

Brazil's draft migration law

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Brazil is developing a long-term solution for filling a legislative gap affecting environmental migrants.

Confronted with an increasing number of Haitian migrants after the 2010 earthquake,¹ Brazilian legislation was not adequate to deal with this new category of migrants properly. In the understanding of the Brazilian authorities, the Haitian migrants did not fall within the definition of a refugee as their reasons for migrating were environmental disasters and instability. As a result, Brazil had no legal grounds to accept them as refugees.

The legal issue was temporarily solved by the promulgation of Normative Resolution 97 – exceptional legislation limited in time and in scope, granting visas to Haitian nationals for a period of five years on humanitarian grounds. These grounds are expressly “those resulting from the aggravation of the living conditions of the Haitian population as a result of the January 12th, 2010 Haitian earthquake”. The Resolution was to remain in force for two years only and the visas were to be granted to no more than 1,200 people

per year. However, subsequent Normative Resolutions in 2013 and 2014 removed the limit on the granting of visas and Resolution 97 will now remain in force until 30 October 2015.

Nonetheless, Brazil’s humanitarian visa is not a long-term solution to this widespread problem, given that its application is restricted to the disaster in Haiti and its people, and it does not meet the need of other countries and other people who are facing similar concerns. A durable and comprehensive solution would require a reform of the present Foreigner’s Statute.

In order to update this law and meet contemporary demands, the Ministry of Justice created a committee of experts whose purpose was to present a proposal for a draft law on migration and promotion of migrants’ rights in Brazil. The proposal was discussed for about a year by academics, experts and representatives of government

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agencies and civil society organisations. The Draft establishes general principles that guide migration policy as a whole, such as the respect of human rights, repudiation of xenophobia and social discrimination, non-criminalisation of immigrants, equal treatment between aliens and nationals, and the development of public policies for the inclusion of migrants in the labour market.

More importantly, the Draft has provisions² allowing for the granting of temporary visas for humanitarian purposes, including in cases involving nationals of any country or stateless persons facing internal conflicts, crisis, calamities or serious and generalised human rights violations recognised as such by the Brazilian government. By admitting calamities as one of the reasons for humanitarian visas, the Draft indirectly establishes the category of environmental migrants, innovating and filling a considerable gap not only in domestic law but also in international law. The temporary visa for humanitarian purposes set out in the Draft can also be granted to unaccompanied immigrant minors and for family reunification purposes. The wording seems broad enough to enable any victim of large-scale environmental

disasters to qualify for a humanitarian visa, regardless of their country of origin.

Despite being a local initiative, the Draft follows a regional trend. In December 2014 Brazil hosted the Cartagena +30 meeting to celebrate the 30th anniversary of the Cartagena Declaration on Refugees of 1984.³ The Brazil Declaration and Plan of Action adopted by that meeting expressly refers to climate-induced migration as a concern; approval of the Brazilian Draft would contribute to addressing this concern while filling a legislative gap affecting environmental migrants worldwide.

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1. See also www.fmreview.org/fragilestates/ponthieu-derderian
2. Articles 33 and 44.
3. See Maldonado Castillo article pp89-91.