

## Humanitarian visas: building on Brazil's experience

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**Brazil's humanitarian visas are an important tool in complementary protection, offering legal pathways for forced migrants to reach a safer country. However, they have shortcomings that need to be addressed in order for the practice to serve as a model for an enhanced instrument of protection for humanitarian migrants elsewhere.**

Brazil's granting of humanitarian visas began in 2012 in favour of Haitians after the devastating earthquake that hit Haiti in 2010, and was extended in 2013 to benefit people affected by the conflict in Syria. The general national legislation on migration dates back to the period of dictatorship (from 1964 to the mid-80s) and, with its logic of national security, offers very limited possibilities of visas and of regular status for migrants. This changed a little in the late 1990s when a specific law on refugees was established, in what can be seen as a step towards accepting humanitarian grounds for staying in the country. Ever since, there have been debates focusing on changing the migration regime so as to allow for other humanitarian forms of entry and residency in the country but the only real achievement has been the introduction of ad hoc humanitarian visas for forced migrants, and even for this Brazil has been praised.

### Haitians

In the aftermath of the 2010 earthquake Haitians wanting to migrate to Brazil faced two challenges: first, a regular tourist visa was required which many Haitians did not possess and, second, the routes to Brazil were risky, for instance because of the activities of human smugglers. In 2012, the Brazilian government decided to create an easier legal pathway for Haitians coming to Brazil and made it possible for humanitarian visas to be obtained at the Brazilian Embassy in Port-au-Prince, citing "the deterioration of the Haitian population's living conditions due to the earthquake in that country on January 12, 2010".

An initial quota of 1,200 visas a year and the limitation of visas only being issued in Port-au-Prince were later revoked.

Any number of these visas could then be obtained and at any Brazilian consulate, even outside Haiti. It is important to note that the requirements for the humanitarian visas are less than for the regular tourist visa, requiring only a valid passport, proof of residency in Haiti and proof of good standing.

The visas were thus a way to facilitate the arrival of Haitians in Brazil, an innovative measure for making it easier to reach a safer country. But once in the country they did not have guaranteed migration status. In light



A 12-year-old Syrian refugee girl plays with her new Brazilian friends at school in Sao Paulo, Brazil.

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of this, most Haitians sought refugee status, at which point they were granted temporary documentation and work permits. However, the Brazilian government's understanding was that environmental crises were not a valid reason for recognition of refugee status. The solution adopted was to refer the Haitians' refugee applications to the National Immigration Council (CNIG), which has the competence to rule on those cases considered 'special or not regulated'. CNIG granted permanent residency for humanitarian reasons to Haitians, with those Haitians who had a humanitarian visa having their migration status resolved faster. It is estimated that over 85,000 Haitians have entered Brazil since the earthquake.

### Syrians

It is the Brazilian government's position that it is important for refugees to have access

to procedures for applying for asylum, that it recognises the disproportionate burden that countries neighbouring conflicts may endure, and that the international community needs to take action as these are matters of international law.<sup>1</sup>

In light of this, in 2013 the National Committee on Refugees (CONARE) passed a resolution allowing for visas to be granted to people affected by the Syrian conflict with fewer requirements than for a regular visa.<sup>2</sup> Initially valid for two years, it was renewed in 2015 for a further two years.<sup>3</sup> The resolution recognises that those who flee war and/or persecution are usually not able to fulfil the formal requirements for a Brazilian visa, such as presenting bank statements, invitation letters and a round-trip airplane ticket. In this case, Brazilian embassies are exceptionally authorised to grant visas even when the travel document of the applicant is due to expire in less than six months and to issue a *laissez-passer* for those who do not possess a valid passport. However, family members of Syrian nationals who are in Brazil have not been able to get humanitarian visas for themselves. At the Brazilian diplomatic representations they have been instructed to apply for family reunification instead but as quite a few of the Syrians in Brazil are still asylum seekers, and not refugees, this demand in practice has resulted in there being no way for family members to enter Brazil.<sup>4</sup>

The broad provisions of the resolution allow visas to be granted not only to Syrian nationals but also to people affected by the Syrian conflict so that minority groups such as the Palestinians and Kurds have also benefitted from the Brazilian humanitarian visa programme. Over 8,500 humanitarian visas have been granted in total<sup>5</sup> and 26% of all refugees in Brazil are now Syrian, at 2,298 forming the largest refugee group in the country.<sup>6</sup>

As in the case of Haitians, the humanitarian visas to people affected by the Syrian conflict serve as a way to facilitate travel to Brazil. Once they are in the country forms of regularisation of their migration status need to be sought.



## Good, but how good?

UNHCR, the UN Refugee Agency, has praised Brazil for the use of humanitarian visas in the context of the Syrian conflict and urged other countries to take similar steps in order to facilitate regular migration channels for those affected by that conflict.

However, despite the humanitarian visas being a positive development in Brazil's migration regime, there are shortcomings. The first of these is the fact that Brazil's humanitarian visas are established through normative resolutions of administrative organs of the Executive. This means that they can expire, be amended or be revoked depending on the political will of the government. In late 2015, as the time of the expiration of the resolution on humanitarian visas for people affected by the Syrian conflict approached, there was a real risk that it was not going to be renewed. In the end it was, but uncertainty and legal insecurity are marks of both sets of visas.

A second issue is that the humanitarian visas were established and are applied in ad hoc situations based on nationality or specific contexts, that is, for specific groups of people. Thus there seems to be a violation of the principles of equality and non-discrimination. The question needs to be posed as to why migrants from similar situations are not benefiting from this form of protection.

Since both these shortcomings can be seen as adding flexibility to the implementation of the humanitarian visas, the model could appear palatable to states that might replicate it and would be able to tailor humanitarian visas to the groups and situations that they desire. However, it also adds legal uncertainty and reinforces the political nature of a humanitarian measure.

Thirdly, there is the fact that once in the country other forms of protection need to be sought. In the case of Brazil all forms of humanitarian protection lead in practice to a request for recognition of refugee status, causing severe inflation of the pressure on the system for dealing with refugees. However, there seems to be no contingency plan in the event that the people who are granted humanitarian visas

are not recognised as refugees, or do not find another migration status in Brazil.

Lastly, asylum seekers from the Syrian conflict who have been granted humanitarian visas were, for most of the period of the existence of the visas, recognised as refugees as a group on a *prima facie* basis, without going through individual refugee status determination. This practice could lead to the potential recognition of persecutors as refugees. Recently, however, individual interviews were reintroduced, as a simple correction of this problem.

There seem to be similarly obvious solutions to all the criticisms of the Brazilian humanitarian visas. If humanitarian visas are to become a more widespread step forward in advancing protection for humanitarian migrants, the Brazilian practice can be seen as a good starting point.

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1. Brazilian Ambassador at the High-level Meeting on Global Responsibility Sharing through Pathways for Admission of Syrian Refugees. Geneva, 30 March 2016.
2. [www.legisweb.com.br/legislacao/?id=258708](http://www.legisweb.com.br/legislacao/?id=258708)
3. [www.legisweb.com.br/legislacao/?id=303612](http://www.legisweb.com.br/legislacao/?id=303612)
4. Interview with Larissa Leite, Protection Coordinator of the Refugee Center at Caritas Arquidiocesana de São Paulo.
5. Brazilian Ambassador, as endnote 1.
6. <http://dados.mj.gov.br/dataset/comite-nacional-para-os-refugiados>