹ Conectas Human Rights, Homepage, 2023, accessed May 29, 2023, <https://conectas.org/>. Contact: arquias.cruz@conectas.org.

B. Treatment of aliens, including migrants, refugees and asylum-seekers (arts. 7, 9, 12–13 and 24)

4. The Brazilian government has not specifically answered question 19 of the list of issues sent by the Human Rights Committee. In fact, it just sent a list of general actions taken on the matter since 2016.
5. Regarding the question about the measures taken to restrict access to the territory during the COVID-19 pandemic, it is important to reiterate that the Brazilian government has published 39 illegal Ordinances with this purpose, since March 2020. Until today, Ordinance n. 678/2022² is still in force, as the new elected government has not yet revoked it.
6. Ordinance n. 678/2022, like all others, violates the fundamental rights to a full defense, adversarial proceedings and due legal process, as well as the principle of *non-refoulement*, since it determines immediate deportation or repatriation as a consequence of non-compliance.
7. Another illegal and disproportionate sanction provided for in the Ordinance is the suspension of asylum requests, which violates the right to immediate access to the asylum application procedure, putting the life and freedom of asylum seekers at risk.
8. Finally, the Ordinance establishes civil, administrative and criminal liability as sanctions, and, consequently, fines up to R\$ 10.000 (approximately US\$ 2.000) are being imposed for irregular stay in the country. These last provisions are of particular concern since the Ordinances caused a repressed demand for migratory regularization and, consequently, regularization requests are taking a long time to be analyzed, aggravating the vulnerability of undocumented migrants.

² <https://www.in.gov.br/en/web/dou/-/portaria-interministerial-n-678-de-12-de-setembro-de-2022-428660501>

9. The continuation of this disproportionate legislation is unfounded, especially after WHO declared end to COVID-19 as a Global Health Emergency.

10. In relation to the question posed by the Human Rights Committee regarding indigenous peoples displaced by the humanitarian situation in Venezuela, it is important to note that, in 2017, former president Michel Temer vetoed the article in the Migration Law that allowed the free movement of indigenous groups across borders, within their ancestral territories. This veto is in disagreement with the Federal Constitution, since it recognizes the right to self-determination of indigenous peoples and their original rights over the lands they traditionally occupy (article 231), in no way limiting them to Brazilian indigenous peoples, and with International Treaties and Resolutions, mainly ILO Convention 169, United Nations Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of Indigenous Peoples. The latter especially recognizes in its article 20 the right to mobility and transit of indigenous peoples across borders.

11. The Warao People, who represent the largest flow of Venezuelan Indigenous People to Brazil, historically present a pendular, cross-border migration and there is “an interest on the part of the Warao in moving freely with dignity and a clear need for humanitarian reception due to the situation they face in the Bolivarian Republic of Venezuela”, according to IOM³.

12. In addition, Brazil has invested in the emergency reception of these peoples, subjecting them to living in shelters for many years, but it is necessary to create alternatives so that they have the right to exercise their culture and self-management. Their relation with the land is important for individual and collective survival, in the material, spiritual and cultural sense.

³ IOM. **Legal Aspects of assisting Venezuelan Indigenous migrants in Brazil**. 2018, page 68. Available at: <https://repository.iom.int/bitstream/handle/20.500.11788/2018/BRL-OIM%20004.pdf?sequence=1&isAllowed=y>

13. Furthermore, there are reports that indigenous peoples coming from Venezuela are being unable to access specialized public services, such as health and education. The displaced indigenous people also face difficulty to access social benefits, such as “Bolsa Família”, due to the conditionality of having their children enrolled in schools, but a way to integrate and adapt Venezuelan indigenous children in basic education has not yet been thought of.
14. Indigenous people coming from Venezuela also take longer to obtain documents in Brazil, as they usually do not have a Venezuelan travel or identity document, since it is not part of their culture to recognize the need for documentation and even the borders formed by the State.
15. Finally, it is worth noting that the last Brazilian government neglected the right to free prior and informed consent. An episode that demonstrates this fact was when, in 2022, Operation Welcome decided to transfer indigenous migrants, who were previously living in different shelters, to a single large shelter with a capacity for thousands of people. Hundreds of Venezuelan indigenous people did not want to move to the new shelter, alleging that they wanted to live under more dignified conditions and more adapted to their culture, but the Operation gave them no other option. Some of them reported that they suffered threats and psychological abuse⁴.
16. Therefore, it would be important to ask whether the government intends to promote adequate public policies for displaced indigenous people, including specific measures to address their issues in the National Policy on Migration, Asylum and Statelessness, currently under development by the Ministry of Justice and Public Security. In addition, it is necessary that the government explains

⁴ Folha de São Paulo. Venezuelan indigenous people protest against supershelter project in Boa Vista. 2021. Available at: <https://www1.folha.uol.com.br/mundo/2021/11/indigenas-venezuelanos-protestam-contr-plano-de-superabrig-o-em-boa-vista.shtml>

Venezuelan indigenous people accuse Operation Welcome and UNHCR of threatening to cut off their food if they do not leave their shelters. 2022. Available at: <https://g1.globo.com/rr/roraima/noticia/2022/03/17/venezuelanos-indigenas-acusam-operacao-acolhida-e-acnur-de-ameacar-cortar-comida-caso-nao-troquem-de-abrigo-humilhante.ghtml>

whether the Ministry of Indigenous Peoples and FUNAI will be included in the Policy elaboration.

17. Lastly, regarding paragraph 177 of the first report sent by the Brazilian government, it is important to highlight that there are several reports about the inaccessibility of the Brazilian Embassy in Porto Príncipe, as well as irregularities to obtain visas, including Haitian migrants having to file lawsuits to request family reunion⁵. In this sense, it is important to monitor the first results of the system implemented by Ordinance n. 38/2023⁶, which promises to facilitate access to family reunifications for Haitians, by transferring the analysis of the requests to the Migration Department of the Ministry of Justice and Public Security.

18. Humanitarian visas for Afghans are also taking long months to be issued, and some Embassies are not even accepting new applications, disregarding the urgency of the situation of widespread human rights violations in that country, and, therefore, Brazil should be asked about this problem as well.

⁵ Folha de São Paulo. Haitians get the right to come to Brazil without a visa after denouncing irregularities to obtain documents. July 30, 2021. Available at:

<https://www1.folha.uol.com.br/mundo/2021/07/haitianos-obtem-direito-de-vir-ao-brasil-sem-visto-apos-denuncia-rem-irregularidades-para-obter-documento.shtml>

⁶https://portaldeimigracao.mj.gov.br/images/portarias/2023/PORTARIA_INTERMINISTERIAL_MJSP.MRE_N%C2%BA_38_DE_10_DE_ABRIL_DE_2023.pdf