

# **LEGAL ASPECTS OF ASSISTING VENEZUELAN INDIGENOUS MIGRANTS IN BRAZIL**



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Brasília  

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2019

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Bureau of Population, Refugees,  
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# IOM

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- Regulating migration
- Forced migration

IOM activities that cut across these areas include the promotion of international migration law, policy debate and guidance, protection of migrants' rights, migration health and the gender dimension of migration.





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Brasilia, April 2018.



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# LIST OF ABBREVIATIONS

- ACTO – Amazon Cooperation Treaty Organization
- Anoreg – Associação dos Notários e Registradores (Association of Notaries and Registrars)
- Anvisa – Agência Nacional de Vigilância Sanitária (National Sanitary Vigilance Agency)
- APITSM – Associação dos Povos Indígenas da Terra Indígena São Marcos (Association of Indigenous Peoples of São Marcos Indigenous Land)
- Arpen – Associação dos Registradores de Pessoas Naturais (Association of Registrars of Natural Persons)
- CIR – Conselho Indígena de Roraima (Roraima Indigenous Council)
- CNAS – Conselho Nacional de Assistência Social (National Council of Social Assistance)
- CNE – Conselho Nacional de Educação (National Council of Education)
- CNIg – Conselho Nacional de Imigração/Ministério do Trabalho (National Immigration Council/Labor Ministry)
- CNJ – National Council of Justice (Conselho Nacional de Justiça – CNJ)
- CNMP – Conselho Nacional do Ministério Público (National Council of the Public Prosecutor’s Office)
- Conanda – Conselho Nacional dos Direitos da Criança e do Adolescente (National Council on the Rights of Children and Teenagers)
- Conare – Comitê Nacional para os Refugiados (National Committee for Refugees)
- CPF – Cadastro de Pessoas Físicas (Register of Natural Persons)
- Creas – Centro de Referência Especializado de Assistência Social (Social Assistance Specialized Reference Center)
- Creas – Centro de Referência Especializado de Assistência Social (Specialized Center of Reference for Social Assistance)
- CTPS – Carteira de Trabalho e Previdência Social (Work and Social Welfare Card)
- DPU – Defensoria Pública da União (Federal Defensor’s Office)
- Dsei – Distrito Sanitário Especial Indígena (Special Indigenous Sanitary District)
- Funai – Fundação Nacional do Índio (National Indigenous Peoples’ Foundation)
- Funasa – National Health Foundation (Fundação Nacional de Saúde)
- ICHR – Interamerican Court of Human Rights
- ILO – International Labour Organization
- IOM – International Organization for Migration
- LDB – Lei de diretrizes e bases – (Educational Bases and Guidelines)
- MDS – Ministério do Desenvolvimento Social (Social Development Ministry)

Mercosul – Mercado Comum do Sul (Common Market of the South)

MJSP – Ministério da Justiça e Segurança Pública (Justice and Public Safety Ministry)

MPF – Ministério Público Federal (Federal Prosecutor’s Office)

OAS – Organization of American States

OHCHR – United Nations Office of the High Commissioner for Human Rights

OTCA – Organização do Tratado de Cooperação Amazônica (Amazon Cooperation Treaty Organization)

Paif – Serviço de Proteção e Atendimento Integral à Família (Family Protection and All-Round Assistance Service)

PF – Polícia Federal (Federal Police)

RANI – Registro Administrativo de Nascimento de Indígena (Administrative Certificate of Indigenous Birth)

Rapim – Reunião de Autoridades sobre Povos Indígenas do Mercosul (Meeting of Authorities on Mercosul Indigenous Peoples)

RG – Registro Geral (Identification Card)

SCFV – Service for Coexistence and Strengthening of Bonds

SCFV – Serviço de Convivência e Fortalecimento de Vínculos (Service for Coexistence and Strengthening of Bonds)

SDH – Secretaria de Direitos Humanos (Human Rights Office of the Presidency of the Republic)

Secadi – Secretaria de Educação Continuada, Alfabetização, Diversidade e Inclusão do Ministério da Educação (Secretariat of Continuous Education, Literacy and Diversity of the Ministry of Education)

Sesai – Secretaria Especial de Saúde Indígena (Indigenous Health Special Office)

Setrabes – Secretaria de Trabalho e Bem-Estar Social de Roraima (Roraima Work and Social Welfare Office)

Sodiur – Sociedade de Defesa dos Índios Unidos de Roraima (Society for the Defense of United Indigenous Peoples of Northern Roraima)

STDs – Sexual Transmissible Diseases

Suas – Sistema Único de Assistência Social (Unified Social Assistance System)

SUS – Sistema Único de Saúde (Unified Health System)

UFRR – Universidade Federal de Roraima (Roraima Federal University)

UNHCR – United Nations High Commissioner for Refugees



# Introductory note to the English Version

The recent flow of Venezuelan nationals constitutes one of the biggest in Latin American history. The flow presents risks to the refugees and migrants and multiple challenges to public authorities, civil society and international organizations managing this large-scale movement. One of those challenges is the presence of international indigenous in the move – a population group with significant cultural, social and legal particularities.

The present report depicts, analyses and make recommendations focusing on the beginning of the reception process of those indigenous Venezuelans in Northern Brazil. Originally published in Portuguese in April 2018, the report addresses the main legal questions and practical challenges to enforce indigenous migrants' rights during the migration flow.

Since the original publication of this report the assistance to Venezuelans arriving in Brazil and other countries in the region has been significantly enhanced. Some of the questions raised have been addressed and several innovative approaches have emerged. As some of the challenges faced in Brazil may also exist in other contexts, and some solutions adopted may be also used elsewhere, this report has the potential to advance current debates.

With that idea in mind, we hope this publication can help to pave a way forward in the field of international indigenous migration studies and policymaking.

Brasília, December 2018.

Stéphane Rostiaux

**IOM Brazil Chief of Mission**



## ABSTRACT

This study takes a rights-based perspective and puts together normative information to assist the Brazilian government in pursuing a better management of the flow of Venezuelan migrants, paying special attention to the specific rights of indigenous peoples. Starting from the diagnoses, descriptions and initial demands made by Venezuelan indigenous individuals we interviewed and by Brazilian officials and civil society spokespersons, we have surveyed the relevant Brazilian and international law with a focus on human rights, indigenous peoples' rights, the rights of ethnic and linguistic minorities and migration law.

The right to an identity and a nationality, the right to have access to official documents and social policies, the right to cross borders, the right of being in cities and towns, the right to housing and the relationship between all these rights and the right of a people to autonomy in defining their life strategies and future plans, including usage and maintenance of their language, customs and relationship with their territories, family members and people of their nation in the Bolivarian Republic of Venezuela, as well as the relationship between indigenous migrants and other indigenous peoples in Brazil, are tackled by this research with a focus on ensuring the dignity of migrants both as individuals and as a collectivity.

The case study about the Warao people in the state of Roraima, northern Brazil, has brought in some elements which, combined with the analysis of the relevant law, help us to define actions by means of which indigenous migrants might be accommodated in existing or new policies in Brazil, with an emphasis on respecting indigenous peoples' ways of life and social organization, language and autonomy, which are important elements in situations of vulnerability. In the face of a quick increase of the migration movement and of the presence of indigenous peoples in cities and towns, both public agencies and other relevant stakeholders begin to ask questions regarding the proper treatment – neither discriminatory nor assimilationist – which such migrants should be given and about the legal backing for State actions in assisting indigenous migrants. To answer those questions, this research analyzes international legislation, the rulings of international courts and reference documents and statements in the field of domestic law, paying special attention to the coming into force of the new Brazilian Migration Law (Law 13,445, 24 May 2017) and other domestic rules relevant to the topic.

Our aim is to give the reader an overview of the relevant law applying to indigenous migrations in Brazil and also, at the same time, to propose policies specifically directed to Venezuelan indigenous migrants, mapping the challenges which the Brazilian government must face to give those people a proper reception according to law. In all that we take a rights-based perspective. In deepening our understanding of the specific features of indigenous peoples' human rights in a migration context, the research aims to throw light on potential topics to be discussed by the United Nations in the context of the Global Compact for Safe, Orderly and Regular Migration.\*

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\* *Note to the English Version:* The Global Compact for Migration was discussed and adopted by 164 countries in Marrakesh, Morocco, in December 2018, after the original research was finished and published.

On the basis of needs assessment undertaken with public officials we have mapped the main difficulties faced by the Brazilian government in establishing proper policies for assisting indigenous migrants from the Bolivarian Republic of Venezuela. The methodology consisted in interviews conducted with a survey form which were previously prepared by the research team. Among the main challenges observed, we should mention (i) the establishment by the State of an effective indigenist action for indigenous migrants, (ii) clarity about the legal backing for government action and greater support by the federal government in establishing policies, (iii) allocation of sufficient budget for state and municipal action and (iv) the definition of a documental policy adjusted to the documental reality of indigenous migrants in a non-discriminatory and non-criminalizing perspective. Understanding that the indigenous migration is a non-conventional migration movement and understanding the challenges related to respecting the mobility rights of indigenous individuals, families and groups as migrants in a universe of diverse yearnings on the part of indigenous groups also show up as key elements.

The main issues concerning the Warao people migration flow were mapped on the basis of the field work undertaken in Boa Vista and Pacaraima (both in Roraima state). The methodology employed consisted in direct observation of places of shelter and interviews with indigenous individuals and their leaders, listening to the problems reported by indigenous migrants themselves.

Throughout the twentieth century and due to historical processes that have prevented them from freely enjoying their territories in the Venezuelan state, the Warao people have gone through an internal migration process that has taken them from their lands into urban centers where they have better access to consumer

goods and ensure a better livelihood for their families, specially by means of selling handcrafts; this was similar to the process that occurred in Roraima. Following that thread, we analyze the assistance offered by government agencies to indigenous migrants according to the Warao perspective.

Based on an analysis of the main international human rights instruments and indigenous peoples' human rights law, the study lists treaties, conventions and statements that apply to Brazil and give directions for both migration and indigenist policy. The indigenous migration movement is covered by at least three sets of legal rights: universal rights recognized in treaties and accorded to all people without distinction; migrants rights, which are ensured to all migrants irrespective of their being indigenous or not; and rights specific to indigenous peoples.

The study is complemented by an analysis of domestic statute law. Here too there is a complementarity between people's rights as migrants – mainly in view of the principles, guidelines and classifications established in the new Brazilian Migration Law and its regulatory decree – and the binding domestic legal instruments relating to indigenous peoples' rights. Indigenous migrants are still indigenous, so that all rights guaranteed to Brazilian indigenous individuals and communities should be assured to them without distinction, both in an urban and in a rural context.

Our conclusion is that all rights that apply to indigenous Brazilians apply also to indigenous migrants, such as access to the indigenous health care subsystem, the right to official documents, nationality, housing and self-determination, as well as the rights to cross borders, to be in cities and towns and to have access to social

policies specifically directed to indigenous peoples. From those conclusions, grounded on Brazilian domestic legislation and international law, we have drawn recommendations for adequate treatment of indigenous people on the move in this non-conventional migration, with the aim of directing the actions of public authorities as regards this population, with a rights-based approach.





# 1

## INTRODUCTION



The very first news about the migratory flow of Venezuelan citizens into Brazil through the municipalities of Pacaraima and Boa Vista, in the state of Roraima, drew the attention both of civil society and of national and local authorities due to the fact that a part of the migrants were indigenous individuals. Their entering Brazilian territory in a state marked by conflicts between indigenous and non-indigenous individuals and communities, as well as the prompt involvement of some Brazilian governmental and civil society institutions to prevent basic rights violations and abuses, have brought to the fore two topics of debate which, although not new, have not had enough visibility throughout the world: indigenous migrations and indigenous life in an urban context.<sup>1</sup>

Although the fiercest fight of indigenous peoples everywhere in the world revolves around the defense of their rights over territories and natural resources, many indigenous peoples face serious discrimination and violation of their fundamental rights in migratory movements and in an urban context. Indigenous migrations occur both inside countries (domestic or internal migrations) and from country to country and are motivated by a range of factors, most noticeably by lack of access to traditional territories and to natural resources which are essential for survival and for ensuring the people's future as a collectivity that lives together according to certain usages, customs and traditions.

According to one of the few published studies about indigenous migrations,<sup>2</sup> among the most famous migrant indigenous groups are the Maya from Guatemala, who had to leave the country during the civil war in Central America and settled in North America, and the P'urepecha from Mexico who went to the United States yet in the 1960s, hired by a programme of temporary work in farming that came to rely on indigenous individuals from many other groups. In Latin America, a similar situation can be seen among the Quechuas of Peru, who have settled in several European countries, where they can be found playing traditional music in subway terminals and train stations; and the Otavalos from Ecuador, who have migrated to Colombia, Chile, Argentina, and Brazil to seek better economic opportunities.

In the African continent, numerous indigenous peoples have migrated to bordering countries. That is the case with the Bantus from Somalia, who have found in Kenya a temporary refuge from conflict; or the migration of the Tuaregs from the Sahara desert into France. In Asia and Oceania there are also records of indigenous peoples' migrations. Maori groups from New Zealand, for instance, have moved from their farming and fishing communities to the country's capital or even to Australia to seek employment and better public services.

Indigenous migration incorporates factors such as conflict situations and pressures for land and natural resources, but is also contingent on the limited availability of work and study opportunities and of access to goods and services. These factors have brought some indigenous peoples or segments of peoples, or indigenous families and individuals, closer to urban centres in a migration movement that is neither crossborder in the narrowest sense of the term nor conventional in the sense of the kind of medium – and long-term solutions required.

1 Trujano, Carlos Yescas Angeles. *Indigenous routes: a framework for understanding indigenous migration*. Geneva: International Organization for Migration, 2008.

2 Yescas, Carlos. *Hidden in plain sight: indigenous migrants, their movements, and their challenges*. Washington, DC: Migration Policy Institute, 2010. Available at: <<https://www.migrationpolicy.org/article/hidden-plain-sight-indigenous-migrants-their-movements-and-their-challenges>>. Accessed in October 31, 2017.

In most cases of indigenous migrations recorded all over the world, indigenous migrants do not belong to the poorest communities in their countries of origin, as many of them hold some type of individual or collective title to land.<sup>3</sup> Outside their countries of birth, indigenous migrants are not usually seen as distinct from other migrants born in the same origin country. For that reason, governments tend not to recognize their ethnic and cultural differences until indigenous peoples or the indigenous movement starts to receive or demand international attention. According to studies on international indigenous migrations,<sup>4</sup> these are usually undertaken with the aim of supplementing income and giving better opportunities to children and family members who remain in the countries of origin. In the case of persecuted or stateless groups, and also of those whose territory has been affected by environmental degradation (and increasingly by climactic change), entire families look for temporary shelter and informal employment or subemployment in their places of destination.

In both international and domestic migration processes, those people or groups do not cease to maintain and express their indigenous identities. Many preserve at least some kind of attachment to their original territories and communities and have mobility or non-settlement as a dominant trait of their migratory flow.<sup>5</sup> Expressing themselves in their own languages and/or holding on to their indigenous beliefs, usages, customs and traditions in the context of migrations, they demand respect and space to live out their identities wherever they might be. Outside their countries of origin and even of crossborder territories, as is the case of indigenous migrants from the Bolivarian Republic of Venezuela to Brazil, migrant indigenous peoples are among the most vulnerable groups and often need humanitarian aid. At the same time, they show an unusual resilience related to their indigenous collective identity. In that sense, protecting their rights should also take into account their status as an ethnic and linguistic minority without losing or diminishing their indigenous identity, as a way of ensuring the protection of their fundamental rights, including the right to exist as indigenous peoples.

This study focuses on legal concerns and their implications for the fulfillment of indigenous migrants' rights, taking into account domestic and international commitments and obligations taken on by the Brazilian state regarding migrants' rights, indigenous peoples' rights, humanitarian law and human rights, with the aim of addressing the rights of indigenous migrants in conventional or non-conventional migration flows, including the pendular movement between neighbouring countries.

## 1.1 Vulnerability in a migratory context

Indigenous peoples and ethnic, linguistic and religious minorities often show up as especially vulnerable groups in migratory processes and particularly in the context of large movements. Nevertheless, they go unnoticed or are made invisible in many emergency situations.<sup>6</sup> Recognizing the identity and forms of organization and mobility of migratory indigenous groups, as well as

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3 Ibid.

4 Ibid.

5 Contributions presented by Emília Botelho and Luciana Ramos, expert anthropologists of the Federal Prosecutor's Office, during the Indigenous Migration Workshop held by IOM in a partnership with the National School of Public Administration (Enap) in 7 February, 2018.

6 United Nations High Commissioner for Refugees (UNHCR). Minority groups. Available at: <<http://www.unhcr.org/minority-groups.html>>. Accessed on 31 October 2017.

encouraging the use of their languages and the practice of their customs and traditions, are key elements in identifying their potential for resilience and should guide the action of migration officers and of the State as a whole in overcoming and preventing such vulnerability.

Vulnerability is determined by the presence, absence and/or interaction of factors or circumstances that enhance exposure to violence, exploitation, abuse and rights violations directed at individuals and families, groups and communities. The International Organization for Migration (IOM) considers it necessary to apply a more holistic approach in dealing with migrants in situations of vulnerability – an approach that takes into account not only the vulnerability factors, but also the migrants’ potential for resilience. In other words, the notion of vulnerability should be understood according to a structural approach and, furthermore, regard should be paid to migrating groups’ capacities and needs.<sup>7</sup> In the context of migrations and leaving aside the issue of human trafficking, IOM defines vulnerability as an individual’s or group’s reduced capacity to resist, face or overcome violence, exploitation, abuse and/or violations of their rights, mainly of the following kind:

- Illegal deprivation of liberty and arbitrary arrest;
- Violations of workers’ rights and obstacles to the enjoyment of fair and favorable work conditions;
- Denial of the right to family life and family unit;
- Torture;
- Cruel, inhuman or degrading treatment;
- Pushbacks (*refoulement*);
- Illegal limitations of the right to come and go;
- Limitations of the right to a nationality (statelessness);
- Slavery;
- Serfdom;
- Limitation or denial of the rights to education and health care;
- Sexual exploitation and abuse;
- Exploitation and abuse against workers.

According to a recent United Nations working report there are nowadays a diversity of migratory experiences, in some of which ‘migrants in a vulnerable situation’ can be found.<sup>8</sup> In this context, vulnerability can be understood in three different ways which sometimes overlap:

- (a) Vulnerability related to the reasons for leaving countries of origin;
- (b) Vulnerability related to the situation encountered by migrants *en route*, at borders and in the context of reception; and
- (c) Vulnerability related to a specific aspect of a person’s identity or circumstance.<sup>9</sup> In addressing the vulnerability of migrant groups, the report offers an overarching definition which subsumes the situations of indigenous peoples, families and individuals:

7 International Organization for Migration. Understanding migrant vulnerabilities and capacities: a framework for analysis and programming. Geneva, October 2016.

8 United Nations High Commissioner for Human Rights. Promotion and protection of the human rights of migrants in the context of large movements. 13 October, 2016. (A/HRC/33/67).

9 Ibid., p. 15.

as they move, some people are inherently more vulnerable than others due to their persisting unequal treatment and discrimination based on factors including age, gender, ethnicity, nationality, religion, language, sexual orientation or gender identity or migration status. Certain people such as pregnant women, persons with poor health conditions including those with HIV, persons with disabilities, older persons, or children (including unaccompanied or separated children) are more vulnerable due to their physical and/or psychological conditions.<sup>10</sup>

The UN agencies for migration (IOM) and refugees (UNHCR), as well as the High Commissioner for Human Rights (OHCHR), have been increasing their efforts to show that those collectivities cannot be overlooked in migration and asylum processes. That is why the report emphasizes the need for a human rights-based approach, which throws light on very particular situations inside the wide range of migration possibilities. As far as indigenous migration from the Bolivarian Republic of Venezuela to Brazil is concerned, situations of special vulnerability in respect of work conditions have been identified, as well as potential situations of abuse related to family interaction; both cases are tied to an absence of intercultural understanding of the risks associated with working in the streets and selling handcrafts and with situations of violence and discrimination. The obstacles that prevent birth registrations, for instance, also prevent the recognition of nationality, among other things.<sup>11</sup>

A human rights-based approach also enables the proposal of State actions and measures that include, but are not limited to, issues related to borders and national security, so as to ensure fundamental rights and welcome all migrants with dignity. About this topic, a Resolution of the UN Human Rights Council in 2017 states:

[...] each State has a sovereign right to determine whom to admit to its territory, subject to that State's international obligations, and recalling also that States must readmit their returning nationals and ensure that they are duly received without undue delay, following confirmation of their nationalities in accordance with national legislation [...].

[...] States have the sovereign right to enact and implement migration and border security measures, but, while doing so, States have a duty to comply with their obligations under relevant international law, including international human rights law and refugee law, in order to ensure full respect for the human rights of migrants, including migrants in a vulnerable situation.<sup>12</sup>

## 1.2 Indigenous peoples in an urban context

In the migration flow between the Bolivarian Republic of Venezuela and Brazil, indigenous migration is associated with the complex question of how to face the violation of indigenous people's rights in an urban context. This topic often remains invisible despite its increasing significance. Indigenous peoples or groups of peoples whose original lands are found inside national territory also need the attention of public institutions with a view to ensuring and respecting their rights inside cities and towns. The situation of indigenous peoples that migrate and live seasonally in an urban context just to receive welfare benefits is a subject to be further explored.

10 Ibid., par. 15.

11 See the chapter "An analysis of migrating indigenous peoples' rights".

12 United Nations Human Rights Council. Protection of the human rights of migrants: the global compact for safe, orderly and regular migration. 19 June 2017. A/HRC/35/L.28).

The recognition of indigenous presence as an independent cultural group in cities and towns contrasts with the assimilationist logic that has dominated the Brazilian government's relationship with indigenous peoples for so long. Assimilationism was formally superseded only in 1988, with the new democratic Constitution, but it is still present in some practices and policies.<sup>13</sup> According to the assimilationist view, indigenous peoples should be 'civilized' in order to be 'integrated' into the dominant society, leaving behind their ways of life, their languages, usages and traditions, considered 'savage' or 'uncivilized'. In this view, indigenous peoples should no more be 'forest-dwellers'; they should abandon their territories, cultures and ways of life and become farmers and peasants. As a result, if they do move to urban contexts, that would mean they have already left aside their indigenous identity.

This assimilationist ideal guided the activity of the Brazilian government and paved the way for the colonization of indigenous land and the resulting massacre of groups and peoples. The relationship between the State and the national society, on the one hand, and indigenous peoples, on the other, became fraught with violence and discrimination.

The 1988 Constitution, combined with the International Labor Organization's Convention No. 169, ratified by Brazil in 2004, and the statements made by the UN in 2007 and by the Organization of American States in 2016, have put away once and for all any legal backing that those assimilationist policies might have had. These instruments affirm the importance and the need for states to recognize and respect indigenous peoples, their forms of social organization and their autonomy in choosing their future and development. Nevertheless, in 2017, with the growth of indigenous migration from the Bolivarian Republic of Venezuela to Brazil, it seems clear that public institutions in general lack understanding and need guidelines regarding indigenous migrants and indigenous peoples' rights in an urban context, particularly the right not to lose their indigenous identities and specific rights due to the migration process. The creation and implementation of public actions and policies aligned with the emerging normative framework and under an autonomist and rights-based perspective still represents a great challenge.

In 2007, UN's Permanent Forum on Indigenous Issues identified some challenges indigenous peoples face when migrating into urban areas:

indigenous peoples worldwide are vulnerable to a range of social and economic factors that affect their human rights. They tend to lack access to education, to live on lands that are vulnerable to natural disasters, with inadequate or no sanitation and poor access if any, to health services; all of which contribute to lower productivity and incomes among indigenous populations. At the same time, their limited political power means that they are unable to use the political system to improve their position. Indigenous peoples that migrate to urban areas face particular and often additional challenges, most prominently unemployment, limited access to services and inadequate housing. In addition, indigenous peoples in urban areas may experience discrimination and have difficulties in sustaining their language, identity and culture and educating future generations which can result in a loss of indigenous heritage and values.<sup>14</sup>

13 The First National Conference in Indigenist Policy, held in June 2015, which had as its main topic the relationship between the state and indigenous peoples in Brazil, illustrated the struggle of those peoples to leave behind the guardianship/assimilationist paradigm that held legal force in Brazil up to 1988. An analysis of this issue can be found at the Conference's Basic Document, available at: <<http://www.funai.gov.br/arquivos/conteudo/ascom/2015/img/06-jun/Documento%20Base%20-%202506.pdf>>. Accessed on 31 October 2017.

14 United Nations Permanent Forum on Indigenous Issues. Urban indigenous peoples and migration: challenges and opportunities. Available at: <[http://www.un.org/esa/socdev/unpfii/documents/6\\_session\\_factsheet2.pdf](http://www.un.org/esa/socdev/unpfii/documents/6_session_factsheet2.pdf)>. Accessed on 31 October 2017.

### 1.3 The case of indigenous (non-crossborder) migration from the Bolivarian Republic of Venezuela to Brazil

According to a survey carried out by the National Council for Immigration (Conselho Nacional de Imigração – CNIg) in 2017 which focused on indigenous migrants, in the migratory movement from the Bolivarian Republic of Venezuela to Brazil the indigenous migrant population was significantly smaller than the non-indigenous population that arrived in Roraima.<sup>15</sup> In the needs assessment for this research several public institutions admitted structural challenges specifically related to the management of the indigenous migratory movement, including lack of guidelines for special care. Local society's concern and discomfort with indigenous presence in the urban context of Pacaraima and Boa Vista was specially highlighted. That discomfort stems from the historical relationship between state and society on the one hand and indigenous peoples on the other, and specially from persistent stereotypes arising from the attempts at assimilation that guided official action in Brazil up to the 1990s (before the coming into force of the normative framework of the 1988 Constitution).

According to the Brazilian Institute of Geography and Statistics' (Instituto Brasileiro de Geografia e Estatística – IBGE),<sup>16</sup> among Brazilian states Roraima is the one with the greatest proportion of indigenous population: 11 per cent of all inhabitants are indigenous. Of those indigenous inhabitants of Roraima, 83 per cent live in traditional indigenous territory, but very little attention has been paid to the other 17 per cent living in an urban context.

Taking stock of the Warao case study; the field work undertaken in Brasilia, Boa Vista and Pacaraima, including technical visits to the Boa Vista Shelter (Immigrant Reference Center – CRI) and Pacaraima Transit House; a needs assessment with institutions dedicated to migrant care; two technical memorandums of the Federal Prosecutor's Office (Ministério Público Federal – MPF);<sup>17</sup> and the study 'Sociodemographic and Laboral Profile of Venezuelan Immigration in Brazil',<sup>18</sup> the present research aims to fill part of the existing gap, formulating new guidelines based on domestic and international law in order to improve indigenous migrant assistance, including indigenous peoples in an urban context.

The engagement of stakeholders dealing with indigenous migrations in Roraima and the potential for producing comparative analyses reveal opportunities for protecting and promoting indigenous rights in the migratory context and also, regardless of indigenous persons' nationality, in an urban context. That engagement shows a very different attitude from the one evinced in the first moments of the emergency response, which revealed serious rights violations linked to deep-rooted prejudice and racism, as was seen, for instance, in the attempted mass deportation of the Warao in 2016.<sup>19</sup> The deportation was prevented by a joint action of the Federal Public Defender (DPU), the Federal Prosecutor's Office (MPF) and civil society organizations, which emphasized the need for State action and the application of a rights-based perspective to the management of indigenous and non-indigenous migrants reception and basic rights protection in Brazil.

15 Simões, Gustavo da Frota (org.). *Perfil sociodemográfico e laboral da imigração venezuelana no Brasil*. Curitiba: CRV, 2017.

16 Brazil. Os indígenas no censo demográfico de 2010: primeiras considerações com base no quesito cor ou raça. Brasília: IBGE, 2012. Available at: <[https://ww2.ibge.gov.br/indigenas/indigena\\_censo2010.pdf](https://ww2.ibge.gov.br/indigenas/indigena_censo2010.pdf)>. Accessed in: 31 October, 2017.

17 Ministério Público Federal. Technical Opinion Seap/6aCCR/PFDC n. 208, about the situation of the Warao indigenous people, from the Orinoco delta region, in the cities of Boa Vista and Pacaraima, 2017a; Ministério Público Federal. Technical Opinion SP/Manaus/Seap n. 10, about the situation of the Warao indigenous people coming from the Orinoco delta region in the city of Manaus, 2017b.

18 Simões, op. cit.

19 Against the proposed mass deportation of migrants, the Federal Public Defender filed habeas corpus No. 0006447–87.2016.4.01.4200 in the collective name of approximately 450 indigenous individuals detained at the headquarters of the Federal Police Superintendence in Boa Vista in 2016. The court granted interim measures to prevent mass deportation and, in March 2017, ruled in favor of the indigenous Venezuelans, ensuring their right to stay in Brazil until a ruling was reached in a regular administrative process based on the principle of human dignity and the Interamerican Convention on Human Rights.



Nevertheless, our research has identified some topics of concern or discomfort among stakeholders dealing with indigenous Venezuelans in Roraima, such as:

- What are their rights as indigenous people? (Does the Brazilian State have specific duties regarding them?)
- Are they crossborder indigenous peoples? (Can they enter Brazil if they are not crossborder?)
- Are they refugees seeking for asylum? (What do indigenous people want when they migrate to Brazil?)
- Should Funai (the National Indigenous Foundation) take action regarding indigenous migrants? (Does the Brazilian State have indigenist obligations towards indigenous people born in a foreign State?)
- Why don't they stay in the spaces designated by public authorities? (Should the State exert guardianship over them?)

For that reason, we also tried to expand the analysis of indigenous migration beyond the rights of crossborder indigenous peoples,<sup>20</sup> applying the standards of human rights, international law and migration law. A review of existent normative guidelines makes it clear that national and international commitments and rules related to migration and indigenous peoples' human rights also apply to indigenous Venezuelans or of other nationalities, and as such should determine discussions in Brazil. In this way, the question of indigenous migrants in Brazil represents an opportunity for innovation and progress in the promotion and protection of indigenous rights in the context of migration policies, paving the way for indigenous peoples to be given special assistance and not merely guardianship care by the State.

Our starting point is the recognition of the right to equality as established in the Brazilian Constitution and in multiple international human rights instruments,<sup>21</sup> which in turn are reflected in the principles and guidelines enshrined in section 3 of Law 13.445, the new Migration Law. Brazilian migration policies should be based on assuring equal treatment and opportunities to migrants and Brazilian nationals and on equal access to basic rights and fundamental guarantees. In other words, they should ensure indigenous peoples' inclusion as citizens without denying their identity and their specific rights.

In short: indigenous peoples' rights already recognized by the Brazilian State should also be applied to indigenous peoples that migrate from the Bolivarian Republic of Venezuela to Brazil, particularly in order to protect indigenous rights against individual and collective violations. Indigenous persons, like any other people, have rights, including the right to come and go and to live in the city or in rural areas, and should as such be free from all violence and discrimination. Accordingly, in thinking about receiving, monitoring and assisting this migratory movement, the protection of indigenous identity and the right to autonomy, as well as the effort to overcome assimilationist visions, ideals and practices, should be understood as fundamental rights.

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20 In Brazil, crossborder indigenous peoples, although they do demand from the government their rights to legal papers, access to public policies and so on, live and move inside their territories without international migratory concerns. That is not the case with the Warao.

21 Such as the Universal Declaration of Human Rights.



# 2

**THE MAIN CHALLENGES FACED  
BY INSTITUTIONS ENGAGED IN  
MANAGING AND ASSISTING THE  
INDIGENOUS MIGRANT FLOW**



This research was guided by a needs assessment which mapped challenges and doubts stated by representatives of indigenous peoples and governmental and non-governmental institutions regarding activities developed towards indigenous persons coming from the Bolivarian Republic of Venezuela to Brazil. In this section, the main topics mentioned by actors involved in indigenous migrant assistance in Roraima are systematized, with a focus on legal issues and their implications.

Our methodology was grounded on a semi-structured interview (Annex: Interview Script) conducted either in person or through Skype. Representatives of at least 20 institutions have interacted with the research: the Federal Public Defensor (DPU); the Foreign Office (MRE); the UN Brazil resident Coordinator's Office; Conectas Human Rights Brazil; the Federal Prosecutor's Office (MPF); the Health Ministry and Indigenous Health Special Office (MS/Sesai); the National Indigenous Foundation (Funai); the Federal Police in Roraima (PFRR); the Roraima Indigenous Council (CIR); IOM; the Federal University of Roraima (UFRR); Pacaraima Municipality Social Assistance Office; the Federal Public Defensor in Roraima (DPU-RR); the Special Indigenous Sanitary District (Dsei/Sesai); the Roraima Work and Social Welfare Office (Setrabes); the United Nations High Commissioner for Refugees (UNHCR); the Association of Indigenous Peoples of São Marcos Indigenous Land (APITISM); and Fraternidade – International Humanitarian Federation. The request for an interview with a representative of Boa Vista municipality was left unanswered.

Taking into account the interview script and questions raised by interviewees, the content was organized in the following thematic sections, which present the point of view of the several institutions regarding their attributions and limitations, as well as some concepts, practices and perspectives related to Venezuelan indigenous migrants assistance in Brazil:

- migration documents: competencies and limitations;
- children and teenagers: care and education;
- shelters: situation and management;
- health care availability and access;
- interactions with institutions and indigenous organizations; and
- sustainability: migrating indigenous peoples' economic activities, concepts of relocation\*, integration between public and international agencies.

Few institutions have expressed doubts about the need to accord special consideration and differentiated assistance to indigenous migrants. However, the fact that no doubts were expressed doesn't mean that, in actual practice, there are no deficiencies in information or no mistakes in the care given to migrants. For some institutions concerns about the absence of specialized tools of attention were often related to the absence of an adequate response to indigenous peoples on the part of the State.

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\* *Translator's note:* In Brazil, the process of relocation is called 'interiorization' and aims at transporting migrants from border towns to other parts of the country.

The study has identified a significant demand for actions that take into account indigenous peoples' collective rights. Acknowledging indigenous peoples' right to autonomy in taking decisions about their future, as well as their rights to a nationality, to cross borders, to have access to public policies and services, and above all their right not to be forced to abandon their indigenous identity should all be at the very center of debate.<sup>22</sup> This means the State cannot divest native peoples of their rights as migrants, foreigners or indigenous peoples; it should, on the contrary, attend to their collective specificities, considering that their forms of social organization, ways of life, languages and cultures may be more or less dissimilar from those of the majoritarian national society.

In actual practice, the main institutional difficulty identified by our study has to do with a lack of understanding or acceptance of the fact that the indigenous migration movement is not a transitory situation. Furthermore, there are doubts on how to coordinate and articulate indigenist policy with migration assistance actions, particularly those related to indigenous persons in an urban context. New understandings about the need for an articulation between institutions with a view to formulating a medium – or long-term plan have begun to emerge, but they still do not embrace the necessary indigenous or indigenist orientation or prominence in the realms of health care, social assistance or migratory reception. The greatest challenges, according to the interviewed institutions, are:

- Understanding the phenomenon of indigenous migration;
- Applying standards of assistance to indigenous peoples in Brazil;
- Acting with technical proficiency, making the most of positive experiences and lessons learned within the country; and
- Avoiding heightening the explicit tensions and pre-existent relations of prejudice towards indigenous people.

## **2.1 Migrants' legal documents: competencies and limitations**

In several countries, including Brazil and the Bolivarian Republic of Venezuela, access to official documentation of births, marriages and so on is different for indigenous peoples and for the general population. This situation poses numerous challenges. If on the one hand many indigenous peoples don't understand the emission and regularization of documents as a priority in their lives, on the other hand the State invests little in indigenous peoples' documentation and often leaves those peoples in a marginalized situation.

In Brazil, the demand for access to social welfare and services and access to public policies has increased indigenous demand for documentation. This demand, in turn, has highlighted some questions which are still to be tackled by the State, among them the need to accept and regularize late birth certification of indigenous persons, including elders, since documentation has only recently begun to be a reality or a necessity for many indigenous peoples.

According to Funai, 'for non-indigenous citizens, basic documentation is both a right and a duty, i.e. it's obligatory. For indigenous people, civil birth certification and basic documentation are not obligatory, but they are a right and an option of each indigenous person.'<sup>23</sup> In that sense, Funai has signed a Technical Cooperation Agreement with the National Council of Justice (Conselho

22 Nações Unidas. Declaração da ONU sobre os Direitos dos Povos Indígenas. Rio de Janeiro, 2008. Available at: <[http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_pt.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_pt.pdf)>. Accessed on 31 October 2017.

23 Funai. Documentação básica. Available at: <<http://www.funai.gov.br/index.php/docb>>. Accessed on 31 October 2017.

Nacional de Justiça – CNJ), the National Council of the Public Prosecutor’s Office (Conselho Nacional do Ministério Público – CNMP), the Human Rights Office of the Presidency of the Republic (Secretaria de Direitos Humanos – SDH), the Federal Public Defensor’s Office (DPU), the Association of Registrars of Natural Persons (Associação dos Registradores de Pessoas Naturais – Arpen) and the Association of Notaries and Registrars (Associação dos Notários e Registradores – Anoreg) to carry out actions that promote civil registry and basic documentation for Brazilian indigenous people.<sup>24</sup> According to Funai, ‘all Brazilian citizens are entitled to basic documentation, and the indigenous person is a full citizen, i.e. has all the entitlements pertaining to the common citizen, besides the specific rights the Constitution warrants to indigenous people.’<sup>25</sup>

For that reason, one of the attributions assigned to the indigenist agency is sponsoring transportation and food for indigenous people when that is strictly necessary for the obtainment of civil registration and basic documentation. Funai organizes and implements periodic collective actions in indigenous lands in partnership with registrars, state identification agencies, the Federal Revenue Service, the National Council of Justice (CNJ) and the Human Rights Office (SDH), among other agencies; to date, several collective efforts for indigenous documentation have been carried out.<sup>26</sup> These measures could be extended to migrant indigenous people in Brazilian territory after being duly adjusted to the requirements for the documentation of foreigners. In other words, by applying the principle of non-discrimination in accordance with the new Migration Law, it may be argued that indigenous migrants also are entitled to have access to basic documentation in Brazil. According to the Decree No. 6.289/2007, that establishes the National Commitment for the Elimination of Under-registration of Births and Expansion of Access to Basic Documentation, the basic documentation for all Brazilians includes:

- Identification Card (RG);
- Register of Natural Persons (CPF); and
- Work and Social Welfare Card (CTPS).

The principle of non-discrimination and the efforts of the Brazilian government to eradicate under-registration of births in the country and expand access to basic civil documentation call for State actions that reach individuals in a coordinated and differentiated way to provide for civil documentation and the consequent migratory regularization, since many indigenous individuals might not have official documents in their country of origin. In that sense, basic documentation for migrants includes:

- Birth certification for those born in the country;
- National Migratory Register or identification document;
- CPF; and
- CTPS.

As regards birth certification for indigenous people, we may point to CNJ-CNMP Joint Resolution No. 3, of April 19, 2012, as a good practice of the Brazilian State. The resolution facilitates late birth certification for indigenous people and also reinforces and gives legitimacy to the use of

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24 Ibid.

25 Ibid.

26 Ibid.

traditional indigenous names, showing understanding and sensitivity on the part of the State to tackle topics related to indigenous documentation without ignoring the historical and regional context of indigenous peoples' reality and their relationship with the State. The same initiative, adjusted to the different documentation required for migrants, could be developed regarding indigenous migrants. In general, it is well known in Brazil that many indigenous people do not have basic documentation and that it is a duty of the State to act in order to facilitate access to such documentation, taking into account its background of absence and the history of its relationship with indigenous peoples.

As regards the migratory movement between the Bolivarian Republic of Venezuela and Brazil, Venezuelan migrants, both indigenous and non-indigenous, have been seeking the regularization of their official status in Brazil in two ways: either applying for asylum or pursuing temporary residence permits. In the case of indigenous migrants, regularization of their status has occurred mainly by seeking asylum; the reason is the absence of documents needed for a temporary residence permit. In general, Venezuelan indigenous people who have come to Brazil face three problematic situations related to documentation:

- The absence of any Venezuelan document, either passport or birth certification;
- A Venezuelan document which doesn't state their parentage;
- Indigenous children born in Brazil and not registered due to the fact that their parents lack documentation, either Brazilian or Venezuelan.

An alternative that might be sought on the basis of the new Migration Law is granting temporary residence permits as an act of humanitarian reception and in view of family reunion, which might apply, for instance, to the children of indigenous Venezuelans born in Brazil. But such measures demand specific legal regulation.

### **2.1.1 Basic documentation**

Once the asylum application protocol is obtained, indigenous individuals can get their CPF and CTPS. Indigenous people coming from the Bolivarian Republic of Venezuela arrive in family groups made up by parents, children, children's spouses and grandchildren. Among them there are also children and young people who sometimes travel without their own parents. In cases such as these, the Pastoral Centre for Immigrants asks the relatives (uncles/aunts and grandfathers/grandmothers) whom the children travel with to sign the asylum applications with the endorsement of the *Aidamos* (leaders of the Warao people). Both the pastoral volunteers interviewed by the study team and the indigenous people themselves claim there is much confusion surrounding the documentation process; they also say the documentation is not necessarily relevant and that regularization is still far away. Indigenous migrant turnover is deemed constant at the shelters, while a few groups have settled down.

Strictly speaking, access to Brazilian documentation would remove all obstacles for civil registration proceedings in the case of children born in Brazil, because the formal allegation for denying birth certification of indigenous migrants' children is the absence of documentation of the parents' parentage, i.e. grandparents' names. By November 2016, twelve indigenous children born in Brazil had been reported as having no more than the certificate issued by the hospital saying they were born alive. It should be emphasized that the public registry office in the city of Pacaraima also expressed doubts about registration proceedings, since in the case



of Brazilian indigenous people the birth certificate is usually issued in conjunction with the Administrative Certificate of Indigenous Birth (Rani), for which Funai is responsible. Without documents, these children – who are Brazilian because they were born in Brazilian territory – are vulnerable and face even more challenges to get proper health care, which is only given by hospitals in emergency cases with the issuance of the Unified Health System (SUS) card. The same situation occurs with the restrictions for enrollment in public schools, which demand from foreigners a document stating the names of their parents.

According to the sources heard by the study team, between March and April 2017 Funai started registering indigenous persons coming from the Bolivarian Republic of Venezuela and seeking the Rani, but halted the process before the documents were issued. The justification given was that the document should be given to indigenous Brazilians only. The experience of Funai in dealing with indigenous lack of documentation and in providing documentation for adults could point to solutions leading to a better service for indigenous people coming from the Bolivarian Republic of Venezuela. When the Rani is belatedly emitted for indigenous Brazilians based on the indigenous person's statement and on an inquiry made by the indigenist agency, the document is officially verified by Funai itself. In view of the Brazilian government's concern to avoid the loss of indigenous peoples' languages and cultures, it seems important to discuss the Rani experience and expand Funai's participation in indigenous documentation. According to interviewees from the Foreign Office, access to documentation is not seen as something that either encourages or discourages the migratory movement, but it is a safety measure both for indigenous peoples and for the State. The transit of undocumented persons, subject to accidents, abuse and crime, is not in the State's interest.

The study team did not get any information about the possibility of access to identity records stating parents' names in the Bolivarian Republic of Venezuela, nor about the potential for collaboration between the Venezuelan consulate in Boa Vista, the Foreign Office and Funai. The Federal Public Defender in Brasilia has urged the Federal Public Defender in Roraima to start a dialogue with the Brazilian registry office and the Venezuelan consulate about the possibility of accessing the documental indigenous data base in the Bolivarian Republic of Venezuela in order to get the data called for in Brazil, to check fingerprints or to retrieve original documents filed in the Bolivarian Republic of Venezuela. It seems that, in the presence of registered data, the Venezuelan consulate in Brazil could issue a consular certificate that would be accepted by Brazilian authorities, or could intermediate the dispatch of a copy of birth and identity certificates.

### ***2.1.2 Temporary residence permit or asylum application***

As regards the number of migrants, and specifically of Venezuelan indigenous migrants, the existing data are difficult to interpret and should be qualified. For instance, the number of migrants' entries into Brazilian territory does not necessarily correspond to the number of migrants in Brazilian soil, since there might be under-registration of migrant population that didn't undergo border control. Also, in the specific case of indigenous groups, the pendular movement of coming from and going back to the Bolivarian Republic of Venezuela might be interpreted as a series of new entries.

In that sense, according to data collected in January 2018 by the Federal Police (PF), in 2017 there were 14,231 asylum applications in Roraima and 4,220 residence permit requests in the same state. The total numbers for Brazil in the same period were 17,865 asylum applications and 8,740 residence permit requests, which shows a significant increase in comparison with

earlier years since 2014. As regards indigenous persons, the main reference is the number of people in shelters. According to information offered by the NGO Fraternidade – International Humanitarian Federation, in January 2017 there were 474 people in the shelter for indigenous migrants in Pacaraima and about 500 people in the indigenous shelter in Boa Vista.

Regarding the control of statistic data, in the registration form of the National Committee for Refugees (Conare) the indigenous origin of the applicant is mentioned as a justification for the asylum application, but there is no registry of disaggregated data that would allow one to identify indigenous migrants; to do that, it would be necessary to search the system. Also, there are mismatches in the information offered by different institutions about the number of documented, undocumented and only partially documented indigenous persons.

The acquisition of temporary residence permits depends on the submission of all documents required and on the payment of a fee.\* The asylum application is free of charge and leads to the obtainment of a provisional protocol that ensures the migrant's regular status; the final analysis of the application is made by Conare and might take from months to years. According to sources heard by the study team at the Federal Police, the asylum application has been used as a preliminary legal support by Venezuelan indigenous people migrating to Brazil in a situation of blatant urgency and vulnerability. As refugees or asylum seekers, however, indigenous people could not, strictly speaking, return to the Bolivarian Republic of Venezuela, as returning to the country of origin could imply the loss of refugee status. Today, the indigenous population often travels without passing through official border posts; as such, their comings and goings are unregistered. According to several institutions interviewed by the study team, the asylum application is not ideal for indigenous people, because that instrument assumes that refugees do not want to or accept not to return to their country of origin due to a well-founded fear of political persecution.

Indigenous people coming to Roraima and also many non-indigenous Venezuelans enter the Federal Republic of Brazil through the São Marcos Indigenous Land, in the municipality of Pacaraima. According to information given by individuals and institutions interviewed by the study team, since 2016 many have gone directly from the Bolivarian Republic of Venezuela to Roraima's state capital of Boa Vista. When they get to the state capital, Venezuelans can go to the Federal Police or the Public Defender's Office (DPU) to seek regularization of their status. In view of their special vulnerability and so that they do not have to travel irregularly from Pacaraima to Boa Vista, indigenous people received by volunteers from the NGO Fraternidade and the Pastoral Centre for Immigrants enroll in a preliminary register, take pictures and fill forms that are then sent to the Federal Police in Boa Vista. The Federal Police takes fingerprints and sends the forms back to Pacaraima, and only then the protocol that allows foreigners to remain in Brazilian territory is issued.

The NGOs act in coordination with the Federal Police and with the support of IOM, UNHCR and the Civil Defense. In their view, the activity of the Federal Police in Boa Vista facilitates migrant assistance. A stepping-up of migration is expected in the following months and years. Without a minimum support for documentation, indigenous migrants would be even more vulnerable to abuse, violence and violations; they would also be more liable to be deported by means of individual proceedings. As the Warao case study has indicated, indigenous people return

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\* *Note to the English Version:* After the conclusion of this research a fee exemption has been introduced for those with few economic resources.

frequently to the Bolivarian Republic of Venezuela to deliver money and goods to their relatives and to bring other family members back with them. As such, the regularization of their status in Brazil should take account of their practices and needs.

### **2.1.3 Humanitarian reception**

In the face of difficulties with documentation and of the situation of extreme vulnerability in which many indigenous families come to Brazil, an alternative to the assistance given to indigenous migrants from the Bolivarian Republic of Venezuela would be the use of the ‘humanitarian reception’ concept. According to the Federal Police, indigenous people cannot be properly documented without parents’ data or without a birth certificate, as stipulated in article 68, paragraph 1, of the Decree No. 9199, 2017, that provides regulations for the new Migration Law. An alternative solution for this bureaucratic obstacle consists in classifying indigenous people as humanitarian migrants according to section 20 of Federal Law 13445. Nevertheless, the full criteria for humanitarian reception have not yet been established by the government.

Article 36 of Decree No. 9199 lists the situations that may ensue humanitarian reception, one of them being serious or imminent institutional instability in the country of origin. The proceedings for requesting a humanitarian visa or residence permit should be defined by a joint act of the Foreign Office, the Justice and Public Safety Ministry and the Labor Ministry. Federal Prosecutor’s Office (MPF) authorities in Roraima point out the need for more flexibility in the demands for documentation, taking into account the vulnerability of the indigenous population. They’ve also emphasized that a preferable approach would be based on social assistance and not on public safety, and that Funai should take part in the proceedings as a qualified official indigenist agency.

#### **Alternatives for safe, orderly and regular migration**

The new Migration Law has instituted a temporary residence permit for humanitarian reception. That request might apply to the case of Venezuelan indigenous migrants under articles 12 and 30 of the Law. In the cases of refugees, stateless people or those accepted by reason of humanitarian reception, moreover, proceedings for civil registration and identification of the applicant can be done with whichever documents are available, as stipulated in article 68, paragraph 2 of Decree 9199/2017, which has provided regulations for the new Migration Law.

### **2.2 Children and young people: care and education**

According to information collected by the study team, indigenous people who come to Brazil migrate in extended family groups, including older couples, their children, children’s spouses, grandchildren and relatives from the same region of origin; an extended family group might have 40 to 70 people. At the shelter in Pacaraima, interviewees reported that men tend to go out in the morning looking for work; that doesn’t happen with the same frequency at the shelter

in Boa Vista. In both shelters, women have stated that they spend their time sewing, making handcrafts or going out to beg or to buy something with the resources acquired by the family. Children remain close to the women of the family – mother, aunt, grandmother and older sisters, for instance – while they are busy with their chores. Sometimes they get together with other children outside the shelters and engage in several forms of play, including those belonging to their cultural tradition. They also say they miss the river activities which are common in their region of origin.

For indigenous people, the connection between mothers and their children is an essential form of care. This is the reason why mothers take their children with them when they go out on the streets to sell handcrafts or to beg, and this attitude is interpreted by many non-indigenous people as a form of abuse. Particularly in Boa Vista, institutions heard by the study team indicate that city residents express anger and outrage, interpreting the presence of children as a form of exploitation practiced by the women. Even the Social Assistance Office in Roraima expressed some concern over a situation of ‘parental negligence’, which may be classified as a crime under Brazilian law. According to reports collected by the study team, women at the shelters in Roraima are advised not to go out with their children so as to not leave them for too long under the sun. Migrants are not forced to remain inside the shelter in Boa Vista, but the City Police has been acting to restrain their presence on the streets.

Some agents interviewed by the study team have clarified that indigenous women earn more by begging than by selling handcrafts and that the money is used to buy diapers, milk and foodstuffs that are not offered by the shelter. Some indigenous mothers report that they know that they could lose their children under Brazilian law, because it is a crime to take the children with them when they go out to beg. This threat from Roraiman society is echoed even by representatives of indigenous organizations in Boa Vista, who also don’t like to see indigenous mothers with their children in the city streets and are afraid that they might be taken for Brazilian indigenous women. Both the Federal Prosecutor’s Office (MPF) and the Federal Public Defender (DPU) emphasize that mothers have the right to be with their children and also have the right to come and go freely, but the anthropological information made available by two technical opinions issued by MPF about the matter and the rights guaranteed by the 1988 Constitution aren’t always incorporated into the words and actions of institutions that deal with Venezuelan migrants.<sup>27</sup>

The two technical opinions issued by MPF indicate that women play a key role in the social organization of the indigenous people that have migrated to Brazil. However, they tend not to be heard, because Brazilian institutions prefer to engage with men who can speak Spanish. Some of the women heard by the study team were appointed by men. Many of these men have become leaders in their groups because they master Spanish and not because they had authority in their places of origin.<sup>28</sup> According to the *Aidamos* (indigenous leaders), there are around 100 children at the shelter in Pacaraima and 150 in Boa Vista, all of which speak the indigenous language.

The study team has identified obstacles, such as time limitations and the ways in which dialogues with migrant indigenous women happen or do not happen. These women have little opportunity to contribute significant views about indigenous migrants’ housing, health, education and food, among other things. International agencies worry about the fact that these women and children constitute the populational segment that is most vulnerable to violence, particularly sexual violence, both inside the shelters and in their relationship with external society.

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27 Ministério Público Federal, op cit. 2017a, 2017b.

28 Ministério Público Federal, op cit. 2017a, 2017b.

A few young women know some Spanish and report having attended schools for indigenous peoples in the Bolivarian Republic of Venezuela, but they are unable to specify what school grade they were in and how much time they spent attending school. In the Pacaraima shelter there are two indigenous teachers who wish to develop educational activities with children and adults. In the Boa Vista shelter there are three teachers, two of which are university graduates; all engage in activities with children and adults and want to keep on teaching the indigenous language and culture alongside the general wish that everyone learn Portuguese.

After the current Brazilian Constitution came into force, a group of normative directives has been built up which stipulates that indigenous peoples have a right to specific and differentiated education. The federal education Guidelines and Bases Law (LDB No. 9394/1996) has reaffirmed the right to specific and differentiated education, prescribing for indigenous peoples an education that strengthens their ethnic identity, values their languages and sciences and retrieves their historical memory. Resolution CNE/CEB No. 3/99 institutes indigenous schools and indigenous teachers as administrative categories, giving indigenous communities the right to create specific syllabi and exert their autonomy in school management. Resolution CNE/CEB No. 5/12 extends to basic educational levels the right of indigenous peoples to a specific, communitarian and differentiated education, given in two or more languages, and Federal Law No. 12,416/11 amends LDB and provides for higher education for indigenous peoples.

The Brazilian experience of indigenous school education makes it clear that it is not enough to simply include indigenous migrants in the schools, as has been done with other Venezuelan children. For indigenous peoples, the right to a specific and differentiated education has been enshrined in technical opinions, guidelines and parameters that secure for them the right to maintain their languages and to strengthen their ways of life and social organization. As interviewees have stated, up to now there is no State action to meet that requirement.

Another difficulty stems from scarce documentation, which prevents access to public policies. According to indigenous people interviewed by the study team, in the shelters at Pacaraima and Boa Vista there are more than ten indigenous children born in Brazil who have not been registered at the local registry due to their parents' incomplete documentation or absence of official documents. At most they have the certificate issued by the hospital saying they were born alive, and for this reason they have no access to adequate health care and are exposed to risks, especially when the parents decide to move to other cities and towns or to return to Venezuela. Volunteers at the Pastoral Centre for Immigrants who perform the preliminary register for requesting the asylum application protocol issued by the Federal Police mention that there are children and young people with no documentation and who do not travel with their parents. According to the Federal Public Defender (DPU), cases such as these should be monitored by the Children's Court at the Federal Police and referred to the Defender to be analyzed; after interviewing the underaged children, the Defender should appoint an official guardian. That action is to be taken by the State Public Defender in conjunction with the Federal Public Defender.

Even though it is mentioned as a serious problem, children's and young people's lack of documentation hasn't prevented two young E'ñepá women, who can speak their native language only, from being interned at the juvenile offender's shelter, having been accused of obtaining money through prostitution under their father's orders. According to reports, the family, lacking all support and information about their rights and the girls' rights, remains at the Boa Vista shelter. Collected data show that the social assistant sometimes visits the girls accompanied by

their mother and sister, although the father's access has been forbidden. Sources at the Federal Police in Roraima inform that, as a rule, indigenous people who undergo violence do not look for the local, state or federal police nor for any other public authority, so they do not receive any information or guidance on their rights.

Improved assistance for indigenous migrants, particularly women, children and youngsters, depends on an increased indigenist engagement in order not only to direct social assistance actions, but also to strengthen internal mechanisms of social control and protection among indigenous peoples themselves in the context of shelters and migration. A discussion about the meaning of 'youth' and/or the use of the concept of 'teenager' in an indigenous context could be an important starting point for casting an intercultural glance at the assistance given to indigenous people in general and to indigenous migrants in particular.<sup>29</sup> In the view of many indigenous peoples, the transition from childhood to adulthood is marked by rites of passage that indicate an individual's ability to take on the responsibilities of adulthood, and not by an age classification defined by an external concept.<sup>30</sup> This understanding can, for instance, guide the identification of indigenous peoples' own strategies and capabilities for resilience in a migratory context.

Information about dangers and concerns linked to the migration movement, to the Brazilian political and social context and to life in the urban context of Boa Vista, Pacaraima and other cities and towns, as well as an Ombudsman and a system of assistance in the defense of their rights, are all key for empowering migrant indigenous groups and peoples and making them self-sustaining.

### **Distinct origins, identical rights**

As this section shows in a detailed way, all rights accorded to indigenous peoples by international treaties incorporated into Brazilian law and by the Constitution itself, as well as by infra-constitutional domestic law, should also be extended to indigenous migrants. See the specific recommendations about access to education.

## **2.3 Shelters: situation and management**

Since November 2017, Venezuelan migrants have been assigned to three shelters: one in Pacaraima and two in Boa Vista. Two of them – one in Pacaraima and one in Boa Vista – are now exclusively dedicated to indigenous migrants. Volunteers working at the Boa Vista shelter mention that approximately 500 migrants have passed through and have received identification cards with UNHCR support. Among those, it is estimated that between 10 and 20 per cent have remained in the shelter

29 Contributions presented by expert Assis Oliveira during the Indigenous Migration Workshop organized by IOM in conjunction with Enap in February 7, 2018.

30 'The negative critique perspective that rejects the use of the term "teenager" among indigenous peoples rests on the idea that the social-cosmological construction of the person (intimately connected with the construction of the body) and, in general, of life cycles among indigenous people has no correspondence with the "teenager" category, mainly because the existence of rites of passage establishes specific forms of transition between childhood and adulthood. The incompatibility between these forms of transition and the Western generational category shows it is necessary to recognize native terms and means of identifying life cycles, which should be introduced as compatible generational markers that, at the same time, relativize Western markers representing identities and rights.' Oliveira, Assis da Costa. *Índigenas crianças, crianças indígenas: perspectivas para construção da doutrina da proteção plural*. Curitiba: Juruá, 2014. p. 100.

since April 2017, while the majority has moved on into Brazilian inner cities or returned to the Bolivarian Republic of Venezuela, if only temporarily. According to information collected in the field study, recently arrived indigenous people are no longer heading to the city of Manaus, Amazonas; some have been to that city and then returned to their country of origin, because the wet season begins at the end of the year – there are lots of fish to eat and the weather is good for sowing.

According to DPU representatives in Brasilia, the number of indigenous migrants is small in comparison with the total number of Venezuelan migrants in Brazil. Nevertheless, there is consensus that indigenous people face the most serious resistance from local society. According to DPU, there are differences between the number of indigenous individuals present at the Boa Vista shelter as stated by different institutions: that figure varies between 300 and 500 and approximately half are children and young people.

In general, the study team have determined that public institutions and agencies are not as present at the shelters as civil society, although the premises themselves and the public resources allocated to shelters are essential for giving a basic reception to indigenous migrants. The absence of a plan of action to implement the relevant public policies and manage the shelter worsens that situation. The Indigenous Health Special Office (Sesai) has informed that it visits the shelter once a week for medical consultations. The study team has detected the continuous presence of volunteers of the NGO Fraternidade, which is responsible for managing indigenous shelters; but it has also determined that other public institutions have not yet developed a plan of assistance for indigenous people.

In Boa Vista, the Civil Defense, by means of the Fire Department, was mentioned by Fraternidade as the institution that daily collects donations from civil society and supports relocations. This is very significant, because the Boa Vista shelter only started to receive food from the Social Development Ministry (MDS) in September 2017, having relied exclusively on donations before that. NGO Fraternidade has never managed other shelters, but plays a role that would be better served by the government in managing the shelters at Boa Vista and Pacaraima. Its activity, which started December 2016, is seen as crucial for the Boa Vista shelter to remain open, although it survives on the basis of donations, with no maintenance and no public officials to take care of its management. Ever since the shelter began to receive federal financing, the physical space allotted to indigenous migrants in Boa Vista went through renovations in the wiring and piping systems. The renovations were conducted by Setrabes to improve the physical structure and cut down on health hazards. Eleven tents sent by Civil Defense were set up outside the Boa Vista shelter.

Officials at Setrabes understand it is up to the federal government to take care of everything that has to do with immigration; the state government would just give support and manage the federal funds. They quote as an example the renovations the Roraima government has been making at the shelter, which are not publicized on a state level because the population doesn't agree with spending public funds with immigrants. To change this scenario, the federal government is expected to act by means of its Ministries, particularly the Human Rights Office, including its National Office for Citizenship and Funai. According to most institutions interviewed by the study team, guidelines for indigenous care should come from the federal government. This position was reaffirmed in a public hearing on the matter held at the Roraima Legislative Assembly in 9 November, 2017.

As far as security is concerned, a police car is stationed under a tent at the Boa Vista shelter, but the policemen do not get out of the car nor walk around. According to a map produced by the New Social Cartography team of Amazonas Federal University, the Pintelândia neighbourhood, where the shelter is located, is regarded as a violent place with lots of drug dealers and high risk of prostitution and child

abuse.<sup>31</sup> It has been reported that the situation of lack of security outside the shelter also involves indigenous people working for food or in underpaid work; inside the shelter there is conflict among family groups, because rival or conflicting groups have had to come together, often against their will.

The *Aidamos* indigenous leaders, appointed inside the shelters, can either expel a family or keep it in the shelter in the event of conflict. Up to now, one family has been expelled. The Fraternidade team has informed that a document is being written in which rules of coexistence and the daily schedules for the shelter are laid out. Some indigenous people report that many rules that now must be followed were absent from their lives before and seem strange to them. This strangeness is compounded by the impact of constant changes in family dynamics.

In Pacaraima, the indigenous people that lived on the streets were sent in November 2017 to a renewed shed belonging to the state government, where UNHCR set up metal structures to prop up hammocks for family groups. Outside the shed five tents belonging to Civil Defense were set up for single young men to sleep in, and there are other spaces where indigenous migrants can sleep on mattresses. According to the information gathered, both state and federal governments have expressed concern with any kind of traditional indigenous building and avoid describing the shelter as a non-temporary dwelling for indigenous migrants. When the shelter was visited by the study team, it assisted 186 people, 100 of which were children. Pacaraima being the first point of entry for Venezuelan migrants, the Pastoral Centre for Immigrants, with volunteer help, has been organizing registers. According to the volunteers involved, 56 families had already been registered in Pacaraima. The total number of registered migrants was 269: 79 from Palo Seco, 108 from Comercial, 53 from Pumalaca and 29 belonging to the E'ñepá ethnic group. There are also reports of families that have not been registered.

According to the Pacaraima Municipality Social Assistance Office, after the municipality officially stated that the town was in an emergency situation, the shelter, called Transit House, was created according to guidance given by the Social Development Ministry. It should be taken into account that Pacaraima is a small town. The shelter's aim is to receive and document migrants and refer them to the Boa Vista shelter. According to information given by the aforementioned Office, the support promised by the Social Development Ministry includes resources for immigrant upkeep, food and hygiene. As the plan has not yet been approved, however, indigenous people get food donated once a week by the local Catholic parish.

At the Pacaraima shelter, volunteers with NGO Fraternidade have created a coexistence code and have brokered agreements with indigenous leaders to organize cleaning teams. Food is prepared by families, with forest wood and grills that were built when the shed was renovated. This resource has made a significant difference in the life of the families, who now can prepare food according to their cultural practices; the food and the way it is prepared could, according to what families say, ensure health and healing for indigenous people.

Interviewees point to a much-neglected topic: the fact that Pacaraima Municipality is located inside São Marcos Indigenous Land and that there is a legal controversy waiting for court trial at the Brazilian federal Supreme Court that aims at the removal of non-indigenous settlers (Civil Suit No. 499/2010). Strictly speaking, the municipality cannot build any new structures in the Indigenous Land. The Pacaraima Municipality Social Assistance Office has stated that the municipality's irregular land situation prevents the assignment of an area for the Transit House or shelter.

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31 Almeida, Alfredo Wagner B. de (ed.). *Nova cartografia social da Amazônia: indígenas na cidade de Boa Vista, Roraima: moradores da Maloca Grande*. Manaus: UEA, 2012.



It is recognized that migrant indigenous families fare significantly better inside the shelter and that the visual impact they had caused in town has been minimized. Nevertheless, according to indigenous people interviewed by the study team, there is a lack of understanding that life at the Pacaraima shelter is, or should be, a temporary situation. Pacaraima's representative has not expressed any doubts about the municipality's attributions, although she assigns to other public spheres the responsibility over indigenous people coming from the Bolivarian Republic of Venezuela and quotes the municipality's financial and administrative limitations to justify such assignation. A concern with the local government's image in the eyes of society as a whole has also been mentioned, as the municipality would have to spend resources, which are already scarce, on Venezuelan migrants.

In the state sphere, Setrabes pinpoints as a major difficulty the lack of expertise on the part of technicians who work with migrants and indigenous people (even for indigenous people born in Brazil). The social assistance network, the educational network and other social services have no specific guidelines for working with the indigenous population, and the same can be said regarding Sesai. A public bidding process was opened for shelter administration; the main aim was putting together a team made up by two anthropologists, two psychologists, two social assistants and two middle-level technicians. Until November 2017, there were no anthropology and psychology professionals working in Pacaraima. With the relocation of non-indigenous migrants to another space in Boa Vista, there are now three shelters available, but the public bidding provides for two teams only; also, the budget anticipates a total number of 150 migrants although there are now more than 700.

The State Social Assistance Office, with the help of NGO *Fraternidade* and no indigenous participation, is drawing up a list of internal rules for the shelter. According to UNHCR, the rules should provide for indigenous adjustment to Brazilian law and define a maximum stay period of three months. *Fraternidade's* representative asks herself what will happen after those three months, because, although most indigenous migrants do move on, and some even return to the Bolivarian Republic of Venezuela, it will be necessary to reexamine each and every case. According to information collected by the study team, the Boa Vista internal rules will be drawn up by a non-institutional work team that gets together every two weeks and is coordinated by UNHCR. The Federal Police is present, but Funai and the Federal Prosecutor's Office are not.

A significant point is that internal rules should stipulate actions that turn the shelters into reference centres, with teams capable of providing indigenous migrants with information about local habits and social norms and also about how to get official documents, put children in schools and seek Portuguese classes with a view to better autonomy and integration.

#### **2.4 Health care: availability and access**

The right to health care is not only an individual right of indigenous persons, but also a fundamental collective right of indigenous peoples. It implies a duty on the part of the State to protect, promote and restore health and mental and physical well-being by means of preventative actions and access to services. This right is enshrined in the Brazilian Constitution and in the main domestic and international human rights instruments. In Brazil, the health policy for indigenous peoples is one of the most sensitive and problematic issues of official indigenous policy.<sup>32</sup> The difficulty of access to health services and treatments, especially for indigenous peoples living in

32 Brazil. Comissão Nacional da Verdade. Relatório. 2014. p. 206.

remote areas, and their unique vulnerability to diseases such as malaria, tuberculosis, respiratory infections and STDs – not least due to the terrible sanitary situation they live in – justify and require a differentiated action on the part of the state.<sup>33</sup>

For that reason, in 1999 the Sub-system of Indigenous Health Care was created inside the framework of the Unified Health System (SUS); in 2002, the National Policy for Indigenous Peoples' Health Care was approved; in 2007, guidelines were laid down for a Policy of Full Mental Health Care for Indigenous Populations; and in 2010 Sesai was created inside the Health Ministry. In general, indigenous people in Brazil receive health care through the public network in cities and towns and through Sesai in indigenous lands. Sesai aims to safeguard indigenous peoples' social, cultural and linguistic particularities in providing health care. For medium – and high-complexity treatments, indigenous persons are referred to public network hospitals, but they also rely on Sesai's expert indigenist monitoring.

As for indigenous migrants, although formally they do not have the right to differentiated health care through Sesai due to the fact that they do not live in indigenous lands, the Health Ministry has informed that a Health Working Group in Roraima, comprised by representatives from Dsei, the National Health Foundation (Fundação Nacional de Saúde – Funasa), the National Sanitary Vigilance Agency (Agência Nacional de Vigilância Sanitária – Anvisa) and state and municipal offices, is developing an action plan with activities to be allocated to different official bodies. The plan aims to define attributions and responsibilities in a flowchart for health care, which provides for care to be given in the shelters and, after that, in the public health care network.

Pacaraima Social Assistance Office has reported that nine physicians were brought from Santa Helena de Uairén (Bolivarian Republic of Venezuela) to examine indigenous people and that all indigenous migrants in Pacaraima already had their SUS card, which enables them to use the public health network. Such a preoccupation with health care is boosted, according to reports, by the fear that indigenous people might spread diseases among the population and also by the presence of several diseases related to malnutrition and changes in eating habits, whether in the context of deprivation in the Bolivarian Republic of Venezuela or after the long journey of migration.

Due to the special features of a service that takes into account indigenous intercultural relationships, both Pacaraima municipality and the NGO Fraternidade conclude that responsibility for health care of all indigenous peoples, migrants or residents, belongs to Sesai. According to Sesai, though, caring for Venezuelan indigenous peoples would entail reducing resources and personnel available for care at the indigenous villages. It has been stated that there is no budgetary flexibility and that financial resources are received on the basis of the official census data, which still do not include indigenous migrants. Sesai has been caring for indigenous migrants from the Bolivarian Republic of Venezuela since 2017 and will continue to do so indefinitely due to a recommendation of the Federal Prosecutor's Office to the Health Ministry.

Sesai has informed that, through Dsei East and Dsei Yanomami, it promotes medical screening and consultations once a week inside a climatized container; 125 consultations are given every week to indigenous migrants in Roraima. Medications are drawn from the share allotted to indigenous peoples living in villages; according to information collected by the study team, there has been no complementation or restocking in spite of continual requests, considering that the time frame for the shipment of new drugs is about six months. A representative from

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33 Alameda, D. abd T. Bedinelli. Especial saúde indígena no Brasil. El País, August 25, 2015. Available at: <<https://brasil.elpais.com/especiais/2015/saude-indigena/>>. Accessed on 31 October 2017.

Dsei has stated that indigenous migrants are mostly ill when they arrive, with cases of serious malnutrition, chickenpox, conjunctivitis, STDs/HIV and tuberculosis, and that the overcrowded shelter does not favor healing. Health professionals care for emergencies at the shelters and refer people to health centres, the Roraima General Hospital or the Children's Hospital; they also track down cases of STDs and HIV, including children, teenagers and pregnant women which are referred to specialized care. Tuberculosis cases are monitored by Anvisa.

Public agents heard at the Dsei have stated that the municipality of Boa Vista has not issued the SUS card for Venezuelan indigenous migrants, which would give them access to consultations and medication in the public health network. The card has been issued only in cases that called for emergency care. The same agents inform that indigenous people in cities and towns cannot get the same kind of care that is given in villages because the formalities are different, and besides there are only 15 doctors to care for 25,000 indigenous individuals. They say that indigenous Venezuelans in Brazil should be cared for by municipalities, just as any other indigenous person in a city or town. They mention that in Boa Vista there is a basic health care center near the shelter that has been refusing health care to indigenous Venezuelans and hasn't been giving directives on vaccination nor issuing the SUS card, all of which is irregular under the law. According to information collected by the study team, there are about 20,000 indigenous people in Boa Vista, but the municipality doesn't offer them adequate health care. Dsei admits indigenous migrants need differentiated health care, but points out that Sesai's attributions are circumscribed to indigenous peoples living in villages, so that Sesai has no legal authority to care for indigenous people in an urban context. This position reinstates the challenge faced by Brazilian public agencies, which are bound to care for and ensure the rights of all indigenous people, whether they be residents, internal migrants or international migrants and regardless of where they live – in traditional villages and lands, in lands regularized by Funai or in cities and towns.

Dsei's representative made it clear that cases of malnutrition in indigenous children arriving from the Bolivarian Republic of Venezuela are directly linked to their families' means of livelihood. Families live on selling handcrafts and begging on the streets and move around frequently, so they have no means to offer regular meals to their children nor to submit them to continued treatment when they fall ill. Brasilia has been processing a Sesai proposal for continual treatment and nutritional monitoring by capacitated indigenous leaders in the shelters, some of which had already been acting as health agents. Fraternidade had identified from 6 to 10 indigenous people capacitated for that kind of role, but that was before the relocation of the group to the Boa Vista shelter. Sesai also proposes to train and capacitate state and municipal professionals and support actions of health education and the creation of educational material. The implementation of those actions has not been observed in the field.

Ten cases of HIV were reported among indigenous migrants who need daily medication and are cared for by Fraternidade under the guidance of Dsei/Sesai. The HIV epidemic among the Warao in the Bolivarian Republic of Venezuela has attracted international attention, particularly because the lack of medication and the absence of retroviral treatment to control the spread of infection can wipe out whole communities.<sup>34</sup> Brazilian volunteers say that indigenous people seem not to worry about the seriousness of the disease in spite of explanations given them by the expert indigenous health team. In some instances, they leave the shelter in mid-treatment.

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34 Velandia, K. A tribo indígena que está sendo dizimada por uma epidemia de HIV. BBC Brasil, January 12, 2018. Available at: <<http://www.bbc.com/portuguese/internacional-42647056>>. Accessed on 12 January 2018.

According to many interviewees, indigenous Venezuelans fear the hospitals and often associate them with unauthorized autopsies allegedly performed in the Bolivarian Republic of Venezuela. In their view, that is what white people do to indigenous people. Fraternidade points out there is an indigenous sector in Roraima's hospitals, but Sesai doesn't always monitor indigenous migrants due to the fact that they're Venezuelan or are in an urban context. Sesai, in turn, says that health care for indigenous city-dwellers is a responsibility of the general health system.

Regarding health care at the public network, the Health Ministry has informed that it has increased resources for basic and medium-complexity care in the state of Roraima and has also offered the same increase for municipalities, which should in turn offer some kind of collateral. One of the obstacles for this increase to be received is the lack of reliable data about the number of Venezuelan migrants to be served. According to the Social Assistance Office, 60 per cent of people receiving health care in Pacaraima are foreigners. This represents a nuisance to the municipality's native inhabitants, which often see themselves competing for scarce resources. According to the municipality's representative, it's crucially important to inform local population about the increase in health investments on the part of the federal government, which aims to expand care to indigenous and non-indigenous Venezuelan migrants.

In January 2018, the creation of an integrated plan of health care involving the Health Ministry, the state government and Pacaraima and Boa Vista municipalities was announced. According to the federal government, its main aim is to broaden and improve basic and hospital health care for Venezuelans. The Health Ministry has stated that two agreements totaling 4.5 million Brazilian reais (around USD 1.2 million) have been signed for personnel training and for mapping immigrants' and indigenous people's health situation.<sup>35</sup>

### **Indigenous health and interculturality**

All rights accorded to indigenous people by international treaties incorporated into Brazilian law, by the Brazilian Constitution itself and by infra-constitutional domestic law should also be extended to indigenous migrants, with an emphasis on the right to differentiated health care, irrespective of whether the indigenous people concerned live in indigenous land or in an urban context. The reason is that, for indigenous peoples, specialized health care not only involves respect for worldviews, practices and even traditional medicine, but also ensures adequate access to health and prevention services and information, because it takes into account intercultural relationship aspects, such as the need for interpreters and for follow-up and the sociocultural reality in which indigenous people live.

35 Marquez, M. Ministro da Saúde assina plano de ações para atender imigrantes venezuelanos em RR. G1-RR, 14 January 2018. Available at: <<https://g1.globo.com/rr/roraima/noticia/ministro-da-saude-assina-plano-de-aco-es-para-atender-imigrantes-venezuelanos-em-rr.ghtml>>. Accessed on 14 January 2018.

## 2.5 Social assistance

Another topic of concern related to indigenous migrants assistance is the scope and responsibility of the social assistance network, both as regards facilitated access to documentation and access to social benefits and health, education and social assistance services. Some of legal instruments applicable to indigenous migration movements in Brazil are:

- Conanda Resolution No. 181/2016 (applying children's rights to traditional peoples and communities).
- CNAS Resolution No. 7/2016 (enactment of the Decennial Social Assistance Plan, which focuses on Strategic Goal 1.1.3 and Aim 5.4).
- CNE Resolution No. 3/2012 (school education for migratory populations).
- Funai Normative Instrument No. 1/2016 (defining the agency's jurisdiction regarding indigenous children and young people).

The Social Development Ministry launched in 2016 a booklet called 'The Role of Social Assistance in Migrant Care',<sup>36</sup> systematizing the debates that took place at a Migrants Technical Chamber within the Trilateral Inter-management Commission and the National Social Assistance Service, with the stated aim of defining the role of social assistance services in the context of an increased migratory movement in Brazil. The booklet lists the MDS ordinances that allocate resources not only for emergency response, but also for basic infrastructure, such as shelters and food for immigrants. The document quotes MDS Ordinance No. 70/2014, providing for joint financing by federated entities located at the migrant route for Special High Complexity Social Protection and establishing criteria, amounts of money and number of people to be cared for. This ordinance, which follows the National Social Assistance Policy, ensures migrant care both at basic and special levels of social protection.

Basic social protection is offered by Social Assistance Reference Centres and would allow for the inclusion of migrants in cash transfer programmes, including Brazil's signature programmes *Bolsa Família*, to which foreigners may have access as long as they are enrolled in the Unified Register of Social Programs (Cadastro Único) according to the guidelines laid down by MDS Joint Circular Letter No. 2/2014. Basic protection also encompasses the Service for Coexistence and Strengthening of Bonds (SCFV) and the Family Protection and Full Assistance Service (Paif). Special social protection encompasses within the Unified Social Assistance System (Suas) the supply of services to persons and families in a situation of social and personal risk, which is often the case with migrants. Special protection is offered by the Social Assistance Specialized Reference Centres (Creas) and involves the judiciary, the Public Prosecutor's Office and Children Guardianship Councils. Among the services provided are safe and healthy accommodations, strengthening of family bonds and developing users' autonomy.

According to MDS, access to Creas services depends on the user' initiative, but the system also receives referrals of sexually exploited children and teenagers, people living on the streets and other situations of rights violation identified by the Social Approach Specialized Service. This service actively seeks out vulnerable persons in public squares, bus terminals and other places with an intense flow of people. In Roraima, in the period covered by the study, active search was not observed by the study team; assistance was given when the user looked for it.

36 Ministério do Desenvolvimento Social. *O papel da assistência social no atendimento aos migrantes*. Brasília, 2016.

Setrabes says that it does not have any documents giving technical guidance on how to work with indigenous peoples. It also mentions the absence of a specific assistance policy and of social assistance directives relevant to migrants and to indigenous people in general, both Brazilian and migrant. It clarifies that the state government has no financial resources, no specific services and no qualified anthropologists and other professionals; also, the competencies and jurisdictions of different agencies regarding such assistance are completely undefined.

Interviewed institutions think that federal ministries should offer directives related to migration in general and specifically to indigenous migration. Regarding social assistance, they expressed doubts on how to interact with those groups in view of the great number of relevant laws and regulations that, in spite of being plentiful, do not make up a national policy of reception to foreigners in general and indigenous foreigners in particular. According to the collected reports, for instance, migrants in Roraima have not been registered at the *Cadastro Único* system, which would give them access to social services such as *Bolsa Família*. Furthermore, there are financial difficulties. The state of Roraima says it has received \$ 480,000 *Brazilian reais* (USD 129,000) from the federal government for the upkeep of activities during six months and then made adjustments to hire a team to manage shelters. The State has signed partnerships with the municipality of Pacaraima, NGO Fraternidade and organizations linked to the Church of Jesus Christ of Latter-Day Saints.

Pacaraima municipality's Social Assistance Office has informed that it knows of no legislation referring to the specific situation of migrants inside the municipality. An official declaration of social emergency has enabled the municipality to apply for resources with MDS, but there are doubts about how to register indigenous people at the *Cadastro Único*, because the Venezuelan ethnicities are not mentioned in the form list. According to the Federal Public Defensor in Brasilia, Cras and Creas social assistance teams assist only those who look for them, even though they do have personnel to act on the streets and other public spaces. The Federal Public Defensor says Venezuelans have no knowledge about the service and for that reason are not assisted by the national social assistance programmes, are not directed to register at *Cadastro Único* nor receive special care dedicated to old and disabled people, which is available to all migrants. Requirements included at the official application forms are presented as justifications or limitations; this makes it clear that a dialogue among institutions is needed for the necessary changes to take place.

Indigenous people must also be able to make informed choices about social programmes, because these programmes have the potential of affecting their specific ways of social organization. The Federal Public Defender in Roraima says there is no legal backing for banning people from staying close to traffic lights or to require that Venezuelan children's school documents be translated into Portuguese. The institution has acted in the administrative sphere to allow foreigners to receive health care even if they do not have the SUS card; when migrants started arriving at the state, that wasn't possible. The Public Defender has been choosing to act administratively in the face of situations that limit indigenous and non-indigenous migrants' access to rights; the judiciary is resorted to only in cases such as the suit against levying fees for vulnerable migrant regularization. The fees have now been abolished.

## Social policies for indigenous people in an urban context

All rights accorded to indigenous peoples by international treaties incorporated into Brazilian law and by the Constitution itself, as well as by infra-constitutional domestic law, should also be extended to indigenous migrants. Social policies aimed at indigenous peoples should also be aimed at indigenous migrants and indigenous people in an urban context. This should always take place by means of processes in which indigenous people are informed and consulted in a specialized and specific way, taking into consideration their right to self-determination and the different kinds of impact, positive and negative, of having access to benefits and services at their country of immigration.

## 2.6 Interaction with indigenous institutions and organizations

One of the challenges that hinder a better reception to indigenous migrants in Roraima is the lack of interaction between indigenous migrants and public institutions and also between indigenous migrants and Roraima's own indigenous peoples and organizations. That is a matter of significant concern. Although Venezuelan indigenous migrants have arrived in a state whose indigenous population is around 50,000 people,<sup>37</sup> most indigenous people coming from the Bolivarian Republic of Venezuela say they don't know Roraima's indigenous peoples. Even in Pacaraima, inside a shelter located in São Marcos Indigenous Land, Warao and E'ñepá indigenous leaders have shown unawareness of native indigenous communities, although they expressed interest in getting to know them. On the other hand, indigenous leaders and associations at São Marcos Indigenous Land say they have not been heard nor consulted and do not participate in any decision-making processes on the premises dedicated to receiving Venezuelan migrants inside the indigenous land. A legal ruling prior to the migrants' arrival regarding the city land development determines that no non-indigenous development should be built until a decision is made about what is to be done with the public premises already located inside indigenous land. The decision is supported by the Federal Prosecutor's Office. However, according to some reports, houses in Pacaraima urban area are being sold to Venezuelans due to the great increase in the local population. This has produced disagreements between indigenous associations: some consider it a risk while others see it as way of gaining a new source of income.

### 2.6.1 Indigenous peoples and organizations

The Roraima Indigenous Council (CIR) has informed that it delivered to authorities in Brasília a letter about the need for removal of non-indigenous settlers at São Marcos Indigenous Land and asks why it is not called upon to discuss the situation of Venezuelan migrants in Pacaraima.

37 Brasil. Instituto Brasileiro de Geografia e Estatística (IBGE). Os indígenas no censo demográfico de 2010: primeiras considerações com base no quesito cor ou raça. Brasília, 2012. Available at: <[https://ww2.ibge.gov.br/indigenas/indigena\\_censo2010.pdf](https://ww2.ibge.gov.br/indigenas/indigena_censo2010.pdf)>. Accessed on 31 October 2017.

CIR is willing to give support to indigenous migrant relatives in a situation looked upon as inhumane, but also makes it clear that it will not participate in ready-made projects without prior discussion. It also points out that talks with indigenous Venezuelans are necessary, but they should be promoted by the Brazilian government; the Council shouldn't be relied upon to initiate such talks.

When the Association of Indigenous Peoples of São Marcos Indigenous Land (APTISM) was questioned, it complained about the lack of direct dialogue with Pacaraima municipal authorities to discuss the situation of indigenous and non-indigenous migrants that come into Brazil through the indigenous land; dialogue does not go beyond individual talks with some leaders. APTISM has mentioned that it couldn't take position on the matter of migrants without knowing whom they are, their stories, what kind of work they do and so on. The association says it needs to receive information, listen to its members and only then take a stand. Groups might be incorporated into existing communities if they can work and show interest in farming or in raising livestock.

Fraternidade has informed that it has promoted talks between indigenous Brazilians and Venezuelans twice, with the help of the State Indigenous Office and CIR. In one occasion, Warao leaders took part in a CIR assembly and described their situation; the other occasion was a visit to communities where indigenous Venezuelans would be relocated to – this initiative was questioned by the Federal Prosecutor's Office. Some have drawn a distinction between the presence of indigenous migrants and of crossborder indigenous people, such as the Yanomami and Taurepang, who have migrated and integrated themselves into the communities where their relatives live. According to CIR, what worries the Tuxauas (as indigenous leaders in Roraima are called) is the fact that they don't know the Warao and don't understand why these Venezuelans have left their native lands or how they are able to live without them; but the Tuxauas do not know the history of territorial losses and environmental disasters that neighbouring peoples have suffered.

Since both CIR and APTISM lack information and wish to know the indigenous migrants, international organizations working in Roraima were asked to send them information concerning the situation of indigenous migration from the Bolivarian Republic of Venezuela. The goal was to help local indigenous associations get closer to indigenous Venezuelans, taking into account the right of indigenous Brazilians to know and take a stand about people entering their territory.

Both CIR and APTISM have stated that Funai and Sesai do very little for indigenous Brazilians. According to this analysis, Venezuelans wouldn't be competing with locals or getting something that belonged to them as these institutions have nothing to offer anyhow. As some MPF authorities in Roraima have reported, the only indigenous organization that shows hostility towards the presence of indigenous Venezuelans in Brazil is the Society for the Defense of United Indigenous Peoples of Northern Roraima (Sodiur), who sent the Federal Prosecutor's Office a letter repudiating the idea of sharing land and health care services with migrants.

According to Fraternidade's representative, Funai attempted a rapprochement by means of a meeting between Brazilian and Venezuelan indigenous artisans. The results were in part positive, but a long delay on the payment offered by the Indigenous Affairs Office for handcrafted products halted the process. The main request presented to Funai is for it to act in the way the Constitution determines and to commit to its institutional role, taking center stage in actions that address the migrant indigenous population and not leaving all initiatives at the hands of civil society volunteers and institutions that do not always have enough knowledge and field experience to work with indigenous peoples. There are sensitive situations, such as that of the Pacaraima



shelter, located in indigenous land, that call for a dialogue with local indigenous people. Those situations could be conducted with better technical quality if the official indigenist agency were directly present.

The Federal Public Defensor in Roraima reinforces the importance of Funai's contribution to guide and promote a dialogue between indigenous peoples, as well as to throw light on their rights and characteristic features, deepening knowledge and promoting better articulation between institutions in spite of inadequate funding. The Federal Prosecutor's Office in Roraima says that, in the absence of greater clarity, strong-willed and even mistaken actions get done and institutions come to the point of denying their responsibilities for indigenous migrant assistance. According to the UNHCR, Funai's specific performance would be a key element in making technical guidance available to players, enlightening institutions, indigenous organizations and society in general and making it clear that care for indigenous people is not an exclusive attribution of the federal government, but depends, on the contrary, on the decentralized and coordinated enforcement of federative policies.

### 2.6.2 Indigenist policy

Officials interviewed at Funai's headquarters in Brasilia say it is not clear that the assistance of indigenous Venezuelans should be undertaken by Funai only, because they are immigrants. According to Funai, the fact that they are foreigners or migrants would call for the participation of other agencies and ministries. The indigenist agency has stated that regional coordinators in Roraima and Manaus, as well as the technical coordinator in Santarém, are waiting for clearer guidelines on their institutional responsibilities. Funai's own perception is that its actions should address only Brazilian or crossborder indigenous peoples. Nevertheless, it does admit that migrants have the same rights as other citizens and that indigenous migrants are indigenous in any case.

Currently Funai does not perform a coordinating role alongside other agencies, institutions and the indigenous migrants themselves and does not have a standardized *modus operandi* to be applied in the several states where indigenous migrants are present; but it does participate in meetings with the Presidency's Chief of Staff Office to discuss the matter. According to Funai, there is nothing in Brazilian law to back in a proper and specific way its work with indigenous Venezuelans. It has informed that Immigration Council (CNIg), together with representatives from MPF, Funai itself, the Federal Police and the Human Rights Ministry, among others, aim to create a text regulating the implementation of the new Migration Law so as to contribute to indigenous migrant assistance. It has also stated that its regional coordinators and local technical coordinators are willing to help indigenous people coming from the Bolivarian Republic of Venezuela, but that they have little knowledge about how far they can go in their action, as well as difficulties stemming from lack of human and financial resources.

It is important to emphasize that Funai is the indigenist state agency and is responsible for creating, coordinating and monitoring policies addressed to indigenous peoples, as well as for carrying out territorial protection policies and promoting indigenous peoples' sustainable development. Under the umbrella of the Justice and Public Safety Ministry, the agency coordinates and implements public policies in indigenous lands directed to the peoples living therein, irrespective of whether the lands have already been demarcated or are still in the demarcation process. Both under Federal Law No. 5371/1967 and under its internal rules, established by Decree No.

9010/2017, no nationality restrictions apply to caring for and protecting the rights of indigenous populations in Brazil. Furthermore, as will be seen, a survey and analysis of normative texts relating to migration and indigenous peoples makes it clear that all rights pertaining to Brazilian indigenous peoples should be extended to indigenous migrants. This fact calls for the action of the official indigenist agency in protecting and promoting indigenous migrants' rights.

Sources heard at UNHCR reinforce the need for Funai's technical and expert participation in current discussions on indigenous migration and about patterns of migrant relocation within Brazil and/or return to the Bolivarian Republic of Venezuela. According to those sources, migrants receive emergency reception in Roraima, but it is necessary to look for medium – and long-term alternatives encompassing lasting solutions for the problem of giving indigenous immigrants adequate assistance. Together with IOM, UNHCR is looking for measures to boost indigenous migrants' income, thus giving them more independence.

The perspective of indigenous migration inside Brazilian territory is seen in a different light by the MPF, which highlights the lack of studies about indigenous people coming from the Bolivarian Republic of Venezuela, and an integration gap between different institutions. According to MPF, indigenous immigrants do not follow a definite pattern of movement and there are no standards of assistance or control of indigenous movements in different states. No one knows, for instance, which and how many indigenous persons have gone to any specific city or town or returned to the Bolivarian Republic of Venezuela; no one knows whether the people coming and going are always the same and how the movement occurs. For example, there are no explanations, but only speculations as to why they went to the neighbouring state of Pará, why they resist staying at the shelter in Manaus (state of Amazonas), why they initially rejected the Boa Vista shelter (state of Roraima) but then came back to it and so on. A coordinated plan should, for instance, establish common standards for welcoming and receiving indigenous people in all municipalities. Their movements should be followed not only by the Federal Police, which takes a public safety stance, but also by indigenist and migration institutions.

## 2.7 Indigenous peoples' sustainability and economic activities

The current emergency assistance given to indigenous Venezuelans who migrate to Brazil through the Roraima border is based on the Pacaraima Transit House and the Immigrant Reference Centres in Boa Vista. Institutions that work closely with migrants point out that shelters are overcrowded, there is no consistent supply of food in Pacaraima, sanitary conditions are still poor in spite of improvements and there is no perspective of decrease in the number of indigenous family groups coming in from the Bolivarian Republic of Venezuela. They also point to a constant 'pendular' flow of groups and individuals going back to the Bolivarian Republic of Venezuela with products acquired in Brazil and returning bringing their relatives with them.<sup>38</sup> According to reports, there are indigenous people who have been in the shelter for almost a year, although they're still a minority. This situation affects the shelter's character as a transit house and stimulates reflection on the need for sustainable economic activities and proper housing conditions, with autonomy for indigenous people whether in a migratory, traditional or urban context.

The State Social Assistance Office in Roraima points out that shelters, which are actually quickly-revamped sports halls, are not appropriate for long-term stays and suggests as an alternative that the federal government build other premises on federal land or renovate federal buildings

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38 Simões, op. cit.

located in the state.\* According to this proposal, the dwellings could be built as a condominium with a specific and differentiated design geared to receiving indigenous people, and management could be carried out at the state level if necessary. At the moment, Roraima state government claims to stimulate the production of indigenous handicrafts as a way of strengthening indigenous migrants' income. But according to Pacaraima municipality's Social Assistance Office, indigenous people at the shelters need training to be able to integrate into society. The Office informed the study team about a proposed bakery course administered by members of the Church of Jesus Christ of Latter-Day Saints. It has also pointed out that the labor market in Pacaraima is very small and there is no consumer market for indigenous handicrafts, so that indigenous products should rather be sold at the Boa Vista street markets.

As has been stated, most indigenous Venezuelans in Brazil have little or no formal schooling, which limits their insertion in the labor market to very small and basic services. According to information collected by the study team, the access to raw materials for handicrafts is quite complex: indigenous people bring in products made with *buriti* (*Mauritia flexuosa*) from the Bolivarian Republic of Venezuela, which are ready to be sold, or else depend on donations of beads and *buriti* fiber that come from the state of Maranhão and are handed out at the Boa Vista shelter. There is little demand for the products, which also sell little, and institutions provide no means for them to be taken somewhere and sold; some such policy should be considered. The creation of fixed sales points is not always of interest to indigenous artisans, who wish to be close to larger concentrations of people. According to the collected data, the sales-generated income is currently very small.

The MPF in Roraima raises questions about the perspectives on autonomy which are being thought and developed with indigenous Venezuelans in Brazil. According to the Prosecutor's Office, any kind of relocation or insertion in the labor market implies an indigenist action, greater anthropological knowledge about indigenous peoples involved and a solid integration between governments of states where indigenous groups come from and are headed to, so as to ensure a good reception and have them included in an action plan. The Prosecutor's Office says that in the beginning of 2017 Roraima government suggested settling indigenous Venezuelans in the state's indigenous lands, but the proposal wasn't accepted by the assemblies of Brazilian indigenous organizations. After that, the idea of allocating land to indigenous migrants was no longer discussed; all we know, on the basis of existing anthropological studies, is that access to land does not represent a prime claim for migrant groups who are, at first, in urgent need of shelter, food and health care. On the other hand, the idea of settling down is not completely unreasonable, even though the land in question is not traditional; likewise, it is not unreasonable that they might want a place to grow crops and live autonomously, possibly still exchanging goods in cities and towns as they did before and as other indigenous peoples still do in Brazil.

According to Funai, discussions about the possibility of allocating and demarcating land for indigenous Venezuelan migrants have produced unease due to the difficulties that such a process would meet with in Brazil. Indigenous migrants, in fact, would not be claiming ancestral land, but perhaps a place to live that took into account the specific character of their social, economical and political organization, in a semi-urban context. Such a dwelling place would probably be used collectively.

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\* *Note to the English Version:* by the time of this translation 12 shelters were active in the cities of Boa Vista and Pacaraima, three of them for indigenous people only.

## 2.8 The main challenges

Studies undertaken by MPF<sup>39</sup> and CNIG<sup>40</sup> highlight that indigenous Venezuelan migrants in Brazil come from several different places in the Bolivarian Republic of Venezuela, where they also performed other economical activities such as farming, fishing, health care or teaching. Their mobility process grew when their lands were appropriated by third parties or were subject to flooding and salinization, with which indigenous groups lost their means of livelihood. Afterwards, trade exchanges with city inhabitants dwindled due to hyperinflation and sheer lack of buyers. Also, the practice of begging as a means of obtaining income became more common. Indigenous people then migrated to Brazil and other countries, leaving part of their families in their original lands and dwelling places. This is the reason why they come and go in a pendular movement: to supply their families with goods and money.

After a period of serious vulnerability, when they remained on the streets of Pacaraima and Boa Vista, indigenous Venezuelan migrants have moved to a situation of greater stability, but they are not autonomous as regards the income they need to provide for family groups; on the contrary, they depend on the institutions currently responsible for their care. Public institutions that care for indigenous migrants in Roraima have singled out the need for coordinated action and for indigenist guidelines, particularly with respect to indigenous sustainability and commercial autonomy. The initial welcome and emergency sheltering, in turn, has a direct impact on some of the main building blocks of the relationship between indigenous people, on the one hand, and public institutions, the local population and local indigenous organizations, on the other. That impact is felt above all inside the migrant group, in its strategies and forms of organization in the context of migration, with greater or lesser external dependency.

Indigenous people coming from the Bolivarian Republic of Venezuela do not fit into the classifications and kinds of assistance accorded to crossborder indigenous groups. That calls for a reflection about the concept of mobility to be applied to their case: is the indigenous Venezuelans' way of life based on continuous mobility? Or is mobility just an extreme solution for a survival problem?

According to Funai's statement at the workshop conducted by MPF in Boa Vista in September 2017, indigenous Venezuelans emphasize their intention to go back as soon as the situation in their country gets better, something which does not seem likely in the mid-term. For now, they go back to take clothes, medicine and food acquired in Brazil to their friends and family members. A question, then, must be posed to Venezuelan indigenous migrants: do they wish to settle in Brazilian soil, even temporarily? Do they wish to relocate to other parts of the country, as do other kinds of migrants? What are their perspectives? According to authorities heard at the Foreign Office, the possibility of indigenous Venezuelans returning to the Bolivarian Republic of Venezuela is not a problem for the Brazilian government; the problem is their invisibility. As indigenous migrants become visible, the state will have to go beyond emergency sheltering regarding concrete actions of reception.

From a practical point of view, the movement seems unceasing. Shelters are overcrowded and all existent initiatives are focused on short-term processes; the central measure is offering shelter, in spite of new actions such as offering beads and *buriti* fiber to facilitate the production of handcrafts as a means of gaining income. But is this action really sustainable? How to devise long-term solutions? Some questions will help us to move forward towards solving the problem:

39 Ministério Público Federal, op. cit. 2017<sup>a</sup>, 2017b.

40 Simões, op. cit.

- Is it possible to sustain the acquisition of raw materials for handicrafts in the way it is done today?
- Is there a consumer market for such products in the long term? Is it possible for indigenous Venezuelans to get their livelihood from that activity when in the Bolivarian Republic of Venezuela the selling of handicrafts was no more than a complement to fishing, farming and small services?
- What activities will give indigenous migrants enough income to be able to survive outside the shelters, bearing in mind that they live in extended family groups?
- Which actions would enable them to develop a sustainable and autonomous livelihood in Brazil?
- Does limiting or forbidding entrances and exits at the shelters, especially for mothers and their children, aid development of autonomy?
- What plans do indigenous people at the shelters have beyond the standard discourse of giving thanks for the welcome and food and saying they will not leave the shelters anymore?
- Up until when will they live in the shelters? Will they be relocated inside the country? Do they need land? On rural areas or next to urban centres?
- Can they live on selling handicrafts and begging on the streets without suffering cultural losses?
- What is the position of each institution involved and how are institutions getting together to act in the medium and long term about Venezuelan indigenous migrants?

According to the IOM field coordinator in Boa Vista, there is a lack of qualitative research about Venezuelan migrants indigenous groups. Such research is necessary to correct misinterpretations about who they are and what they mean to do, and it would have to posit differences between diverse groups as defining their choice to go back to the Bolivarian Republic of Venezuela or to stay in Brazil in an autonomous and specifically indigenous way of life. Considering the regional context, both governmental and civil society institutions find it difficult to take into account the rights of migrants, of indigenous groups and of indigenous migrants. This difficulty is expressed in doubts about the possibility of assisting them and in the need to take advice from higher-ranking authorities. The conclusion is that it is necessary to clarify the responsibilities and attributions of such institutions in caring for indigenous peoples as holders of rights and as human beings who have the same rights as any other person. It is also necessary to clarify the legal and public policy markers that underpin state action to give adequate care to the indigenous migrant population.

In general, Venezuelan indigenous migrants have been calling on the Brazilian government to innovate, although they constitute a small group of people. A dialogue is needed among different government spheres to deepen the discussion. In the view of MPF representatives, the reasons which drive Brazilian indigenous peoples into cities and towns, particularly in the southern states, are not wholly similar to the situation of indigenous Venezuelans. When they go into cities and towns with their families, indigenous Brazilians seek access to governmental public policies, such as teacher training courses. Besides, the Guarani and the Kaingang of southern Brazil go frequently to the big cities and concentrate in busy spots to sell handicrafts in the summer.

In cities such as Curitiba and Porto Alegre, small welcome structures were created to receive those families and their children, complying with a request of the Federal Prosecutor's Office. A reference that may be considered for the development of strategies for international indigenous migration, taking into account challenges that have not yet been addressed, is the role of the Brazilian government regarding indigenous people who regularly travel to the cities in groups, all of whose members live in the same village. In Brazil there is an increasing presence of indigenous

groups who travel seeking donations, goods and possibly cultural exchanges; such is the case of the Maxakali in the state of Minas Gerais and of the Hup'äh in the state of Amazonas. The impact of transfer payment policies with no indigenist monitoring, the access to goods and services without a reflection on those peoples' autonomy and some groups' or peoples' choice to stay near urban centers all call for a state engagement that goes beyond the traditional assimilationist and welfarist approach.

It should be remarked that both social assistance services provided by the Social Development Ministry and indigenist assistance services provided by Funai are theoretically and legally available to indigenous migrants, because there is nothing in Brazilian law that forbids it. This mean there are no obstacles to the use of those services by indigenous Venezuelan migrants in Brazil. The major challenge lies in implementing such rights by means of specific and appropriate public policies that take into account indigenous peoples' particular ways of life.







# 3

THE WARAO CASE STUDY



This chapter presents data related to the migratory movements of the Warao people and the context in which those movements take place. It also discusses the relationship patterns that the Warao have established with state actors, local society, other indigenous peoples and humanitarian organizations.

From a review of the available literature, interviews with indigenous individuals and visits to shelters in Boa Vista and Pacaraima, we aim to understand the ambitions and plans of the Warao and the assistance that has been offered by government and civil society agents to those people in Brazil. At the same time, in analysing the experiences of the Warao in their migratory movement to Brazil, we aim to present proposals for the adequate treatment of the Warao in Brazil on the basis of current Brazilian law and of the current scenario as identified by this study, with an emphasis on human rights. This chapter is organized around a series of topics, with references to the final recommendations presented whenever possible.

A case study about the situation of the Warao indigenous people in Roraima has been undertaken. The literature consulted includes two technical opinions by the Federal Prosecutor's Office,<sup>41</sup> the survey 'Sociodemographic and Laboral Profile of Venezuelan Immigration in Brazil'<sup>42</sup> and a field study carried out from 5 to 11 November 2017, in Roraima, which comprised visits to the shelter Immigrant Reference Center (CRI) at the Pintolândia neighbourhood in Boa Vista and the transit house 'Janokoïda' (the Warao word for 'house') in Pacaraima. The transit house had just been opened to give shelter to indigenous migrants who before had remained on the streets. The opening of the shelter or transit house in Pacaraima has had a significant impact on reducing the insecurity and vulnerability mentioned in both MPF opinions and in the CNIg study on the situation of indigenous migrants.

Certain situations reported on the MPF technical opinion on the status of the Warao in Boa Vista and Pacaraima in January 2017 had changed in November 2017, among them the following:

- The immigrant indigenous population both in Pacaraima and in Boa Vista had increased, although it remained significantly smaller than the non-indigenous Venezuelan migrant population in Brazil;
- Structural conditions for emergency reception into shelters had improved. In Boa Vista, the CRI space was turned into a shelter exclusively dedicated to indigenous migrants;
- The Transit House in Pacaraima was also established as a shelter exclusively dedicated to indigenous Venezuelans, who as a result didn't have to live on the streets anymore.

The Warao report that, in moving out of the Pacaraima streets, they have experienced an improvement in personal safety (protection against abuse, violence and the weather, no longer being exposed to rains and high temperature), in food safety, in emergency medical care and even against exploitation in work. Nevertheless, structural issues related to the coordination of specific and differentiated state action addressed to indigenous people, the definition of public policies for indigenous care and the pursuit of long-term solutions that take into account indigenous specificity and autonomy remain unaddressed; no legal rules or technical guidelines refer to those issues.

41 Ministério Público Federal, op. cit., 2017a, 2017b.

42 Simões, op. cit.

The CRI in Boa Vista concentrates the largest population of Venezuelan indigenous migrants in Brazil. The field study team interviewed seven *Aidamos* (leaders of the Warao) people and one leader of the E'ñepá people, two elders, five women and three Warao and E'ñepá girls. As the MPF and the Federal University of Roraima had already established, the *Aidamos* leaders nominated in Brazil and in immigrant shelters are not the same as the Warao leaders in their own communities in the Bolivarian Republic of Venezuela. At CRI, seven indigenous leaders presented themselves and each one was responsible for a definite number of Warao families and a group of E'ñepá families, in groups that range from 24 to 112 people. At the transit house in Pacaraima the study team interviewed one *Aidamos* couple and some Warao young people and women. Most adult men were 'working' outside the transit house. In both shelters, the Warao constitute a large majority in comparison with other ethnic groups, such as the E'ñepá.

The field study team also interviewed indigenous representatives of CIR and APTISM and observed a lack of mutual knowledge and of attunement between indigenous leaders and the authorities involved in the indigenous migrants issue. In Pacaraima, the Warao leaders did not even mention the existence of indigenous communities nearby. Indigenous representatives of the São Marcos Indigenous Land (where Pacaraima municipality is located), in turn, say they are not receiving any direct information about the situation of the Warao nor concerning measures and strategies for their reception in Pacaraima; all their knowledge about those matters comes from the press. When questioned, both the Warao and the indigenous Brazilians showed their desire for greater communication, which reinforces the need for Funai's engagement in promoting such an exchange.

As regards civil society, the study team interviewed representatives of the NGO *Fraternidade* – that currently manages the two shelters visited, under the responsibility of Roraima state government and with certain roles delegated to Boa Vista and Pacaraima municipalities –, of the Pastoral Centre for Immigrants in Pacaraima, of Socioenvironmental Institute and of Conectas Human Rights. It also interviewed researchers, volunteers and UFRR students and produced a written record of the public hearing about Venezuelan immigration in Roraima, which took place at the state Legislative Assembly on 9 November 2017.

The research team talked with representatives of IOM and UNHCR in Boa Vista and promoted a hearing in which both Public Defenders (DPU) and Federal Prosecutors (MPF) were present. Also among public officials, representatives of Funai, Sesai and the Health Ministry in Brasilia were interviewed, as well as representatives of the Indigenous Health District (Yanomami) in Boa Vista, of the Federal Police in Roraima, of Setrabes and of the Pacaraima Social Assistance Office. The exhibition 'Warao – Water People in Movement', at the Tourist Centre or Orla Taumanan, in Boa Vista, was visited.

Interviews and field observations have made it clear that indigenist technical monitoring is important to customize actions and policies aimed at welcoming and regularizing indigenous migrants. In the Warao case, for instance, it seems indispensable to take into account the cultural diversity displayed by this indigenous people in spite of their linguistic unity, as has also been stated by the MPF opinion in Roraima.<sup>43</sup> This diversity, coupled with the experiences of the Warao in the Bolivarian Republic of Venezuela, has a general influence on indigenous resilience strategies, including with respect to the choice of migrating and to the migratory movement, which reflect different fears and expectations among the Warao in Brazil and/or in the Bolivarian Republic of Venezuela.

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43 Ministério Público Federal, op. cit., 2017a.

### 3.1 The Warao in Brazil

The Warao indigenous people has the second largest indigenous population in the Bolivarian Republic of Venezuela and is concentrated in the Orinoco Delta, being present in rural and urban areas, by the riverside and by the seaside.<sup>44</sup> According to the MPF technical opinion, the presence of Warao indigenous people has been recorded in Guiana and Suriname, which is a sign of pre-colonial migration.<sup>45</sup> The Warao territoriality and their mobility inside and outside the Bolivarian Republic of Venezuela help us to understand some resilience strategies employed by this indigenous people over the centuries.

The anthropological study produced by MPF indicates that at least 11 inter-ethnic precolonial systems of coexistence between different indigenous language groups have been identified in Warao territory.<sup>46</sup> The presence of settlers, particularly through the establishment of religious missions, and the enforcement of a change in inter-ethnic relationships have affected the forms of organization of indigenous peoples inside their territories. Regarding the Warao, the particular features of their territory have made them one of the few indigenous groups that were not completely subject to the missions system. Their cultural features have also enabled the Warao to gather around them other groups fleeing from the missions. The Warao cultural diversity, which stems from a multiplicity of peoples who lived in the Orinoco River delta before the colonial period and were united by a common language, is a paramount feature of this indigenous people.<sup>47</sup>

In this way, and particularly due to the twentieth century events that impacted land use and their physical and cultural reproduction in their original territory (such as the building of large development projects and cycles of economic depression), the Warao have organized themselves according to groups and areas<sup>48</sup> and have acquired a migratory character, initially inside the Bolivarian Republic of Venezuela and now also beyond it.<sup>49</sup> The Warao population in the Bolivarian Republic of Venezuela numbers more than 48,000 individuals.

Indigenous peoples with a large population, such as the Warao in the Bolivarian Republic of Venezuela and other groups in Brazil, have a common identity and common features but are often divided into groups that live very different lives, particularly regarding forms and strategies of livelihood and plans for the future. Different groups belonging to the same indigenous group may live closer to urban centers or further away from them without losing their indigenous identity. Due to these characteristics of the Warao and of other migrating indigenous peoples, it is very difficult to understand the migratory phenomenon on the basis of existing legal categories, which were devised in view of other populational groups.

Warao presence has been recorded in Roraima at least since 2014 and underwent a significant increase over the following years.<sup>50</sup> After the attempted collective deportation of around 450 Warao in December 2016, the MPF and the DPU demanded that the state act in view of giving

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44 According to the MPF opinion, the Warao 'totalize about 49,000 individuals and are scattered throughout hundreds of communities located at the Caribbean region of the Orinoco River delta on the Venezuelan coast, and also in several cities and towns around the delta, in a region that encompasses the whole state of Delta Amacuro e certain areas of Monagas and Sucre states (García Castro; Heinen, 1999; Venezuela, 2016)'. *Ministério Público Federal, op. cit., 2017a, p. 3.*

45 *Ibid.*

46 *Ibid.*, p. 6.

47 *Ibid.*, p. 5.

48 *Ibid.*, pp. 6–7.

49 These issues are described in the Technical Opinion Seap/6<sup>o</sup>CCR/PFDC No. 208/2017, p. 23, and were confirmed by an anthropological study carried out among the Warao in Boa Vista and Pacaraima.

50 *Ministério Público Federal, op. cit., 2017a, p. 17.*

the indigenous group a better reception. In that period and following pleas for humanitarian aid, a significant engagement of civil society and international agencies was witnessed. This engagement also has to do with the currently increasing flow of Venezuelans who come into Brazil through the state of Roraima in pursuit of better living conditions (particularly food and access to medications, health care and employment) and apply for asylum or request permanent residence permits in Brazil.

As previous studies by MPF and UFRR have found, the Warao in general do not seem to have clarity or concern about their choices or the officially available modalities for their permanence in Brazil.<sup>51,52</sup> Many individuals talk about their needs for food, health care and providing for their family members. As some Warao women have stated, several families have lost sons and daughters due to harsh living conditions. The interviewed authorities express doubts about the Warao intention of settling in Brazil and relocating to areas away from the border, especially in view of their manifest desire of a pendular return to the Bolivarian Republic of Venezuela, which is facilitated by Roraima's nearness.

Indigenous people who have been in the Boa Vista shelter for a long time, as well as those who are with their family members in the Pacaraima shelter and seem to be settling down, specially due to having found a steady supply of food after a long migratory process, say they are interested in learning Portuguese, and some say they wish their children to study. However, they sometimes seem to repeat phrases which they think Brazilians wish to hear or which they believe to be 'correct', such as the statements that they are no longer roaming the streets of Boa Vista or that they are looking for other kinds of work; in the latter instance, some are not able to say which kinds of work they are referring to.

In the face of deficient care in the Bolivarian Republic of Venezuela, some Warao leaders would like to ensure the continuity or permanence of the emergency assistance they have been getting in Brazil. They fear, for instance, lack of food and access to health care. Many report they cannot rely on Venezuelan health care. Some women in the Boa Vista CRI mention as a good thing the fact that they receive at the shelter everything they need, especially food, toiletries and raw materials for handcrafts.

The Warao have always declared their interest in returning to the Bolivarian Republic of Venezuela to get raw material for handcrafts, to provide for their relatives or to come back with them or even to go away for good when the situation in the country gets better. Some indigenous peoples heard by the study team, including girls and young adults, report having attended bilingual schools in the Bolivarian Republic of Venezuela. In the Pacaraima shelter there are at least two indigenous educators, while in Boa Vista there are three; all say they're interested in teaching the indigenous children. Indigenous people interviewed by the study team want to learn Portuguese and want their children to study, quoting as a model the Venezuelan bilingual schools.

### 3.2 The Warao pendular migration

One of the features which have been identified in previous studies and technical opinions is the pendular character of Warao migration.<sup>53</sup> According to the Sociodemographic Profile, in Pacaraima

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51 Ministério Público Federal, op. cit., 2017a, p. 17.

52 Ministério Público Federal, op. cit., 2017a.

53 Ministério Público Federal, op. cit., 2017a; Simões, op. cit.

When asked about future migration plans, the answers oscillate between going back to Venezuela when the crisis is over or going back just to fetch family members and come with them to Brazil. What is common to all is the desire to remain in Roraima, preferably in the city and having the ability to provide for themselves. Few showed any interest in migrating to another Brazilian state. The intention of going to Manaus, which used to loom larger in Warao plans, seems to be suffering some modifications as a migratory strategy. In CRI there was a family who came back from Manaus because the Amazonas shelter was crowded, there was less freedom to come in and go out of the shelter and there was no autonomy to light a fire and cook one's own meal. Only one Warao said he had plans to go to Belém and was saving money for that end.<sup>54</sup>

In view of the nature of the border between the two countries and the kind of migration movement which Venezuelans indigenous people engage in, there is no systematized and precise official information on immigrants' entry into Brazil and exit from the country. Given the current situation in the Bolivarian Republic of Venezuela, any interest in going back to that country is usually mentioned alongside the interest in returning to Brazil after a few months. A pendular migratory movement is thus established. This movement is contemplated neither by the legal category of asylum, marked by the existence of a persecution or threat and by the choice not to return to the country of origin, nor by the permanent residence category, based on the willingness to settle down and stay in the country. Some of the indigenous interviewees say they have already gone back or want to go back to the Bolivarian Republic of Venezuela to bring along with them family members they left behind, while others – usually those that report living in the city in the Bolivarian Republic of Venezuela – say they're in Brazil to sell handcrafts in the hope of being able to go back and provide for others in the Bolivarian Republic of Venezuela until the next time they travel to sell handcrafts and buy other goods.

The Venezuelan Immigration Sociodemographic Profile Survey delves deeper into a qualitative study of the migrant Warao and identifies at least three groups in Pacaraima – who are now probably in Boa Vista – organized according to their original ties in the Bolivarian Republic of Venezuela and their presence in Brazil, all of which are interested in the pendular dynamics between the two countries.<sup>55</sup> These dynamics and the history of social, cultural and subsistence practices related to the presence in, proximity to or passage through urban centres during decades, while they were still in the Bolivarian Republic of Venezuela, as well as the amount of goods (clothes, shoes, toiletries, food) amassed to be taken to the Bolivarian Republic of Venezuela indicate that the Warao in general are not seeking asylum or permanent residence in Brazil in a narrow sense. They are certainly interested in circulating freely with dignity, and there is also a clear need for humanitarian reception due to the situation they face in the Bolivarian Republic of Venezuela.

Thus, in respect of their presence in Brazil, we can draw up a non-exhaustive list of the situations in which different Warao individuals live and their goals:

- **Migrants in a shelter situation as an alternative to living on the streets:** they are in the recently-opened shelter/transit house in Pacaraima and say they do not envisage the possibility of moving out so soon, because there is food, men are able to go out looking for work (mainly loading trucks) and it is visible they haven't yet accumulated too many objects, considering that less than one month before that they were living on the streets;

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54 Simões, op. cit.

55 Simões, op. cit.

- **Migrants in a recent or initial shelter situation:** they have been at the CRI/shelter in Boa Vista for no more than 1–3 months and hope to sell their handcrafts and gather donations (mainly clothes, shoes, toiletries and food) to go back as soon as possible to the Bolivarian Republic of Venezuela. They say they envisage returning to Brazil after that if they are able to sell more handcrafts.
- **Migrants in an established shelter situation or in a situation of permanence in the shelter:** they have been at the CRI/shelter in Boa Vista for a longer period of 4–11 months, have accumulated objects (mainly clothes, shoes, toiletries, foodstuffs) and claim they do not envisage moving away from the shelter so soon. Furthermore, they want the children to study and don't want to have to send the women out on the streets;
- **Migrants in a situation of transit through other Brazilian states:** they are fewer in number and are in cities in other states – Manaus (state of Amazonas), Belém and Santarém (state of Pará) – having possibly passed through the state of Roraima. There are some monitored cases of indigenous people going back to the Bolivarian Republic of Venezuela.

In short, different groups of Warao express different goals for their stay in Brazil. Up to now, institutions that have been monitoring the Warao migratory movement have not talked directly to the indigenous people in the shelters, following indigenist guidelines and in a comprehensive and systematic way, about their short – and long-term future perspectives. Warao leaders have also shown openness and interest in knowing more about their rights and the possibilities of life in Brazil, confirming the importance of an indigenist work looking for solutions that reinforce indigenous migrants' autonomy and sustainability.

The Brazilian government in particular is called upon to protect indigenous peoples' human rights due to the situation of malnutrition and lack of food security, health hazards and vulnerability to violence and exploitation that those peoples face before, during and after their migratory journey. Brazilian official organs recognized and reported to the study team that indigenous Venezuelans, particularly indigenous children, arrive from the Bolivarian Republic of Venezuela with serious cases of malnutrition, skin diseases, dehydration, diarrhea and other diseases. Several cases of HIV have been detected and demand treatment.

Indigenous people, in turn, talk about the scarcity of food for them and for their children in the Bolivarian Republic of Venezuela. They mention the extreme difficulty of acquiring basic foodstuffs and toiletries, with a direct impact on their health. They say they cannot rely on health and social assistance services in the Bolivarian Republic of Venezuela any more and that on the way to Brazil or on the way back they have to face abuses, constraints and plundering on the part of police officers and others. In such a situation, state action assumes an urgent humanitarian character and calls for solutions that reinforce indigenous peoples' and individuals' mid – and long-term autonomy and sustainability.

### 3.3 Analysis of the assistance given by government agencies to Warao indigenous people in Brazil

Due to the special repercussions of indigenous immigration from Venezuela, indigenous people in general and the Warao in particular have been receiving special assistance from government institutions, even though they do not constitute the majority among the immigrants. Be it because of the alarm among locals or because some civil society institutions and even government agencies consider it a duty to respect their culture and way of life, or yet because of the difficulty



faced by institutions that do not feel prepared to work with indigenous peoples and populations, the Warao case reveals how much it is necessary to deepen and interrelate policies related to indigenous peoples, the urban context and migrations.

### 3.3.1 Indigenist policy

The fact that they come from another nation-state and the resulting accrual of the qualification 'international migrant' to their 'indigenous' condition gives rise to doubts on the part of state actors, including Funai, on how to treat the Warao and other migrant indigenous peoples.

Funai is the indigenist state agency whose duty it is to devise, coordinate and monitor policies addressed to the peoples living in indigenous lands, irrespective of whether the lands have already been demarcated or are still in the process of demarcation. Under the umbrella of the Justice and Public Safety Ministry, Funai implements policies of territorial protection and promotes the sustainable development of indigenous peoples in Brazil. The implementation of health, education and social assistance policies lies with the Ministries of Health, Education and Social Assistance respectively, but it is up to Funai to coordinate such policies and offer technical consultation on indigenist matters, as well as to promote indigenous peoples' participation and autonomy under the law. In that sense, Funai also implements other sectorial policies which demand a special regard to or that affect indigenous people, their territories and their natural resources.

Traditionally, the agency works with the 305 officially recognized indigenous peoples, including crossborder groups, and also with isolated indigenous groups. Its actions for promoting and protecting indigenous peoples' rights in an urban context are quite limited due not only to current financial restrictions that affect the federal government, but also to the specific requirements of indigenous peoples in cities and towns, which are still sometimes invisible for public policies. The situation is compounded by doubts about the indigenist agency's jurisdiction to work with indigenous migrants, for the migrant situation is presumably beyond its technical and legal competencies.

Neither Federal Law No. 5,371/1967, which instituted Funai, nor the agency's internal rules, established by Decree No. 9,010/2017, mention that the agency should work with indigenous persons born outside national territory. According to Funai's statute, its aims are:<sup>56</sup>

- I – to protect and promote indigenous peoples' rights on behalf of the Union;
- II – to devise, coordinate, articulate, monitor and ensure the implementation of the Brazilian government's indigenist policy on the basis of the following principles:
  - a) recognition of indigenous peoples' social organization, customs, languages, beliefs and traditions;
  - b) respect for the indigenous citizen and his or her communities and organizations;
  - c) warrant of original title to land and guarantee of inalienability and unavailability of traditionally occupied lands, together with full and exclusive right of enjoyment of all resources therein;
  - d) assurance of isolated indigenous peoples' liberty and traditional activities, with no obligation of making contact with them;
  - e) assurance of environmental protection and conservation in indigenous lands;
  - f) assurance of the promotion of indigenous peoples' social, economical and cultural rights;
  - g) assurance of indigenous peoples' and their organizations' participation in government forums dedicated to defining policies relevant to them;

56 Funai. Política indigenista no Brasil: avanços e desafios. Available at: <<http://www.funai.gov.br/index.php/todos-presidencia/2901-politica-indigenista-no-brasil-avancos-e-desafios?start=1>>. Accessed in: October 31, 2017.

- III – to manage indigenous property according to article 29 provisions, except for those assets whose management is assigned to indigenous peoples or their communities and which can also be managed with explicit commission from the interested communities;
- IV – to promote and support surveys, censuses, analyses, studies and scientific researches about indigenous peoples, aiming at enhancing appreciation and knowledge of their cultures;
- V – to monitor indigenous peoples' health care actions and services;
- VI – to monitor indigenous peoples' differentiated education actions and services;
- VII – to promote and support sustainable development in indigenous lands according to each indigenous people's reality;
- VIII – to arouse, by means of communication actions, collective interest for the indigenous cause; and
- IX – to exert police authority for the defense and protection of indigenous peoples.

It is clear that the Federal Union's indigenist intent to protect Warao rights requires a special assistance on the part of Funai, and this assistance is acknowledged in the indigenist agency's statute and in the law that created it. On account of its many special features – such as the collective migration profile including many children suffering from malnutrition, the presence of indigenous families on the streets and the problems of communication resulting from the fact that Warao is their native tongue – the Warao situation has received highlighted attention and has been demanding a better stance from the Brazilian indigenist agency.

There is a demand for a better indigenist orientation not only on the part of municipal, state and federal government institutions, but also of civil society institutions involved in managing shelters and caring for the Warao. In spite of its funding limitations, human resources and political backing, Funai itself admits it has the necessary expertise to make positive contributions, even in monitoring the work of other agencies, such as the Health, Education and Social Development Ministries. In the areas of territorial management, reinforcing particular forms of social organization, reviving cultural practices and economic activities and ethnodevelopment, Funai also acknowledges it could contribute positively. The agency has been acting rather timidly, in an emergency character only, and work with indigenous migrants is not mentioned at the pluriannual actions and goals plan published in 2016.<sup>57</sup>

One point in which all interviewed institutions agree is the need for federal coordination of all actions according to an indigenist, migration, humanitarian and human rights outlook. Also needed is an institutional space with authority to summon public agencies, UN agencies, universities, civil society organizations and local indigenous organizations to debate and exchange experiences and guidelines. Ordinance No. 21871-E instituted in Roraima a Migrations Management Cabinet, which was extinguished, however, on 15 April 2017. It is necessary, therefore, to put together a similar body that articulates federal, state and municipal governments in a framework of indigenist expertise in order to debate, direct, implement and monitor current and future issues having to do, for instance, with demands for territorial solutions, articulation with indigenous and indigenist areas of action in Roraima and finding mid – and long-term solutions for indigenous immigration.

57 Brasil. Presidência da República. Lei nº 13.249, de 13 de janeiro de 2016. Institui o Plano Plurianual da União para o período de 2016 a 2019. *Diário Oficial da União*, January 14, 2016. Available at: <<http://www.funai.gov.br/index.php/plano-plurianual-pa>>. Accessed on 31 October 2017.

### Expert indigenist action

Virtually all public actors and Brazilian indigenous institutions in Roraima call for expert indigenist action, which can be offered by Funai. Such action could coordinate and improve policies intended for indigenous migrants and indigenous peoples in an urban context.

### 3.3.2 Regularization of official documents

In general, public institutions and the people that work with the Warao mention their concern about the great number of obstacles that prevent them from legalizing their situation or their migratory status on account of the lack of documents and the migration's pendular character. The following cases, for instance, have been identified:

- Waraos who don't bring any documents from the Bolivarian Republic of Venezuela or who *don't have any documents* there; to regularize their situation, they are informally directed to apply for asylum;
- Waraos who bring no more than the *Venezuelan identification document*, which Brazilian authorities deem inadequate for applying for residence, because it does not state parents' names;\*
- *Warao children who arrive from the Bolivarian Republic of Venezuela without any documents*, which hinders the identification of legal guardians and, as a result, applications for residence permit or asylum in Brazil;
- *Warao children born in Brazil who are not registered in Brazilian notary offices* due to the absence of documents that state the names of the parents' parents.

### The right to documentation

The right to basic documentation and, in the case of indigenous migrants, to the regularization of their migratory situation is a fundamental human right and should be extended to the Warao as it is to all other citizens. Any normative act that aims to rule on this issue should move towards expanding access to identification documents, ensuring this right and giving due consideration to indigenous peoples' and also indigenous migrants' specific needs.

\* *Note to the English Version:* Two Interministerial Executive Acts have altered this requirement. Interministerial Executive Act nº 9 of 14/03/2018 exempts Venezuelan and Guyanese indigenous migrants from presenting documents stating their parents' names, introducing the possibility of self-declaring this information; it also introduces the possibility, for indigenous migrants from the above mentioned countries, of presenting any state-issued document with a photograph for purposes of requesting a temporary residence permit in Brazil. Interministerial Executive Act nº 15 of 27/08/2018 extends the possibility of self-declaring the parents' names to all Venezuelan and Guyanese migrants.

Considering that civil documentation does not feature as a central concern for many indigenous peoples, be they Brazilian, Venezuelan or from elsewhere, and that nation-States themselves do not always promote the proper registration and documentation of indigenous populations, especially those who live in far-off areas, the demand for civil documents in migration processes impacts indigenous migrants the most. The Warao case shows there is a need for solutions tailored to the realities of those peoples, a solution that brings to the fore rights accorded indigenous peoples by treaties, conventions and by domestic law itself, so that the absence or scarcity of documentation doesn't harm those populations, excluding them even more from access to their fundamental rights. On the other hand, state concerns about migratory control and security issues must be taken into account. Lack of documentation is also a safety hazard for migrants, and in this way calls for coordinated action in order to document indigenous migrants for their own protection.

### ***3.3.3 Shelter and food***

When they enter Brazil through the state of Roraima, indigenous migrants can access so-called shelters, namely CRI in Boa Vista and the Transit House in Pacaraima. Emergency sheltering has been adapted to better serve indigenous needs; it has, for instance, been reorganized to cater for indigenous claims to be separated from non-indigenous migrants and has undergone structural renovation, as sleeping hammocks and external grills for cooking were set up. Currently the internal rules for the Boa Vista shelter are being drawn up; they must be appropriate to ensure differentiated assistance to indigenous migrants.

According to information provided by NGO Fraternidade, there is a concern with overcrowding at CRI. During the last twelve months, the number of people entering or leaving Boa Vista shelter has fluctuated; the average number of Warao varies between 120 and 250 people and often reaches the shelter's maximum capacity. At the same time, Warao indigenous people are constantly coming into Brazil, and a good proportion among them has moved from Pacaraima to Boa Vista. In Boa Vista, the Warao receive daily meals prepared in the shelter kitchen with donated food. Indigenous ladies and young women produce pieces of handwork with beads and nylon string given by Fraternidade. The distribution of clothes and snacks by a religious organization was observed by the study team, as was also a Portuguese language class inside the shelter. Indigenous people describe their presence in the shelter as especially important to get around the scenario of hunger which they experienced in the Bolivarian Republic of Venezuela and do not show any interest in moving out, as they mostly depend on assistance. During the study period, there were no records of counselling sessions about rights and references to indigenous people in the shelter, nor of any actions aimed at finding long-term solutions for reception beyond initial emergency sheltering.

Setrabes has informed that a set of internal rules for the shelter is being drawn up with the help of Fraternidade personnel. The internal rules could, among other things, stipulate a recommended time frame for families to remain in the shelter, reinforcing its temporary character. However, there are no records of families or groups who have left the shelter looking for a long-term solution. On the contrary, it is constantly reported that they leave the shelter to settle down on the streets, to live on the streets or shelters of other cities and towns or to go back to the Bolivarian Republic of Venezuela. It is necessary to begin discussions with indigenous people and government officials responsible for indigenist policy in order to devise a strategy for indigenous migrants to leave the shelter. Such strategy must be different from the one adopted for non-indigenous people.

In Pacaraima, where the shelter for indigenous migrants coming from the Bolivarian Republic of Venezuela has been recently opened and taking into account the fact that the municipality is the door through which Venezuelans come to Brazil, it is possible that the shelter has another meaning and a different dynamics, both for indigenous people arriving for the first time and for those who return from the Bolivarian Republic of Venezuela to Brazil or from other states to Roraima. Considering that in Pacaraima the men have been finding more work opportunities and the shelter offers greater flexibility regarding the Warao way of life, specially in respect of cooking, it is possible that the demand for long-term stays should increase.

For the municipality's Social Assistance Office, though, which manages the shelter alongside Fraternidade, the shelter is a transit house and is characterized as temporary. There is no clarity about the proceedings of indigenous health care for the Warao in Pacaraima, but there are indications that the Office is working to issue the SUS card for every indigenous person. In spite of these progresses in policy reach, neither the Pacaraima or Boa Vista municipalities nor the state government suggest long-term solutions. In their view, indigenist expertise is necessary; Warao mobility and the dynamics of their permanence in the state are seen as a factor of difficulty.

### **Participation in sheltering and food policies**

Sheltering and food policies, just as other actions addressed at indigenous peoples, should be based on indigenous self-determination and on respect for indigenous culture, their styles of relationship and their codes. This means that, as the law provides, such policies cannot dispense with indigenous participation by means of previous free and informed consultation; they also cannot do without an input of indigenist thought.

#### **3.3.4 Social assistance**

In the field of social assistance, the need for federal guidelines about migrant assistance was pointed out, with special mention to the specifics of assisting indigenous migrant. Such guidelines could be consubstantiated on a specific policy that took into account the workings of the Unified Social Assistance System, spanning federal, state and municipal levels with their referenced networks and their councils. Similarly, the need for greater clarity about the jurisdiction of the Indigenous Health Sanitary Districts to care for indigenous people in an urban context, outside their villages and including indigenous migrants such as the Warao, was pointed out. To gain such clarity, even normative adjustments were mentioned as a possibility.

Furthermore, concern was expressed as to the Action Plan for managing indigenous migrant shelters in an ideal context of transition towards long-term solutions that acknowledge indigenous peoples' autonomy and at the same don't leave them without assistance. In that sense and in the framework of discussions about migration, it is always important to keep in mind the need to better understand what indigenous migrants themselves think about the possibilities, threats and risks of returning to their original territories, and also about possibilities of cooperation

between the governments of Brazil and the Bolivarian Republic of Venezuela to ensure the dignity of indigenous populations.

Although the state government is hiring (with federal funds) teams to devise and implement action plans in the indigenous migrant shelters, there is little clarity about the lines such plans should follow in order to acknowledge indigenous identities and work towards actions that strengthen indigenous forms of organization and self-sustainability even outside their traditional lands. Education, for instance, entails considerable challenges and opportunities. There is interest and some demand for educational activities addressed to the Warao, but such demand cannot be reduced to access to Roraima's public schools. When they talk about education, the Warao highlight the importance of their language and their stories and also of learning Portuguese, mentioning the experience of some indigenous people in the Bolivarian Republic of Venezuela who had access to bilingual and intercultural education, which is also provided for in Brazilian law. However, there was no effort to hire Warao educators to make up the teams.

In Pacaraima, the study team observed women not only making handcrafts, but also sewing cloths brought from the Bolivarian Republic of Venezuela, and there are reports of indigenous men that find day jobs loading and unloading trucks. If on the one hand there is some worry about informality and possible abuse in the labor relations which indigenous men are subject to, on the other hand there is also a possibility of greater autonomy for indigenous migrants to manage their own resources and, as a result, their sustainability. The Pacaraima transit house or shelter does not offer food, just a cooking space and occasional donations of foodstuffs. Because of this, the Warao buy or get ingredients (flour, sausages, fish, fruit) to prepare their own food.

Although these work and food systems were not thought out as such and have come about on their own as a result of particular circumstances, which have to do with the size of the municipality and its location, after minimum conditions of food and shelter are ensured it is possible to carry out a comparative analysis which may govern action plans with an emancipatory and not merely welfarist character. It is well known that aid politics, although necessary in emergency situations, can have a severe impact on indigenous peoples' culture, organization and life when not treated as emergency measures. They can introduce a strong dependence on State action. According to Funai itself, State action must be guided by a paradigm shift from welfarism to the protection and promotion of indigenous peoples rights, both to redress historical wrongs and to prevent further human rights violations.<sup>58</sup>

### **Social policies: from assistance to emancipation**

Social policies directed to indigenous people should respect their forms of organization, their autonomy and their self-sustainability, always prioritizing emancipation over dependence. As an example, indigenous peoples' and cultures' unique knowledge should be valued in view of its productive outcomes.

58 Funai. Documento base da I Conferência Nacional de Política Indigenista. Brasília, 2015. Available at: <<http://www.funai.gov.br/arquivos/conteudo/ascom/2015/img/06-jun/Documento%20Base%20-%202506.pdf>>. Accessed on 31 October 2017.

### ***3.3.5 Their relationship with other indigenous peoples***

Pacaraima municipality is located within São Marcos Indigenous Land, which was demarcated and homologated in 1991 to ensure the physical and cultural survival of the Macuxi, Wapichana and Taurepang peoples. The exclusive and permanent enjoyment of natural resources by the original inhabitants of the indigenous land is constitutionally assured. Representatives of Roraima's indigenous peoples say they know very little about the situation of the Warao and other indigenous peoples who migrate from the Bolivarian Republic of Venezuela, and say they are interested in getting information and helping out. However, they complain that institutions that work with indigenous Venezuelans often ignore the forms of organization of indigenous people in Roraima and particularly in the São Marcos Indigenous Land and act without consulting or informing indigenous leadership.

The Warao, on the other hand, say they know nothing about the existence of indigenous peoples nearby and ignore that the Pacaraima shelter is located in indigenous land. Some Warao leaders in Boa Vista reported with satisfaction their experience of participating in an assembly of the Roraima Indigenous Council. They say they were excited about the Council's organization and willingness to hear what they had to say.

Warao protection cannot entail lack of consideration for other indigenous peoples' rights. In January 2016, with the news that the Warao would be settled on indigenous land with no consultation to São Marcos peoples and other peoples of Roraima, there was increased concern with the possibility of indigenous Brazilians' and also Venezuelans' rights being violated. CIR's representative reported also their worries about increased racism and discrimination on the part of the non-indigenous population due to the presence of indigenous Venezuelans in the city. He said that in non-indigenous eyes there is no distinction between Brazilian and Venezuelan indigenous peoples, so that Brazilians too began suffering discrimination and abuse in the urban area of Pacaraima.

In this way, public action addressed to indigenous migrants should care also for the relationships that are or can be established with original peoples of the relevant territory. This consideration should also inform local indigenist actions and Action plans for shelters, particularly the Pacaraima shelter, which is located inside indigenous land.

#### **Exchanges between indigenous peoples**

Exchanges between indigenous groups are extremely significant for the organization of their communities, especially when there is an interest in the flow of information. Indigenous peoples' autonomy should be respected in all circumstances, and decisions that impact their lives should be preceded by free and informed consultation with them.





# 4

**AN ANALYSIS OF THE LAW  
CONCERNING INDIGENOUS  
MIGRANT ASSISTANCE UNDER  
A RIGHTS-BASED APPROACH**



This chapter presents the relevant law for an appropriate treatment of indigenous migrants' situation. We start with an analysis of the main international human rights instruments relevant to migrations and indigenous peoples, including treaties that have been incorporated into Brazilian domestic law and recommendations, conventions and declarations by international organizations in which Brazil participates. Then the relevant domestic law is presented as regards both indigenism and migration rights, with an emphasis on the new Brazilian Migration Law and its regulating decree.

All human beings, whether they be defined as a migrant, a refugee or something else, are accorded the enjoyment of their human rights with no discrimination at any stage of their travels or movements. Therefore, all principles and rights enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention for the Elimination of Racial Discrimination, the Convention against Torture, the ILO Convention No. 169 and so many other international human rights treaties ratified by Brazil fully apply to indigenous Venezuelans, as do also those principles and rights established in the Brazilian Constitution – namely in articles 1, 3 and 5, which deal with non-discrimination and protect personal identity as a fundamental element of human dignity – and in the applicable domestic law.<sup>59</sup>

This understanding is reaffirmed by the UN Human Rights Council Resolution 'Protection of the human rights of migrants: the global compact for safe, orderly and regular migration', approved in June 2017, which:

[...] reaffirms the duty of States to effectively promote, protect and respect the human rights and fundamental freedoms of all migrants, including those of women and children at risk, especially unaccompanied migrant children or children separated from their families, persons with disabilities and those who are discriminated against on any basis, regardless of their migration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party;

[...] calls upon all States to promote and protect the human rights of all migrants, without discrimination of any kind, and to this end to provide assistance and relief to migrants who need it, including those in a vulnerable situation, regardless of their immigration status, and to create a safe, accessible and enabling environment in which individuals and organizations that provide such attention can operate.<sup>60</sup>

Essentially, this resolution embodies progress in expressing concern for the special vulnerability that indigenous peoples, along with other specific groups, experience in the context of migrations. In its preamble, it states:

*expressing serious concern* about the special needs of and risks faced by migrants in vulnerable situations, including women at risk, children, especially unaccompanied migrant children or children separated from their families, members of ethnic and religious minorities, victims of violence, older persons, persons with disabilities, persons who are discriminated against on any basis, *indigenous peoples*, victims of human trafficking and victims of exploitation and abuse in the context of the smuggling of migrants, and recognizing the need to address vulnerable situations and the disproportionate risks migrants may face, particularly with regard to discrimination

59 Contributions presented by Federal Assistant District Prosecutor João Akira during the Indigenous Migration Workshop organized by IOM in conjunction with Enap on 7 February 2018.

60 United Nations Human Rights Council, op cit.

and exploitation, as well as sexual, physical and psychological abuse, violence, human trafficking and contemporary forms of slavery, racism, xenophobia, discrimination and intolerance towards all migrants;

*expressing serious concern also about the particular vulnerable situations and risks faced by migrants, which can arise from the reasons for leaving country of origin, circumstances encountered by migrants en route, at borders and at destination, specific aspects of a person's identity or circumstance or a combination of these factors [...].*<sup>61</sup>

Given the factual conditions of Brazil's northern border, the current migratory movement coming from the Bolivarian Republic of Venezuela, including its indigenous migrants, may be classified as a 'large movement' under paragraph 6 of the New York Declaration for Refugees and Migrants.<sup>62</sup> The topic of large movements was also addressed by the report presented to the UN General Assembly in April 2016 in the context of preparations for a high-level meeting on migrations and refugees:

whether a movement is characterized as 'large' is less dependent on the absolute number of people moving than on its geographical context, the capacities of the receiving States to respond and the impact caused by its sudden or prolonged nature on the receiving country. Large movements often involve mixed flows of people who move for different reasons and use irregular channels. By default, the responsibility for responding to large movements of people lies primarily with the receiving States. This is an area in which greater international cooperation and responsibility-sharing is needed.<sup>63</sup>

Indeed, the Venezuelan flow to Brazil presents the features of a 'mixed' migration in view of the different motivations and expectations of migrating groups, which include at least economic migrants, humanitarian migrants and asylum-seekers, Venezuelan nationals, indigenous people and people from other countries who reside in the Bolivarian Republic of Venezuela. This mixed flow calls for international cooperation efforts and demands special attention for the Brazilian northern border.

To comply with its international commitments and obligations, the Brazilian government should make sure that human rights are central to its responses. And how should that be done? According to the UN Human Rights Council, to ensure respect for the human rights of vulnerable groups in migratory movements it is important to:<sup>64</sup>

- Confront xenophobia;
- Protect the lives and safety of migrants;
- Guarantee access to justice for migrants;
- Ensure that all returns are lawful and sustainable;
- Uphold migrants' right to liberty;
- Ensure the widest protection of the family unity of migrants;
- Guarantee the human rights of all children;
- Protect the human rights of all women;

61 Ibid., added emphasis.

62 United Nations. General Assembly. New York declaration for refugees and migrants. New York, 29 July 2016. Available at: <[http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_71\\_1.pdf](http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf)>. Accessed on 1 December 2018.

63 United Nations. General Assembly. In safety and dignity: addressing large movements of refugees and migrants. April 2016. (A/70/59), paragraph 11. Available at: <[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/59&=E%20](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/59&=E%20)>. Accessed on 31 October 2017.

64 United Nations High Commissioner for Human Rights, op. cit.

- Ensure the right of migrants to the highest attainable standard of physical and mental health;
- Safeguard the right of migrants to adequate housing;
- Guarantee to migrants the right to work in just and favorable conditions;
- Promote international cooperation.

In addition, in the attempt to enforce at the Amazon border indigenous and migrant rights provided for in national and international rights protection instruments, it is necessary to ponder a demand for more budgetary flexibility in order to cater for the changing needs of local actions and programmes. In the normative field, such budgetary flexibility is justified by the protection of human rights, which in the context of migrations encompasses not only emergency situations but also the daily task of dealing with seasonal increases and decreases of population at the border. In other words, criteria for the distribution of federal resources should go beyond the census population and must involve a differentiated planning system as far as border areas are concerned.<sup>65</sup> The adoption of a human rights approach in analyzing the situation of indigenous migrants is backed by the commitments of state parties to the New York Declaration. States declare in paragraph 5: ‘We reaffirm and will fully protect the human rights of all refugees and migrants, regardless of status; all are rights holders.’<sup>66</sup>

Indeed, state action in border areas should go beyond a simple national security approach, for several studies and diagnoses show that the border should be seen and managed also as a place of meeting and integration, where understanding and valuing ‘otherness’ should be recognized and promoted.<sup>67</sup>

Legal benchmarks – beyond New York Declaration commitments – include international human rights instruments which, due to their conventional nature, are also binding domestic instruments when ratified by Brazil. Article 2 of the Universal Declaration of Human Rights, for instance, establishes that ‘Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind’.

Although there is no official definition of international indigenous migrations, some elements have been identified by an analysis of migratory movements in several countries.<sup>68</sup> In the United States, for instance, for many years the migration of Mexican and Guatemalan indigenous peoples has remained invisible and only now has begun to yield more systematic data, which can be applied to the Brazilian situation.<sup>69</sup> It has been observed, for instance, that indigenous people in general start migrating to other countries after a process of domestic migration motivated by economic, social and environmental reasons that prevent them from staying at their traditional territory or drive them away from it. It is a case of forced migration due to loss of territory caused not only by conflicts and disputes for natural resources and by the scramble for economic opportunities, but also by reasons such as armed conflicts and disaster situations. In other countries, therefore, it turns out that indigenous migratory routes may include enrollment

65 Contributions presented by expert Marcia Sprandel during the Indigenous Migration Workshop organized by IOM in conjunction with Enap on 7 February 2018.

66 United Nations. New York declaration for refugees and migrants, *op. cit.*

67 Contributions presented by expert Marcia Sprandel during the Indigenous Migration Workshop organized by IOM in conjunction with Enap on 7 February 2018.

68 Trujano, *op. cit.*

69 Associated Press. Indigenous immigrants counted for the first time. NBCNews, April 1st, 2010. Available at: <[http://www.nbcnews.com/id/34694076/ns/us\\_news-life/t/indigenous-immigrants-counted-first-time/#.Wb2ZwTNDTeQ](http://www.nbcnews.com/id/34694076/ns/us_news-life/t/indigenous-immigrants-counted-first-time/#.Wb2ZwTNDTeQ)>. Accessed on 31 October 2017.

in temporary work programmes, illegal entry into a country or application for asylum. All this goes beyond mere crossborder relations.<sup>70</sup>

It is worthwhile to highlight that most indigenous migrants coming from the Bolivarian Republic of Venezuela, although they do cross the border from one country to another, do not fit into the definition of *crossborder indigenous groups*, i.e. those whose territory lies under the jurisdiction of two or more neighbouring countries. All the same, it is clear that all general human rights protections and safeguards apply equally to those indigenous migrants. The right to come and go, to speak their native tongue, to enjoy autonomy in making individual and collective decisions, to live together as families and as communities, to profess and practice their religion, to express their culture, to have access to basic services, to work with dignity and so many others are covered by a human rights-based approach to migration rights.

### **The main instruments**

#### **Indigenous peoples**

- UN Declaration on the Rights of Indigenous Peoples
- Declaration on the Rights of Persons Belonging to National, Ethnic, Religious or Linguistic Minorities
- ILO Convention No. 169
- American Declaration on the Rights of Indigenous Peoples

#### **Migrants**

- New York Declaration for Refugees and Migrants
- Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas

## **4.1 International legislation and recommendations**

In 2007, the UN General Assembly approved the Declaration on Indigenous Peoples Rights. Brazil voted for the declaration and stated its commitment to this important international document. Although the declaration is not a treaty, it incorporates several binding rights in international law, which are provided for in international human rights treaties although indigenous peoples are not specifically mentioned. The declaration has been put to use by the international human rights system to advance fundamental rights protection for indigenous peoples, incorporating collective aspects and also those pertaining to the colonization which indigenous peoples have suffered in different parts of the world.

In this declaration, we shall highlight the articles that reaffirm the guarantee of non-discrimination for indigenous peoples in the access to and enjoyment of their rights. At the same time, these articles emphasize the duty to acknowledge and respect indigenous peoples' specific identities, languages, cultures, traditions and ways of life:

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<sup>70</sup> Yescas, op. cit.

#### Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

#### Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

#### Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

#### Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

#### Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

#### Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

#### Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Another international instrument relevant to indigenous peoples is ILO Convention No. 169. As a binding international treaty, Convention No. 169 was incorporated into Brazilian domestic law by Decree No. 5,051/2004 and has the same force as an ordinary federal law. It states a range of specific fundamental rights of indigenous peoples, such as the right to land, to autonomy and to previous consultation. It also explicitly correlates the terms 'indigenous' and 'migrant', which makes it relevant to the case of Venezuelan indigenous migrants in Brazil:

#### Article 20

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.
2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:
  - (a) admission to employment, including skilled employment, as well as measures for promotion and advancement;
  - (b) equal remuneration for work of equal value;
  - (c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;
  - (d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organizations.
3. The measures taken shall include measures to ensure:
  - (a) that workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labor contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labor legislation and of the means of redress available to them;
  - (b) that workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;
  - (c) that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labor and other forms of debt servitude;
  - (d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.
4. Particular attention shall be paid to the establishment of adequate labor inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.



Also according to ILO Convention No. 169, States should establish previous free and informed consultation with indigenous peoples about measures that affect them and should respect those peoples' self-determination; besides, non-discrimination should be the basis for drawing up and enforcing national states' law and public policies. So:

#### Article 6

1. In applying the provisions of this Convention, governments shall:

(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

(b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

(c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

The Organization of American States (OAS), in turn, approved in 2016 the American Declaration on the Rights of Indigenous Peoples, the first instrument in its history to promote and protect the rights of American indigenous peoples. Although it is not a binding treaty, Brazil voted for its approval and manifested its commitment to the principles enshrined therein. The declaration lists some directives for the treatment of indigenous migration cases; just as ILO Convention No. 169, besides approaching the rights of indigenous peoples from a human rights-based perspective, it combines the categories 'indigenous peoples' and 'migrant', particularly as respects labour:

#### Article II.

States recognize and respect the multicultural and multilingual character of indigenous peoples, who are an integral part of their societies.

#### Article III.

Indigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development.

#### Article XXVII. Labor rights

1. Indigenous peoples and individuals have the rights and guarantees recognized in national and international labor law. States shall take all special measures necessary to prevent, punish and remedy any discrimination against indigenous peoples and individuals.

2. States, in conjunction with indigenous peoples, shall adopt immediate and effective measures to eliminate exploitative labor practices with regard to indigenous peoples, in particular, indigenous children, women and elderly persons.

3. Where indigenous peoples are not effectively protected by the laws applicable to workers in general, States, in conjunction with indigenous peoples, shall adopt all necessary measures to:

- a. protect indigenous workers and employees in relation to hiring under fair and equal conditions in both formal and informal employment;
  - b. establish, apply, or improve labor inspection and the enforcement of rules with particular attention to, inter alia, regions, companies, and labor activities in which indigenous workers or employees participate;
  - c. establish, apply, or enforce laws so that both female and male indigenous workers:
    - i. enjoy equal opportunities and treatment in all terms, conditions, and benefits of employment, including training and capacity-building, under national and international law;
    - ii. enjoy the right of association, the right to form trade unions and participate in trade union activities, and the right to collective bargaining with employers through representatives of their own choosing or through workers' organizations, including traditional authorities;
    - iii. are not subject to discrimination or harassment on the basis of, inter alia, race, sex, origin, or indigenous identity;
    - iv. are not subject to coercive hiring systems, including debt servitude or any other form of forced or compulsory labor, regardless of whether the labor arrangement arises from law, custom, or an individual or collective arrangement, in which case the labor arrangement shall be deemed absolutely null and void;
    - v. are not forced to work in conditions that endanger their health and personal safety; and are protected from work that does not conform to occupational health and safety standards;
    - vi. receive full and effective legal protection, without discrimination, when they provide their services as seasonal, occasional, or migrant workers, as well as when they are hired by employers, such that they receive the benefits of national laws and practices, which shall be in accordance with international human rights laws and standards for this category of workers;
  - d. ensure that indigenous workers and their employers are informed of the rights of indigenous workers under national law and international and indigenous standards, and of the remedies and actions available to them to protect those rights.
4. States shall take measures to promote employment of indigenous individuals.

The declaration expands on some topics already dealt with by the UN Declaration on the Rights of Indigenous Peoples, particularly in its articles II, IX, XVII and XXVI, which reaffirm respect for the pluricultural character of indigenous peoples, the recognition of their legal personality, their right to maintain their special family systems and the right of indigenous children to enjoy their own culture, their language and their traditions in a clear perspective for the future. All these rights are safeguarded in Brazilian domestic law and apply to indigenous migrants, as there is no legal provision or prohibition against it.<sup>71</sup>

Still in the international sphere and considering the linguistic and cultural barrier that often hinders the offer of assistance to indigenous people, it is important to highlight that since 1992 there has been a Declaration on the Rights of Persons Belonging to National, Ethnic, Religious or Linguistic Minorities.<sup>72</sup> This instrument, approved by the UN General Assembly, affirms that states are obliged

71 Funai. OEA aprova Declaração Americana sobre os Direitos dos Povos Indígenas. June 28, 2016. Available at: <<http://www.funai.gov.br/index.php/comunicacao/noticias/3815-oea>>. Accessed on 31 October 2017.

72 For clarification, it should be mentioned that in international law declarations are general rules: they are not legally binding on States, but they do represent a wide consensus of the international community, particularly of UN Member States, and they have a strong moral link with the actions of states in their domestic policies and in drawing up domestic legal rules.

not to discriminate these groups, creating suitable policies and safeguarding their right to self-determination. This represents above all a progress towards guaranteeing these groups' physical and cultural reproduction and safeguarding contact with citizens on the other side of the border whenever such contact is necessary for the maintenance of their ways of life. So:

#### Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

About the principles of equality and non-discrimination in the Interamerican Human Rights Protection System, Advisory Opinion No. OC-18/03,<sup>73</sup> drawn up by the Interamerican Court of Human Rights, should be mentioned. The opinion was written on the occasion of a request by Mexico, in 2002, who asked for clarification on the breadth of the principles of equality and non-discrimination as applied to so-called 'illegal' migrants, and reflects the understanding of the highest human rights court in the American continent. According to the Court, states cannot subordinate or condition the observance of fundamental human rights, including the rights to equality before the law and to non-discrimination, to achieving migration policy goals contained in its laws, because any action or omission to that end would be inconsistent with international human rights instruments. *In verbis*:

1. That States have the general obligation to respect and ensure the fundamental rights. To this end, they must take affirmative action, avoid taking measures that limit or infringe a fundamental right, and eliminate measures and practices that restrict or violate a fundamental right.
2. That non-compliance by the State with the general obligation to respect and ensure human rights, owing to any discriminatory treatment, gives rise to international responsibility.
3. That the principle of equality and non-discrimination is fundamental for the safeguard of human rights in both international law and domestic law.
4. That the fundamental principle of equality and non-discrimination forms part of general international law, because it is applicable to all States, regardless of whether

<sup>73</sup> Interamerican Court of Human Rights. Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 of 7 September 2003. Series A No. 18.

or not they are a party to a specific international treaty. At the current stage of the development of international law, the fundamental principle of equality and non-discrimination has entered the domain of *jus cogens*.

5. That the fundamental principle of equality and non-discrimination, which is of a peremptory nature, entails obligations *erga omnes* of protection that bind all States and generate effects with regard to third parties, including individuals.

6. That the general obligation to respect and guarantee human rights binds States, regardless of any circumstance or consideration, including the migratory status of a person.

7. That the right to due process of law must be recognized as one of the minimum guarantees that should be offered to any migrant, irrespective of his migratory status. The broad scope of the preservation of due process encompasses all matters and all persons, without any discrimination.

8. That the migratory status of a person cannot constitute a justification to deprive him of the enjoyment and exercise of human rights, including those of a labor-related nature. When assuming an employment relationship, the migrant acquires rights that must be recognized and ensured because he is an employee, irrespective of his regular or irregular status in the State where he is employed. These rights are a result of the employment relationship.

9. That the State has the obligation to respect and guarantee the labor human rights of all workers, irrespective of their status as nationals or aliens, and not to tolerate situations of discrimination that are harmful to the latter in the employment relationships established between private individuals (employer-worker). The State must not allow private employers to violate the rights of workers, or the contractual relationship to violate minimum international standards.

10. That workers, being possessors of labor rights, must have all the appropriate means to exercise them. Undocumented migrant workers possess the same labor rights as other workers in the State where they are employed, and the latter must take the necessary measures to ensure that this is recognized and complied with in practice.

11. That States may not subordinate or condition observance of the principle of equality before the law and non-discrimination to achieving their public policy goals, whatever these may be, including those of a migratory character.

These principles, then, should direct the creation of public policies and the treatment states accord to migrants inside their territories, including indigenous migrants. They constitute important directives to the Brazilian government regarding indigenous migrants coming from the Bolivarian Republic of Venezuela, as the Warao and E'ñepá, for instance.

It is also important to highlight that regional blocs such as the Amazon Cooperation Treaty Organization (ACTO) and, more recently, Mercosur, by means of the Meeting of Authorities on Indigenous Peoples (Rapim), have been pondering the topic of crossborder migration of indigenous peoples, which in some aspects resembles the situation of indigenous migration from the Bolivarian Republic of Venezuela to Brazil. These government efforts aim to create protocols and multilateral agreements on border traffic and access to documentation, taking into account indigenous peoples' sociocultural features.

ACTO, for instance, signed the Strategic Agenda for Cooperation in the Amazon for the period 2010–2018. The programme Strategic Framework to Develop a Regional Agenda for Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact, promoted by the Interamerican Development Bank, is now being developed. As a result of the programme's first stage, Guidelines for Health Care of Indigenous Peoples in Voluntary Isolation and Initial Contact were published. The second stage is expected to result in new projects for indigenous peoples living in border areas.

Mercosur has also progressed in the direction of protection for indigenous peoples. Since Rapim was made official, in 2014, the bloc has been developing regional action plans based on the protection and promotion of indigenous peoples' rights, particularly human rights and the right to self-determination.

In 2014, considering the need to delve deeper into the social dimension in the regional bloc's process of integration and the need to promote the inclusion of all its inhabitants, including indigenous peoples in particular, with respect for their knowledge and their cultural practices and valuing their specificities, Mercosur approved its 2015–2017 Action Plan.<sup>74</sup> The plan focuses on border areas based on indigenous peoples' human and collective rights and on respect for cultural diversity, participation, consultation and cooperation with those peoples. The plan describes some goals shared by member states which are relevant to this study's subject matter and could act as guidelines for establishing policies directed to indigenous migrants coming from the Bolivarian Republic of Venezuela to Brazil:

#### Goal I

To ensure that indigenous peoples in Mercosur have access to knowledge and information about their rights as recognized by our laws and our countries on an international level.

##### Actions:

- *To promote actions of information and training for indigenous people about their rights, by means of workshops, meetings, courses, seminars and multiplier training processes, among other possibilities, specially in border areas.*
- To produce Mercosur material (folders, booklets, radio communication, bilingual audiovisual communication, etc.)

#### Goal II

To safeguard for Mercosur indigenous peoples full access to and enjoyment of all their rights as recognized by our laws and our countries on an international level.

##### Actions:

- To exchange experiences about policies of access to civil registration and identification of indigenous peoples in border areas.
- Analysis and diagnosis of the dynamics of indigenous peoples and communities in border areas as regards their customs, problems and mobility-related needs.

#### Goal VII

To strengthen, publish, value and revive Mercosur indigenous peoples' cultures, tongues, languages and knowledges.

##### Actions:

- To draw up strategies for promoting and supporting community communication initiatives among indigenous peoples, specially on border areas.
- To draw up strategies to recover, value and visualize, by means of publications, short films, visual material, etc., the contributions given by indigenous peoples' culture and knowledge (medicine, food, education, production, cultural and artistic expression, etc.).

<sup>74</sup> Mercosur. CMC. Decisão nº 45/14. Plan de Acción de la Reunión de Autoridades sobre Pueblos Indígenas para el Período 2015–2017. Paraná, 16 December 2014. Available at: <[http://www.sice.oas.org/Trade/MRCSRS/Decisions/DEC\\_045-2014\\_s.pdf](http://www.sice.oas.org/Trade/MRCSRS/Decisions/DEC_045-2014_s.pdf)>. Accessed on 21 October 2017.

- To incorporate interculturality as a criterion for the *development and implementation* of regional public policies directed to the population as a whole.

- To promote activities of cultural exchange between indigenous peoples in Mercosur, specially in border areas.

The Mercosur action plan proposes the development of interactive material aimed at indigenous peoples themselves so they acquire knowledge of their rights, with proper guidance and training for public agents engaged in that process. Such training should aim at the recognition of indigenous peoples' self-determination and the protection and promotion of their rights, in addition to specific actions concerning basic documentation and border crossing between the bloc's Member States.

Besides complying with indigenous peoples' specific rights, it is important to give due consideration to the law in general and also to initiatives for protecting the rights of migrants, including refugees, temporary migrant and stateless persons. The applicable reference in this regard is the New York Declaration for Refugees and Migrants, which is aligned with the 2030 Agenda for Sustainable Development and recognizes the need for humanitarian protection mechanisms and instruments that affect the flow of migrants and refugees, underpinned by a reaffirmation of the principles enshrined in the United Nations Declaration. The New York Declaration recognizes that proper treatment of migrations and refugees due to political, economic, social and humanitarian reasons is key for safeguarding human rights, which do not stop at borders.

Acknowledging that poverty, underdevelopment, lack of opportunities, poor governance and environmental factors are some of the most common drivers of current migrations, the declaration proposes the development of a humanitarian agenda to address the issue, which has stepped up exponentially in the last decade. In short, and considering its application to Venezuelan indigenous migrants, it acknowledges in particular:

### III. Commitments for migrants

41. We are committed to protecting the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status, at all times. We will cooperate closely to facilitate and ensure safe, orderly and regular migration, including return and readmission, taking into account national legislation.

51. We take note of the work done by the Global Migration Group to develop principles and practical guidance on the protection of the human rights of migrants in vulnerable situations.

52. We will consider developing non-binding guiding principles and voluntary guidelines, consistent with international law, on the treatment of migrants in vulnerable situations, especially unaccompanied and separated children who do not qualify for international protection as refugees and who may need assistance. The guiding principles and guidelines will be developed using a State-led process with the involvement of all relevant stakeholders and with input from the Special Representative of the Secretary-General on International Migration and Development, the International Organization for Migration, the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees and other relevant United Nations system entities. They would complement national efforts to protect and assist migrants.

57. We will consider facilitating opportunities for safe, orderly and regular migration, including, as appropriate, employment creation, labor mobility at all skills levels, circular migration, family reunification and education-related opportunities. We will pay particular attention to the application of minimum labor standards for migrant workers

regardless of their status, as well as to recruitment and other migration-related costs, remittance flows, transfers of skills and knowledge and the creation of employment opportunities for young people.

63. We commit to launching, in 2016, a process of intergovernmental negotiations leading to the adoption of a global compact for safe, orderly and regular migration at an intergovernmental conference to be held in 2018. We invite the President of the General Assembly to make arrangements for the determination of the modalities, timeline and other practicalities relating to the negotiation process. [...] <sup>75</sup>

In Annex II, dealing with the development of a global compact for safe, orderly and regular migration to be approved in a conference held in 2018, the New York Declaration suggests the compact could include the following elements:

(a) International migration as a multidimensional reality of major relevance for the development of countries of origin, transit and destination, as recognized in the 2030 Agenda for Sustainable Development;

(b) International migration as a potential opportunity for migrants and their families;

[...]

(e) The facilitation of safe, orderly, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies; this may include the creation and expansion of safe, regular pathways for migration;

[...]

(i) Effective protection of the human rights and fundamental freedoms of migrants, including women and children, regardless of their migratory status, and the specific needs of migrants in vulnerable situations;

(j) International cooperation for border control, with full respect for the human rights of migrants;

In this regard, the UNHCR has recognized, in a 10-point action plan, proposals for interstate action towards guaranteeing the human rights of populations involved in migratory movements. Some of the points seem to apply to the movement of migrants from the Bolivarian Republic of Venezuela to Brazil, particularly the following:

#### 9. Return of non-refugees and alternative migration options

For people who are found not to be refugees, and for those who do not wish to seek asylum, expeditious return in safety and dignity is usually the preferred response of states. UNHCR may, on a good offices basis, assist states in the return of people who are not in need of international protection where this is the most appropriate and agreed solution. The manner in which UNHCR could be of assistance deserves closer examination by all interested parties. There will be circumstances where people who do not meet the criteria for refugee status may nevertheless be in a position to access alternative temporary migration options. These could variously allow them to stay legally in the country of arrival, or to move to a third country for humanitarian reasons, or for the purposes of work, education or family reunion. Efforts to address mixed population movements should also explore a place for regular migration options, temporary or even longer term.

#### 10. Information strategy

<sup>75</sup> United Nations. New York declaration for refugees and migrants, op. cit.

All of the measures described above should be complemented by information campaigns in countries of origin, transit and destination. People need to be alerted to the dangers of irregular movement and the difficulties they might face upon arrival, as well as to any alternatives to irregular migration which might also meet their circumstances. Such information campaigns will likely not curb irregular movements entirely but, if combined with the other action points and supported by longer term measures to tackle the root causes of such movements, they may have a positive impact. While information campaigns are primarily a task for agencies with a migration or information related mandate such as IOM, UNHCR may also play a role in such initiatives. UNHCR also has capacity and interest to initiate public awareness activities about the plight of refugees, in order to promote tolerance and to combat racism and xenophobia.<sup>76</sup>

Temporary migrants' return with dignity and respect for their family relations and cultural interactions, as well as initiatives for information campaigns and developing materials to increase awareness, promote tolerance and combat racism and xenophobia, are thus proposed as possible policies. These proposals are aligned with the Mercosur 2015–2017 Action Plan for indigenous peoples and reveal possibilities of policy development regarding indigenous peoples migrating from the Bolivarian Republic of Venezuela to Brazil.<sup>77</sup>

Regarding Brazilian activity concerning refugee protection, it is important to highlight the Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas, approved in 2010 to mark the sixtieth anniversary of the Office of the United Nations High Commissioner for Refugees (UNHCR), the sixtieth anniversary of the 1951 Convention Relating to the Status of Refugees and the fiftieth anniversary of the 1961 Convention on the Reduction of Statelessness. The governments of the participating countries, among them the Bolivarian Republic of Venezuela and the Federative Republic of Brazil, resolved:

1. To *revitalize* implementation of the 'borders of solidarity', 'solidarity cities' and 'solidarity resettlement' programmes of the 2004 Mexico Plan of Action to Strengthen the International Protection of Refugees in Latin America, with the support of the international community, as necessary.
2. To *promote* the exchange of good practices and lessons learned throughout the region within the framework of the Mexico Declaration and Plan of Action which could be useful for the care and protection of refugees and internally displaced persons and the search for durable solutions.
3. To *recommend* applying the Mexico Plan of Action as the regional framework to address new challenges related to the identification and the protection of refugees in the context of mixed migratory movements.
4. To *recognize* the importance of achieving durable solutions for refugees and, in particular, the need to address the fundamental root causes of refugee displacement, in order to avoid new refugee flows.
5. To *promote* accession in the hemisphere to the international instruments for the protection of refugees and, in this regard, to call on States that have not yet done so to consider speedy accession to these instruments.
6. To *consider* the possibility of adopting appropriate national protection mechanisms to address new situations not foreseen by the international instruments for the protection of refugees, giving due consideration to the protection needs of migrants and

76 UNHCR. Refugee Protection and Mixed Migration: A 10-Point Plan of Action. 2007. Available at: <<https://www.unhcr.org/protection/migration/4742a30b4/refugee-protection-mixed-migration-10-point-plan-action.html>>. Accessed 1 December 2018. See also the 2016 updated manual: <http://www.unhcr.org/publications/manuals/5846d48b7/10-point-plan-action-2016-update-chapter-10-information-strategy.html>

77 Ministério Público Federal, op. cit. 2017a.



victims of trafficking, including whether they are in need of international protection as refugees.

7. To *urge* countries in the Americas to consider acceding to the international instruments on statelessness, reviewing their national legislation to prevent and reduce situations of statelessness, and strengthening national mechanisms for comprehensive birth registration.

8. To *promote* the values of solidarity, respect, tolerance and multiculturalism, underscoring the non-political and humanitarian nature of the protection of refugees, internally displaced persons and stateless persons, and recognizing their rights and obligations as well as their positive contributions to society.

9. To *recognize* the importance of greater opportunities for regular migration and policies that respect the human rights of migrants, regardless of their migration status, for preserving the space for refugee protection. [...] <sup>78</sup>

We should, therefore, look into which migratory category would subsume indigenous migrants coming from the Bolivarian Republic of Venezuela to Brazil. To that end, we can examine legal instruments valid under Brazilian domestic law.

### Main instruments

#### Indigenous peoples

- Brazilian Constitution (articles 231-232)
- Federal Law No. 6,001/73 (Indigenous Peoples' Statute)

#### Migrants

- New Migration Law (No. 13,445/2017)
- Decree No. 9,991/2017

## 4.2 Domestic legislation and recommendations

The Brazilian Constitution enshrines the dignity of the human person and citizenship among its foundations and, according to article 3 sections I and IV among others, lists as goals of the Brazilian Federative Republic the building of a free, fair and solidary society and promoting the welfare of all with no prejudice and no discrimination whatsoever. In the *caput* of its 5th article it also prescribes equal treatment for Brazilians and foreigners as far as the access to all rights and safeguards is concerned. Regarding indigenous peoples, it has dedicated a full chapter to their rights, which are listed in articles 231 and 232:

Article 231. Indigenous peoples' social organization, customs, languages, beliefs and traditions are recognized, as well as their original rights over lands traditionally occupied by them, the demarcation of which, along with the protection of Indigenous peoples' assets and securing respect for these, is a responsibility of the Union.

78 UNHCR. Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas. 2010. Available at: <<https://www.unhcr.org/protection/basic/4cdd3fac6/brasil-declaration-protection-refugees-stateless-persons-americas-brasil.html>>. Accessed 1 December 2018.

§ 1. The lands traditionally occupied by Indigenous peoples are: those which they inhabit in a permanent character; those used for their productive activities; those indispensable for the preservation of environmental resources which are essential for their well-being; and those necessary for their physical and cultural reproduction according to their uses, customs and traditions.

§ 2. Lands traditionally occupied by Indigenous peoples are their permanent possession and Indigenous peoples shall have the exclusive enjoyment of the soil, rivers and lakes within them.

§ 3. Development and exploitation of water resources, including the potential for electric power generation, as well as mineral resources prospection and extraction in indigenous lands, can only be effected with permission of the National Congress after having heard the affected communities, to which is assured participation in the proceeds of those activities according to the law.

§ 4. The lands which are the object of this article are inalienable and unavailable and rights over them are indefeasible.

§ 5. Displacement of indigenous groups from their lands is strictly forbidden except when authorized by the National Congress, in the event of a natural disaster or epidemic that puts its population in risk or in the interest of the country's sovereignty, after due deliberation by the National Congress; in any case, immediate return as soon as the risk is over is guaranteed.

§ 6. All acts that have as their object the occupation, ownership or possession of the lands referred to in this article, or yet the exploitation of natural resources from the soil, rivers and lakes therein, are null and void, subject to the Union's public interest according to the stipulations of a complementary law; the aforementioned nullity and invalidity shall not engender any right to compensation nor will they be cause of action against the Union, except as regards betterments added in good faith, which shall be compensated according to the law.

§ 7. The provisions in article 174, §§ 3 and 4, do not apply to indigenous lands.

Article 232. Indigenous peoples, their communities and their organizations are legitimately entitled to be parties in legal proceedings in defense of their rights and interests; the Public Prosecutor's intervention in all parts of the process is safeguarded.

In this way, the framers of the Brazilian Constitution have given pride of place to the respect for indigenous peoples' autonomy and self-determination inside Brazil, recognizing indigenous usages, customs and traditions, their specific modes of expression and decision-making and their legal personality and according them full citizenship. Before the 1988 Constitution came into force, the matter had already been regulated by Federal Law 6,001/1973, known as Indigenous Peoples' Statute. Some aspects of that law have been superseded by the new constitutional legal framework, but for the most part the law remains valid for regulating the legal situation of indigenous people in the country. In its second article, the law stipulates:

Article 2. The Union, States and Municipalities, as well as their organs of indirect administration, shall, within the bounds of their respective competencies and in view of protecting indigenous communities and preserving their rights:

[...]

III – respect the singularities inherent to the indigenous condition in according Indigenous peoples' means for their development;

IV – ensure to Indigenous peoples’ the possibility of freely choosing their means of livelihood and subsistence.<sup>79</sup>

On the principle of non-discrimination, indigenous cultural heritage and the right to intercultural and bilingual education, the law states:

Article 14. There will be no discrimination between indigenous workers and other workers, and all rights and safeguards enshrined in labor and welfare laws shall apply to indigenous laborers equally.

Article 47. Respect for indigenous communities’ cultural heritage, their artistic values and means of expression is safeguarded.

Article 49. Indigenous peoples’ education in reading and writing will be carried out in the language of the group of which they are members and also in Portuguese; the use of their language is safeguarded.

In other words, Brazilian domestic legislation provides for cultural diversity and respect for the self-determination of indigenous peoples, emphasizing non-discrimination between them and other citizens with due regard to their peculiar sociocultural and linguistic status. These legal markers should be extended to all indigenous people in Brazilian soil, including indigenous Venezuelan migrants. There is no legal bar to applying those provisions to indigenous migrants, whose rights should be respected on an equal footing with Brazilian citizens and indigenous peoples of Brazilian origin.

When in Brazilian soil, indigenous Venezuelans are not only indigenous peoples, but also migrants, irrespective of their movement being cyclical and pendular or of their migration being temporary or permanent. Thus, in addition to the protection which they should receive for being indigenous peoples, and which is provided for in the laws quoted above, they also qualify for migrant protection, subject to the specific status of indigenous peoples. In this connection, it is important to look at the provisions of the new Migration Law (Federal Law No. 13,445 of 24 May 2017), which updated migrants legal status pursuant to international treaties on the subject and, above all, to the democratic approach of the 1988 Constitution. In its first article, the law defines an immigrant as ‘a national of another country or a stateless person that works or resides in Brazil and settles in the country either temporarily or permanently’. Indigenous Venezuelan migrants fall into this category.

In addition to principles and rules relevant to indigenous peoples, policies directed toward this population should incorporate principles and guidelines laid down in article 3 of Federal Law No. 13,445/2017:

Article 3. Brazilian migration policy adheres to the following principles and guidelines:

I – Universality, indivisibility and interdependency of human rights;

II – Rejection and prevention of xenophobia, racism and all forms of discrimination;

III – Non-criminalization of migration;

IV – Non-discrimination on account of the criteria or proceedings by means of which the person was admitted into national territory;

<sup>79</sup> Brasil. Presidência da República. Federal Law No. 6,001 of 19 December 1973. Provides for the Indian Statute. Diário Oficial da União, Brasília, 21 December 1973.

- V – Promotion of regular entry and documental conformity;
- VI – Humanitarian reception;
- VII – Brazil’s economic, touristic, social, cultural, sports, scientific and technological development;
- VIII – Assurance of the right to family reunion;
- IX – Equal treatment and opportunity for migrants and their families;
- X – Migrants’ social, labor and productive inclusion by means of public policies;
- XI – Migrants’ free and equal access to social services, programmes and benefits, public assets, education, free legal aid, work, housing, banking services and social security;
- XII – Promotion and publicization of migrants’ rights, freedoms, guarantees and duties;
- XIII – Social dialogue in drawing up, implementing and evaluating migratory policies and promotion of migrants’ participation as citizens;
- XIV – Reinforcing the economic, political, social and cultural integration of Latin American peoples by constituting spaces for citizenship and the free movement of persons;
- XV – International cooperation with countries of origin, transit and destination of migratory movements so as to ensure effective protection for the human rights of migrants;
- XVI – Integration and development of border areas and development of regional public policies to give effect to the rights of border residents;
- XVII – Full protection and attention to the superior interests of migrant children and teenagers;
- XVIII – Respect for treaty provisions;
- XIX – Protection of Brazilians abroad;
- XX – Migration and human development in places of origin as inalienable rights of all people;
- XXI – Recognition of academic qualifications and professional practice in Brazil, subject to the terms of the law; and
- XXII – Repudiation of collective deportation practices.

This list of principles and guidelines should, then, direct the formulation of public policies for the migration movement of indigenous people from the Bolivarian Republic of Venezuela to Brazil. It should be combined with the principles that guide the design of indigenist policies, considering indigenous peoples’ cultural and linguistic peculiarities and the perspective of ensuring their physical and cultural reproduction, as well as their autonomy. Indigenous migrants, in spite of linguistic and cultural obstacles, need specific actions of welcome, documentation, protection and, above all, encouragement for their autonomy or economic and social sustainability. Indigenist expertise should make sure, for instance, that policies don’t force indigenous peoples’ assimilation nor put them under the guardianship of the State, as if they were not fully competent. There is a delicate balance to be sought between giving attention to indigenous particularities and ensuring indigenous rights with no discrimination.

In general, a few points merit highlighting: non-criminalization of migration; non-discrimination on account of the proceedings adopted for entry into the country; regularization of documents, which should be facilitated in view of indigenous specificity; humanitarian reception; labour

and productive inclusion by means of public policies that respect indigenous forms of social organization; and social dialogue with migrant participation in drawing up public policies. These elements gain further significance in the case of indigenous migrants and are directly related to the process of free, previous and informed consultation as a means to ensure respect for indigenous self-determination.

The migration law recently adopted in Brazil lists progressive principles and guidelines that give legal backing for the treatment of indigenous migrants passing through Brazilian territory or settling in the country, with an emphasis on human rights protection. The law makes a list of basic rights that must be accorded to migrants, with no distinction between them and Brazilian citizens:

Article 4. To migrants in national territory are assured, on an equal basis with nationals, the inviolability of their rights to life, liberty, equality, safety and property. The following rights are also guaranteed:

I – Civil, social, cultural and economic rights and freedoms;

II – The right to freedom of movement within national territory;

III – The right of family reunion with the migrant's spouse or partner and his or her children, family members and wards;

IV – Protection for witnesses and victims of crimes and rights violations;

V – The right to transfer the proceeds of their income or savings to another country;

VI – The right of assembly for peaceful ends;

VII – The freedom of association for lawful ends, including workers' unions;

VIII – The right of access to public health and social assistance services and to social security in accordance with the law and barred any discrimination on account of nationality and migrant status;

IX – Access to justice and to free legal aid for those who are able to prove their lack of resources;

X – The right to public education, barred any discrimination on account of nationality and migrant status;

XI – Guarantee of performance of legal and contractual labor obligations and of workers' protection laws, barred any discrimination on account of nationality and migrant status;

XII – Exemption from the fees stipulated in this law through declaration of economic inability in accordance with regulations;

XIII – The right of access to information and safeguard for migrant data confidentiality in accordance with Federal Law No. 12,527 of 18 November 2011;

XIV – The right to open a bank account;

XV – The right to exit, remain in and reenter national territory, even before being granted resident status, extension of stay or conversion of visa into resident status;

XVI – The right to be informed about safeguards accorded to migrants seeking migratory regularization.

§ 1. The rights and safeguards provided for in this law will be implemented according to the provisions of the Federal Constitution regardless of the migrant's status, subject to § 4 of this article, and do not exclude other rights and safeguards derived from international treaties signed by Brazil.

- Among the rights safeguarded to migrants, the following should be mentioned:
- Public education, barred any form of discrimination on account of migrant status or nationality;
- Full access to justice;
- Access to public health care;
- Social security, also barred any form of discrimination on account of migrant status or nationality;
- Exemption from fees due to economic inability.

These provisions should be applied to indigenous migrants coming from the Bolivarian Republic of Venezuela highlighting their indigenous condition, which also assures them rights such as access to bilingual education and support for communitarian education, access to the indigenous health care subsystem in addition to the general right to health care in the public network, access to social security with special beneficiary status and the right to be collectively represented in the judiciary system by MPF and DPU, as well as the right of access to Funai, the official indigenist agency.<sup>80</sup>

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80 This condition is regulated by INSS Normative Instruction No. 45.







# 5

**AN ANALYSIS OF MIGRANT  
INDIGENOUS PEOPLES' RIGHTS**



**O**n the grounds of international legal instruments and Brazilian domestic law relevant to the rights of indigenous peoples and migrants, this chapter looks at some of the main rights which should be assured to Venezuelan indigenous migrants in Brazil. This analysis of indigenous migrants' rights aims at offering guidelines for public agencies and public policies directed to these groups.

It should be recalled beforehand that indigenous peoples and indigenous persons are free and equal in the face of all other peoples and individuals. They have the right to non-discrimination on the exercise of their rights, and in particular they cannot be discriminated against on account of their indigenous ancestry and identity. Indigenous peoples also have the right to self-determination and can, therefore, choose their own forms of organization and means of seeking economic, social and cultural development inside nation-states. They have the right to maintain and strengthen their own political, legal, economic, social and cultural institutions and the right to participate, if they so wish, in the state's political, economic, social and cultural arenas. These rights are provided for in ILO Convention No. 169 and have been reaffirmed by not only by the United Nations and OAS Declarations on the rights of indigenous peoples, but also by international case law and human rights systems and by the Brazilian Constitution and domestic law.

In short, domestic and international law accords specific recognition, protection and respect to indigenous peoples, their social organization, their customs, languages and traditions and the territories traditionally occupied by them, establishing that indigenous peoples have the right not only to enjoy equal rights and opportunities, but also to special respect for their particularities and their choices of social organization, their development plans and ways of life, irrespective of being in an urban or rural context.

Nowadays, Brazil recognizes indigenous peoples' individual and collective rights, such as cultural and identity rights, the rights to education, work and health care and the right to their own language. Crucially, it recognizes that indigenous persons have the right to live with dignity, with physical and mental integrity, freedom and security, i.e. the right not to be forcibly assimilated or torn apart from their cultures.

In this way, after the 1988 Brazilian Constitution came into force, several breakthroughs in the implementation of public policies specifically aimed at indigenous peoples have been noted, starting with a change in the welfarist/guardianship paradigm that used to inform the state's relationship with indigenous peoples and persons. On the basis of the principle of non-retroactivity of human rights, it is understood that all rights accorded to Brazilian indigenous peoples apply also to indigenous migrants, taking into consideration the particularities related to their migratory context. Indeed, there is no legal interdiction to giving migrants access to policies that implement the specific rights of Brazilian indigenous peoples. On the contrary, all legal instruments emphasize the universality of rights.

## 5.1 The right to a nationality and the documentation of indigenous migrants

### Main parameters

- All immigrants, including indigenous migrants, should have their rights of nationality and of access to documentation safeguarded;
- Migrations cannot be criminalized (article 3 of Federal Law No. 13,445/2017);
- In their Joint Resolution No. 3 of April 19, 2012, CNMP and CNJ guarantee to indigenous peoples the right to civil registration, even late in life, and define parameters for Funai's action;
- According to article 312 of Decree No. 9,991/2017, vulnerable or economically incapable groups are exempted from all fees related to documental regularization.

Migrants' rights to basic documentation and to a nationality should be respected in all cases. According to the Universal Declaration of Human Rights, the United Nations and OAS Declarations on the Rights of Indigenous Peoples and the International Covenant on Civil and Political Rights, which is legally binding in Brazil, every person has the right to a nationality and every child has the right to acquire a nationality. The state should dedicate special care to indigenous migrants, considering their particularities and the difficulties these groups find in accessing basic documentation in Brazil and in their countries of origin. The lack of documentation is an obstacle to the regularization of their migratory status, including civil registration to their children born in Brazil.

The new Brazilian legal framework relating to migration is based on the principles of humanitarian reception, non-criminalization of migration and promotion of the migrant's documental regularization. On these assumptions, when the deportation of 450 Venezuelan migrants (including children and indigenous people) was attempted in December 2016, the DPU filed *habeas corpus* No. 0006447-87.2016.4.01.4200, which was accepted by the court in an interim proceeding. In March 2017 the court ruled in favor of DPU, barring the deportation of those individuals by means of collective proceedings. From then on, the Brazilian government's position has been to encourage Venezuelan and indigenous migrants' full documentation and regularization of their status at immigration points in Brazilian soil. According to the court, deportation would violate the American Convention on Human Rights (Pact of San Jose) which in its article 22.9 forbids the collective deportation of foreigners. The court also highlighted the humanitarian approach to migratory movements coming from the Bolivarian Republic of Venezuela.

As regards the regularization of migrants' status, the new Brazilian Migration Law lists the visa categories and the requirements for their issuance:

Article 12. To the applicant who wishes to enter or remain in Brazilian territory, the following kinds of visas may be issued:

I – Visitor visa;

- II – Temporary visa;
- III – Diplomatic visa;
- IV – Official visa;
- V – Courtesy visa.

It is clear that indigenous migrants who wish to stay for a certain time in Brazil can be authorized to do so under article 14 of Federal Law 13,445/2017, by taking into account situations of humanitarian reception and family reunion. A humanitarian reception temporary visa seems to be an option in that case, since paragraph 3 of article 14 reads:

§ 3. A humanitarian reception temporary visa can be issued to a stateless person or a national of any country in a situation of serious or imminent institutional instability, armed conflict, large-scale calamity, environmental disaster or serious violation of human rights or of international humanitarian law, or yet in other hypotheses as laid out in regulatory ordinances.

Article 36 of Decree No. 9,991/2017, which regulated the new Migration Law, provides for the issuance of humanitarian reception temporary visas in the above-mentioned cases and stipulates that a joint ordinance of the Justice and Public Safety Ministry, the Foreign Office and the Labor Ministry shall define the conditions, periods and requirements for issuing a temporary visa. The ordinance should be based on the principles that inspired Brazilian migratory policy and should pay special attention to indigenous migrants and their particularities, especially as regards documentation fees and requirements in respect of documentation issued in the country of origin.

Resident status can also be granted in situations of humanitarian reception or family reunion; in taking account of personal situations, it can be granted when the person in question has applied for asylum or special protection accorded to stateless persons, as per article 142 of Decree No. 9,199/2017.

It is understood that possibilities of humanitarian reception and (in some cases) of family reunion can match the situation of indigenous Venezuelan migrants and allow for their regularization. Article 145 of the decree that regulates the new Migration Law lays down that humanitarian reception resident status can be granted to a national of any country in a situation of:

- I – Serious or imminent institutional instability;
- II – Armed conflict;
- III – Large-scale calamity;
- IV – Environmental disaster; or
- V – Serious violation of human rights or international humanitarian law.

Article 153 defines those cases in which family reunion resident status can be granted. The case of Venezuelan migrants who have children in Brazil may be understood as an instance of family reunion, as has been detailed in the Warao case study. The same can be said about indigenous people in the Bolivarian Republic of Venezuela whose family members in Brazil have received resident status.

About civil identification for immigrants, Law 13,445/2017 provides:

Article 19. Registration consists in civil identification by means of biographic and biometric data and is incumbent upon every immigrant with a temporary visa or resident status.

§ 1. Registration will generate one unique identification number which will be enough for all acts of civil life.

§ 2. The immigrant's identity document will be issued on the basis of the unique identification number.

§ 3. While civil identification is not issued, the document proving that the immigrant has applied for it with the relevant authority shall guarantee his or her access to the services regulated by this law.

Article 20. Civil identification for immigrants applying for asylum, statelessness recognition and humanitarian reception can be effected with whatever documents the immigrant has in hand.

In other words, in situations of humanitarian reception, civil documentation will be issued in Brazil on the basis of whatever documents the immigrant – including indigenous immigrants – has with him or her. The new Migration Law validates the application of legal mechanisms of temporary or permanent residence based on humanitarian reception or family reunion (in specific cases) to the regularization of indigenous migrants' situation. When this migration law is combined with other legal instruments relevant to indigenous peoples' human rights, one must conclude that there is legal backing for applying to indigenous migrants all policies directed to indigenous peoples, with an emphasis on protecting their languages and cultures, on access to health care and education and on access to specific documentation according to the guidelines laid out above.

Regarding Venezuelan indigenous migrants' documentation and the difficulties related to the absence of documents stating parents' names, the Brazilian government itself has already faced similar or comparable situations that can underpin possible solutions. In 2012, the country regulated late birth registration for indigenous persons by means of CNJ-CNPM Joint Resolution No. 3, which provides:

Article 4. The indigenous person's late birth registration can be effected:

I. By presentation of the RANI;

II. By presentation of the person's data in an application signed by a representative of the National Indigenous Foundation – FUNAI, who should be identified in the registry; or

III. According to article 46 of Federal Law 6,105/1973.

§ 1. If there is a credible doubt about the authenticity of the declarations or suspicion of double registration of the same person, the registrar may demand the presence of a representative of FUNAI and the presentation of a negative certificate of birth registration from the registry divisions having jurisdiction over the territories where the person in question was born, where his or her original village is located and where he or she applies for health care.

§ 2. If doubt or suspicion persist, the registrar shall submit the case to the competent state court charged with monitoring acts of registration, stating the reasons underlying the said doubt or suspicion.

§ 3. The official shall communicate the indigenous person's late birth registration immediately to FUNAI, which shall inform the competent court whenever a double registration of the same person is confirmed, so that suitable action may be taken.

It should also be highlighted that in March 2017 CNIG published Normative Resolution No. 126 based on the goals of MERCOSUR. The normative resolution seeks to deepen the process of integration between member states and of free movement of persons and full respect for migrants' human rights. It also strives to regularize migratory movements, especially in the north of the country, of foreigners coming from bordering countries:

Article 1. The national of a bordering country not yet covered by the Residency Agreement for Nationals of MERCOSUR Member States and Associated States who came into Brazil by land may apply for temporary residence for a period of up to 2 years.

Decree No. 9,199/2017 defines the proceedings for applying for visa and for the visa to be granted. It also allocates official competencies for approving normative ordinances regarding specific protocols and principles of treatment for migrant regularization:

Article 24. The Foreign Office is competent to approve rules regarding simplification of procedures for granting visas, either due to reciprocity or to other reasons deemed relevant.

Article 25. Visa issuance simplification or the reciprocal exemption from visa of from consular fees related to visa proceedings can be defined by means of diplomatic interchange.

§ 1. The above-mentioned exemption from the requirement of obtaining a visa will be granted, at the Foreign Office's discretion, to nationals of any country which assures the same treatment to Brazilian nationals and for as long as such reciprocity lasts, and the requirements for mutual exemption shall be defined by means of diplomatic exchange.

§ 2. A joint act of the Minister of Justice and Public Safety and of the Foreign Office Minister can, in exceptional cases, exempt from the visitor visa requirement nationals of a certain country for a certain period, with due regard to national interest.

§ 3. The Foreign Office will inform Federal Police and other competent authorities about the countries to which exemption from visa applies and about the conditions related to said exemption.

§ 4. The migrant to whom the above-mentioned temporary visa has been granted shall be able to work in the country subject to current legislation.

Regulations for the new Migration Law have assigned specific competence to the Justice and Public Safety Minister, to the Foreign Office Minister and to the Labour Minister to define conditions, periods and requirements for issuing humanitarian temporary visas. At the same time, immigrants are free to work in Brazil even before the visa is issued. The regulations also institute procedures for the immigrant to apply for the National Migratory Registration Card:

Article 63. The National Migratory Registration Card shall be issued to the registered immigrant and shall bear the National Migratory Register unique number.

§ 1. If the National Migratory Registration Card is not issued, the registered immigrant will present the protocol he or she received in applying for the Card, combined with his or her travel document or another identification document recognized by an official act of the Minister of Justice and Public Safety. In this way, to the migrant will be guaranteed the rights provided for in Federal Law No. 13,445/2017 for a maximum period of 180 days, extendable by the Federal Police free of cost for the applicant.

§ 2. The National Migratory Registration Card can be issued by electronic means according to the terms laid down by the Federal Police. The issuance of the electronic document is no obstacle to the issuance of the physical document.

Article 64. The immigrant who has a temporary visa and has entered the country shall apply for registration within 90 days of the date of entry, subject to the penalty provided for in section III of the caption of article 307.

§ 1. If the immigrant works as a domestic servant, the registration should be carried out within 30 days of the date of entry into the country, with proof of the inscription of the labor relationship in the Work and Social Security Card and of registration in the Digital Registry of Tax, Social Security and Work Obligations, also called e-Social.

§ 2. If the inscription of the labor relationship in the Work and Social Security Card and of registration in e-Social is not proved within the period specified in § 1, the Federal Police shall register the immigrant and duly notify the Labor Ministry.

Article 65. The travel document belonging to a migrant with temporary visa is valid for proving his or her identity and demonstrating his or her regular status in the country as long as the period of registration has not expired, irrespective of the National Migratory Registration Card having been issued or not.

Article 66. The immigrant present in the country whose application for residence has been accepted should apply for registration within 30 days from the date of publication of his or her application's acceptance, subject to the penalty provided for in section IV of the caption of article 307.

§ 1. The publication to which the caption of this article refers will be carried out preferentially by electronic means.

Article 67. Registration shall be applied for:

I – At any Federal Police unit that offers services to immigrants, for those who have temporary visa or those with a residence permit based on seaman status;

II – At any Federal Police unit that offers services to immigrants in the circumscription where the applicant lives, for those with a residence permit not based on seaman status;

III – At the Federal Police unit that offers services to immigrants in the municipality where the border resident plans to enjoy the rights accorded him or her by Federal Law No. 13,445/2017.

Article 68. The registration of the immigrant's biographical data will be carried out on the basis of his or her travel document or another identification document accepted pursuant to the terms laid down by an act of the Justice and Public Safety Minister.

§ 1. If the document bears any contradiction or does not state the names of the immigrants' parents, the immigrant shall present:

I – Birth certificate;

II – Marriage certificate;

III – A consular certificate of his or her country of nationality; or

IV – Judicial justification.

§ 2. Civil registration and identification of people with recognized refugee or stateless person status, of those to whom asylum has been granted or of the beneficiaries of humanitarian reception can be effected with whatever documents the immigrant has in hand.



§ 3. The presentation of the documents mentioned in paragraphs 1 and 2 shall abide by the rules of legalization and translation, including those provided for by treaties to which Brazil is a party.

§ 4. An act of the Justice and Public Safety Minister can establish the necessary requirements for the registration referred to at paragraph 2 and for exemption from legalization and translation, in accordance with the law and with treaties to which Brazil is a party.

In this way, the regulations for Law No. 13,445/2017 have introduced exceptions to the requirement of presentation of the travel document (passport) for those immigrants seeking resident status or temporary visa by reasons of humanitarian reception who wish to apply for civil registration and identification. These exceptions may apply to Venezuelan indigenous migrants, and this is an important step for guaranteeing their access to documentation.

As has been indicated, Venezuelan indigenous migrants must have access to basic rights and safeguards just as any other individual in Brazilian territory, plus specific rights due to their indigenous status, for indigenous peoples, being ethnic and linguistic minorities, merit proper treatment. Just as any other vulnerable group, they should be treated according to article 312 of Decree No. 9,199/2017 as regards documental regularization:

Article 312. Consular fees pertaining to visas or documents regularizing migratory status shall not be charged from members of vulnerable groups and economically incapable individuals.

§ 1. Economic incapacity shall be declared by the applicant or by his or her legal counsel and evaluated by the competent authority.

§ 2. In case of doubt about economic incapacity, the competent authority may request complementary documentation for the condition to be proved.

§ 3. If the declaration mentioned in § 1 is proved false, the applicant will be subject to the corresponding consular fee and also to all applicable administrative, civil and criminal penalties.

§ 4. As respects the exemption from visa fees, people to whom the humanitarian reception temporary visa has been granted will be classified as belonging to vulnerable groups according to the terms of a joint act of the Justice and Public Safety Minister, of the Foreign Office Minister and of the Labor Minister.

§ 5. As respects the exemption from fees pertaining to documents regularizing migratory status, minors without their guardians, victims of human trafficking and slavery and beneficiaries of resident status due to humanitarian reception shall be classified as belonging to vulnerable groups.

This means that Venezuelan indigenous migrants present in the country are exempt from consular fees pertaining to visas or documents regularizing their migratory status, both due to their belonging to vulnerable groups and to economic incapacity. These provisions should guide the action of state agents in registering and identifying immigrants.

## 5.2 The right to cross borders and humanitarian reception for indigenous peoples

### Main parameters

- Every human being has the right to come and go and to choose his or her residence (article 12 of the International Covenant on Civil and Political Rights);
- Indigenous peoples are entitled to move around and to preserve their relationships with relatives, with respect for their social organization, irrespective of national borders (United Nations Declaration on the Rights of Indigenous Peoples and American Declaration on the Rights of Indigenous Peoples).

Everyone lawfully within the territory of a State has the right to move, to cross borders and to choose his or her residence inside a certain country. This right is a basic safeguard, as established by article 13 of the Universal Declaration of Human Rights and article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, both of which apply to Brazil. Article 12 of the International Covenant of Civil and Political Rights, which was incorporated into Brazilian law by means of Decree No. 592/1992, also refers to peoples' right to cross national borders:

#### ARTICLE 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

It should be noted that section 3 of article 12 of the International Covenant on Civil and Political Rights provides for possible restrictions to the right to liberty of movement; these restrictions may be applied to protect national security, public order, public health or morals and other fundamental rights. Regarding indigenous peoples, the right to mobility is further reinforced by the states' human rights commitment to ensure their right to maintain contacts, relations and cooperation with their own members divided by borders:

United Nations Declaration on the Rights of Indigenous Peoples

#### Article 36

1. Indigenous peoples, *in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.*

2. States, in *consultation and cooperation* with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

In the same vein, the OAS Declaration on the Rights of Indigenous Peoples, 2016, reaffirms:

Article XX. Rights of association, assembly, and freedom of expression and thought

1. Indigenous peoples have the rights of association, assembly, organization and expression, and are entitled to exercise them without interference and in accordance, *inter alia*, with their cosmovision, values, uses, customs, ancestral traditions, beliefs, spirituality, and other cultural practices.

2. Indigenous peoples have the right to assemble on their sacred and ceremonial sites and areas. For that purpose they shall have free access to, and use of, such sites and areas.

3. *Indigenous peoples, in particular those who are divided by international borders, have the right to travel and to maintain and develop contacts, relations, and direct cooperation, including activities for spiritual, cultural, political, economic, and social purposes, with their members and other peoples.*

4. States, in consultation and cooperation with indigenous peoples, shall adopt effective measures to ensure the exercise and enforcement of these rights.<sup>81</sup>

In that respect, the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992, states:

Article 2

[...]

5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.<sup>82</sup>

It is worth to remember that the Warao Venezuelan indigenous migrants, although they cross borders, do not fit exactly into the legal definition of *crossborder indigenous groups* – those whose territories are located within the jurisdiction of two or more neighbouring countries. Nevertheless, as the surveys and studies prepared by CNIG and MPF have shown, indigenous Venezuelans established in Brazil maintain family, social and cultural ties with their relatives in the Bolivarian Republic of Venezuela. The maintenance of such ties is also a right related to indigenous identity.

This is the reason why, although they are not settled in crossborder territories, the Warao and other Venezuelan indigenous migrants are members of peoples which are, nowadays, divided by the borders between Brazil, Venezuela and other countries. In this regard, ILO Convention No. 169 stipulates:

81 Our emphasis. In Spanish: '1. Los pueblos indígenas tienen los derechos de asociación, reunión, organización y expresión, y a ejercerlos sin interferencias y de acuerdo a su cosmovisión, *inter alia*, sus valores, sus usos, sus costumbres, sus tradiciones ancestrales, sus creencias, su espiritualidad y otras prácticas culturales. 2. Los pueblos indígenas tienen el derecho a reunirse en sus sitios y espacios sagrados y ceremoniales. Para tal fin, tendrán libre acceso, y uso de los mismos. 3. Los pueblos indígenas, en particular aquellos que están divididos por fronteras internacionales, tienen derecho a transitar, mantener, desarrollar contactos, relaciones y cooperación directa, incluidas las actividades de carácter espiritual, cultural, político, económico y social, con sus miembros y con otros pueblos. 4. Los Estados adoptarán, en consulta y cooperación con los pueblos indígenas, medidas efectivas para facilitar el ejercicio y asegurar la aplicación de estos derechos'.

82 OHCHR. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. 1992. Available at: <https://www.ohchr.org/en/professionalinterest/pages/minorities.aspx> . Accessed on 5 December 2018.

## Article 32

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

Therefore, and in spite of the social and economic crisis which indigenous Venezuelans themselves say they have been facing in their home country, indigenous migratory movement is less compatible – unless so considered by competent authorities – with the definition of asylum than with the definition of humanitarian migration. For example, available reports mention that some Warao return to their original communities ‘either to take back some of what they have been able to collect (objects, clothes, some foodstuffs) or to fetch more handcrafts to be commercialized in Brazil,’<sup>83</sup> which shows they are not being persecuted in their home country and that they maintain social, family and cultural ties across borders, as specified in international normative documents. The return to the Bolivarian Republic of Venezuela is a perspective for most indigenous groups that migrate to Brazil.

The Guide to ILO Convention No. 169 highlights that

indigenous peoples’ right to maintain and develop contacts and cooperation across national boundaries is by its nature different from other internationally recognized rights of indigenous peoples, as its implementation requires political, administrative and/or legal measures from more than one state. A precondition for the implementation of this right is thus that the states concerned have a friendly and cooperative relationship upon which specific arrangements for the implementation of this right can be established.<sup>84</sup>

The right to move across borders is thus a human right, specially as regards indigenous peoples, to whom must be assured the possibility of maintaining their social and family ties, which are key to preserving their social organization and their ways of coexisting. It is up to the State to guarantee that kind of movement in its migratory policies, finding alternatives to reconcile this right of indigenous peoples with the documentation and security requirements intrinsic to the circulation of people in any border situation. The right to move and settle in Brazil should be safeguarded to Venezuelan indigenous migrants in accordance with indigenist policies directed to other indigenous groups living in the country.

### 5.3 The right to land, housing and residence

#### Main parameters

- The right to adequate housing is a human right in both urban and rural contexts (International Covenant on Economic, Social and Cultural Rights);
- Indigenous peoples should be duly informed and previously consulted about housing policies (ILO Convention No. 169).

83 Simões, op. cit., p. 6.

84 International Labour Organisation. Indigenous and tribal peoples’ rights in practice: a guide to ILO Convention No. 169. International Labour Standards Department, 2009. p. 165. Available at: <[http://www.ilo.org/global/publications/ilobookstore/order-online/books/WCMS\\_171810/lang--en/index.htm](http://www.ilo.org/global/publications/ilobookstore/order-online/books/WCMS_171810/lang--en/index.htm)>. Accessed on 24 October 2017.

Regarding the right to traditional lands, it is clear that the Venezuelan State, which is also a party to ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples, is obliged to acknowledge and respect the territorial rights of local indigenous peoples such as the Warao. This acknowledgement includes the duty to demarcate and protect indigenous peoples' traditional lands.

According to the data collected by this study, up to now the indigenous population that migrates to Brazil settles mostly close to or inside the urban centers of Boa Vista and Pacaraima, heading sometimes to other urban centers of northern Brazil, and claims no land demarcations. When Venezuelan indigenous migrants arrive, they request emergency sheltering, health care and food. Many say they had a house or land in the Bolivarian Republic of Venezuela but couldn't go on living there, mostly due to poor access to food and health care services. So, their coming to Brazil is not due to the wish to settle down in another territory, but to regain decent living conditions.

In this way, it is crucial that the Brazilian government recognize and respect indigenous Venezuelans' ways of life and offer them, with no discrimination, access to policies that may ensure their physical and cultural survival in Brazilian territory, including their right to mobility. In other words, if on the one hand indigenous Venezuelans have no claim to the demarcation of traditional lands in Brazilian soil, on the other hand the State must safeguard fundamental rights that allow them to maintain their indigenous identity after the initial stage of emergency reception at the shelters.

State action might include safeguarding their right to adequate (individual or collective) housing according to the ways of life of indigenous migrant groups and their strategies of mobility or non-settling. This right may be catered for both in cities and towns, by means of housing actions or policies, or in rural areas (through the creation of indigenous reservations, for example, provided for in article 26 of Federal Law No. 6001/1973), and may include territorial policies that take mobility into account. In other words, indigenous migrants' right to housing should be weighed against their right to transitory or permanent mobility if it is established that this is a key feature of the indigenous peoples or groups in question.

According to Funai, in addition to 462 regularized indigenous lands, there are in Brazil 46 indigenous reservations. Reservations are currently undergoing a special regularization process which aims to cater for the rights to decent collective living and to access to land and natural resources in the case of indigenous peoples who have lost use of or are prevented from using their traditional lands either wholly or in part. According to the Brazilian indigenist agency, current legislation (1988 Constitution; Federal Law No. 6,001/1973; Decree No. 1,775/1996) classifies indigenous lands in the following categories: Traditionally Occupied Indigenous Lands; Indigenous Reservations; Domain Lands; Interdicted Lands. Also according to Funai:

in extraordinary cases, such as an irreversible internal conflict, great developmental impacts or the technical impossibility of recognizing traditionally occupied lands, Funai promotes the acknowledgement of the territorial right of indigenous communities by means of the Indigenous Reservation category, as provided for in article 26 of Federal Law 6,001/1973, in a partnership with state and federal agrarian agencies. In this modality, the Federal Union may purchase directly or expropriate, or yet receive as a donation, the property or properties which will be destined to the constitution of the Indigenous Reservation.<sup>85</sup>

85 Funai. Entenda o processo de demarcação. Available at: <<http://www.funai.gov.br/index.php/2014-02-07-13-24-53>>. Accessed on 31 October 2017.

The Federal Union may establish, in any part of the national territory, areas devoted to indigenous possession and occupation, where indigenous peoples may live and find means of livelihood, being entitled to the enjoyment and use of natural resources and of the conditions for their physical and cultural reproduction.<sup>86</sup>

In the near future the Brazilian government may be compelled to devise and implement access to land and natural resources to be shared between indigenous Venezuelans and other segments of Brazilian society in both urban and rural contexts, ensuring them decent and differentiated housing conditions.

Before that, however, indigenous peoples, including indigenous migrants, should be heard regarding their forms of social organization, their ways of life, their yearnings and plans, according to ILO Convention No. 169 and also to domestic case law and the Interamerican human rights system.<sup>87</sup>

ILO Convention No. 169

Article 6

1. In applying the provisions of this Convention, governments shall:

(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

(b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

(c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

State intervention without due consultation and free, previous and informed consent can result in serious violations of human rights, such as is the case when forced assimilation occurs, or in sociocultural disintegration, loss of languages and specific ways of life and hindrances to the performance of cultural and spiritual practices. In the Brazilian recent past, indigenous internment in boarding schools, reformatories and even prisons during the process of integration or assimilation into mainstream Brazilian society and removal from traditional indigenous land led to the disappearance of thousands of individuals, hundreds of peoples and many languages, beliefs and cultural manifestations, as the Brazilian State itself has recognized by means of the National Truth Commission.<sup>88</sup>

86 Funai. Modalidades de terras indígenas. Available at: <<http://www.funai.gov.br/index.php/indios-no-brasil/terras-indigenas>>. Accessed on 31 October 2017.

87 Interamerican Court of Human Rights. Pueblos indígenas y tribales: cuadernillo de jurisprudencia de la Corte Interamericana de Derechos Humanos nº 11. OAS. Available at: <<http://www.corteidh.or.cr/sitios/libros/todos/docs/indigenas.pdf>>. Accessed on 24 October 2017. Brasil. Conselho Nacional de Justiça. Jurisprudência da Corte Interamericana de Direitos Humanos – 2014. Coordination: Luís Geraldo Sant'Ana Lanfredi and Fernando Antônio Wanderley Cavalcanti Júnior. Brasília, 2016. Available at: <<http://www.cnj.jus.br/files/conteudo/arquivo/2016/09/3e650189cd668d1979b867bcf4a99264.pdf>>. Accessed on 31 October 2017.

88 Brazil. Comissão Nacional da Verdade. Texto 5: Violações de direitos humanos dos povos indígenas. In: \_\_\_\_\_. Relatório: textos temáticos. Brasília, 2014. v. II, p 204–262. Available at: <<http://cnv.memoriasreveladas.gov.br>>. Accessed on 24 October 2017.

## 5.4 The right of being in the city and access to social policies aimed at indigenous peoples

### Main parameters

- The right of access to public policies should be assured to indigenous peoples on an equal footing and with no discrimination whatsoever (International Covenant on Economic, Social and Cultural Rights and Convention on the Elimination of All Forms of Racial Discrimination);
- Indigenous peoples have the right to live or be in cities or towns or in rural areas and do not lose their indigenous identity by reason of the place where they live (ILO Convention No. 169 and UN Declaration on the Rights of Indigenous Peoples).

A significant factor for the analysis of indigenous migrants rights, although underemphasized by authors and international human rights case law, is the question of mobility as a possible way of life.<sup>89</sup> In spite of the stigma associated with the term 'nomad' and of its strong relationship with a pastoral or rural context, some important reflections can be drawn up to raise sensitivity and open possibilities in dealing with indigenous migrants coming from the Bolivarian Republic of Venezuela to Brazil, including those in cities and towns. The mobility of the Warao, for instance, who move into urban centres such as Boa Vista, Manaus, Belém and Santarém, may be the key to improve the way this migratory movement is dealt with, both in terms of reception and of adequate public policies.

The term 'nomadism' denotes a mobile way of life which organizes itself around cyclic or seasonal patterns, but it also carries a strong stigma of incivility.<sup>90</sup> Nevertheless, mobility can also be established to ensure the survival and improve the well-being of the indigenous peoples involved. In that sense, it constitutes a life strategy related to a particular cultural identity and to the human dignity which is protected by numerous human rights instruments. It is always important to know the reason why indigenous peoples move, and only then apply definitions that might, when necessary, help to explain different aspects of the situation.

Nomadic people are characterized by their mobile and non-permanent habitat. The definition of nomadism, however, has evolved so as to include people who move around seasonally and who also have a fixed dwelling during part of the year. This term is often used to characterize the situation of gypsies in Europe.<sup>91</sup>

As the Sociodemographic and Laboral Profile of Venezuelan Immigration in Brazil shows, several groups of indigenous migrants already circulated around the Bolivarian Republic of Venezuela

89 Gilber, J. *Nomadic peoples and human rights*. New York: Routledge, 2014.

90 Tapper, R. 'Who are the Kuchi? Nomad self-identities in Afghanistan'. *Journal of the Royal Anthropological Institute*, v. 14, n. 1, p. 97–116, 2008; Salzman, P. C. 'Nomadism'. In: Barnard, A. and J. Spencer (eds.). *The Routledge encyclopedia of social and cultural anthropology*. 2. ed. London: Routledge, 2010. p. 505–506; Brockington, Dan. 'Nomads'. In: Birx, H. James (ed.). *Encyclopedia of anthropology*. London: Sage, 2006. p. 1745–1746.

91 Gilber, op. cit.

in urban contexts, such as the town of Tucupita, while others chose a life of mobility after their access to and use of traditional territories was restricted.<sup>92</sup> Indeed, nomadism or domestic migratory movements do not result only from the choice of a way of life or from an economy that determines territorial movement; many times, they can also be strategies of survival in an environment that has shown itself to be wholly or partially hostile to those peoples in their traditional lands.

Indigenous mobility can be international, but may also take place inside a country, in which case it raises the issue of the right to domestic mobility, which doesn't involve crossing borders. The choice of a mobile way of life, with no fixed address or residence, should thus be accepted by competent authorities and not automatically assumed to be a problem or a situation to be overcome. When mobility is not merely circumstantial, the challenges posed by the pattern of movement should be taken account of in planning for State action. If that is not done, the result can be sheer inefficiency and rights violations.

It is also important to consider that the option for mobility is not necessarily absolute and it cannot be described as the best or the worst life choice. At least at the current juncture of migratory movements in Brazil, the 'mobility' element, as well as that of 'access to urban centres', should be better understood and respected, free of all prejudice and stigmatization on the part of public and private institutions that, either voluntarily or by administrative responsibility, have been involved with the migration issue. Legally, the mobility element has been shyly mentioned in ILO Convention No. 169. It can be deepened in the experience and case law of different countries in the context of current issues, including in those related to urban contexts:

#### Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. *Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.*
2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

In any case, it is plausible to envision State actions directed to society as a whole, including indigenous people, for preventing and countering discrimination and stigmatization of indigenous migrants, as e.g. actions undertaken to inform, educate and raise awareness about indigenous migrants, indigenous history and indigenous contributions in the social, economic and political arenas in Brazil, such as the measures provided for in Federal Law No. 11,645/2008, which introduces into the official school curriculum the mandatory study of afro-Brazilian and indigenous history and culture. Municipal and state governments should engage in the struggle against racism and discrimination directed at indigenous people, migrants and indigenous migrants now and in the future.

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92 Simões, op. cit.



Indigenous migrants can be stigmatized for being foreigners. In addition, when in cities or towns they are often seen as beggars and street-dwellers, although some indigenous people define begging and peddling handcrafts as modes of work. Indigenous people coming from the Bolivarian Republic of Venezuela, for instance, are disproportionately targeted by racial discrimination, prejudice and racism, besides being more vulnerable due to migration. In this way, it is imperative to consider if and how situations of vulnerability could be linked to the choice of a mobile lifestyle, at least as regards some groups or subgroups. This information would be crucial to guide State action.

In the urban context, a concept of risk for indigenous children, mothers and young girls should be drawn up and discussed through an intercultural lens, taking migration dynamics into account. This is because some practices classed as risky by State officials aren't always considered risky in the indigenous sociocultural context.

It must be highlighted that both indigenous migration into cities and towns and indigenous presence in cities and towns to sell handcrafts, either just passing through or for a period of time, either intermittently or without permanent residence, is not at all a new phenomenon. The difference now is that the Warao fit into the 'foreigner' category with an element of eccentricity which had previously been made invisible: they speak indigenous languages and have a different culture and a different life perception and worldview, and have arrived in a country that purports to protect and promote diversity.

What is new, then, is the engagement of State institutions (in different governmental levels), of civil society and of the academy in the quest for solutions that meet indigenous migrants' demands and assure them a decent lifestyle without compelling them to change their social organization and way of life. In giving visibility to indigenous migration and indigenous presence in urban contexts, the agents involved are taking the first steps in the way of implementing the rights of those peoples and individuals, including the right to physical and cultural survival.

The document *O papel da assistência social no atendimento aos migrantes* (The Role of Social Assistance in Migrant Assistance), drawn up by the Brazilian Social Development Ministry (MDS), lists the principles, guidelines and federative competencies in migrant care through the Unified Social Assistance System (SUAS). Public administration follows five guiding principles:

- a) Universality: all migrants are entitled to social assistance protection, given to whomever needs it, with full respect for dignity and autonomy, no discrimination of any kind and no need to go through any embarrassing situation in order to prove their condition;
- b) Gratuitousness: social assistance to migrants shall be given at no cost;
- c) Completeness: the migrant is entitled to all social assistance provisions by means of the articulated set of social assistance services, programmes, projects and benefits (with the exception of the 'Benefício de Prestação Continuada' or Continued Provision Benefit, which is restricted to Brazilians, either born or naturalized, as provided by Decree No. 6214/2007).\*

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\* *Note to the English Version:* After the conclusion of this research, in April 2018, the Federal Supreme Court (Supremo Tribunal Federal) ruled that being a migrant does not preclude access to the Continued Provision Benefit, unanimously understanding that the Brazilian Constitution does not allow for distinction between Brazilians and migrants in any issues related to social security and social assistance, without exceptions. Recurso Extraordinário (Extraordinary Appeal) nº 587.970

d) Intersectoriality: the offer of social assistance services to migrants should be characterized by the integration and articulation of the social assistance network with other sectorial policies and agencies; and

e) Fairness: social assistance services offered to migrants should take into account respect for national, regional, cultural, socioeconomic, political and territorial diversity and should give priority to those in a vulnerable situation or in social or personal risk.

The MDS document also set seven guidelines:

- a) Primacy of the State's responsibility in directing social assistance policy;
- b) Political and administrative decentralization and a single command in each government level;
- c) Joint financing by the Union, States, the Federal District and Municipalities;
- d) Families as the key social core for all social assistance actions and services;
- e) Territoriality;
- f) Strengthening of the democratic bond between the State and Civil Society;
- g) Social control and popular participation.

As for the competencies of the several federated entities:

1. The following responsibilities regarding migrants are held in common by the Union, States, the Federal District and Municipalities, in accordance with their competencies as provided for in the Federal Constitution, LOAS and NOB/SUAS 2012:

a) SUAS management and organization; the offer of services, programmes and social assistance projects with a specific methodology for migrant assistance is safeguarded by means of the social assistance network;

b) The definition of reference and counter-reference flows in migrant assistance at social assistance services, with respect for diversity in all its forms so as to guarantee equal attention;

c) The integration of services, benefits and transfer payment programmes under their respective jurisdictions, according to criteria of access;

d) The promotion of intersectorial articulation between SUAS and other public policies, as well as with the rights defense and safeguard system;

e) Training for managers, workers, heads of institutions and organizations, users and social assistance counsellors, along with other public policies.

2. The following responsibilities belong to the Union:

a) To define and make available methodological guidelines for basic and special social assistance services addressed to adults and families in a migrant situation, so as to prevent or revert situations of risk and social vulnerability;

b) To monitor and evaluate social assistance policies in migrant assistance and assist States, the Federal District and Municipalities in their development;

c) To regulate access to social protection guarantees, as established in the National Social Assistance Policy – PNAS and NOB/SUAS; and

d) To co-finance, by means of consistent and automatic fund-to-fund transfers, services aimed at adults and families in a migrant situation in the regional and local spheres.

3. The following responsibilities belong to the States:

- a) To co-finance, by means of consistent and automatic fund-to-fund transfers, services aimed at adults and families in a migrant situation in the regional and local spheres;
- b) To stimulate and give technical and financial support to municipal consortia and associations in offering social assistance to adults and families in a migrant situation;
- c) To organize, coordinate and offer regionalized services of special medium – and high-complexity social protection aimed at adults and families in a migrant situation in accordance with socio-territorial diagnoses and the criteria drawn up by CEAS and approved by CIB;
- d) To monitor and evaluate social assistance policies in migrant assistance and assist Municipalities in their development;
- e) To give technical and financial support to Municipalities in implementing and organizing services aimed at adults and families in a migrant situation;
- f) To coordinate the definition of reference and counter-reference flows in migrant assistance at social assistance services, agreed with Municipalities and approved by CIB; and
- g) to organize, coordinate, articulate, follow and monitor the social assistance network at state and regional levels.

[...]

5. The following responsibilities belong to Municipalities:

- a) To offer social assistance services, developing specific methodologies for adults and families in a migrant situation at existing social assistance services, preferably in specific units, it being permissible to offer services in conjunction with other target groups when the demand is low;
- b) To monitor and evaluate social assistance policies in migrant assistance inside the Municipality;
- c) To organize in a territorialized manner the offer of services aimed at adults and families in a migrant situation in areas of greater vulnerability and risk as defined by a socio-territorial diagnosis; and
- d) To organize, coordinate, articulate, follow and monitor the basic and special social protection network, defining references and counter-references in assisting adults and families in a migrant situation.

The MDS document also gives guidelines to social assistance offices at state and municipal levels on the challenge of organizing the demands and particularities of migrant families, defining flows and frequencies of assistance and integrating public policies and shared or exclusive responsibilities so as to prevent omissions or superpositions in the offer of services. It also makes the point that language should not be a barrier for access to public services and proposes hiring professionals and offering Portuguese courses as a complementary activity.

As Funai states in its website, its own action in protecting and promoting indigenous access to social rights is based on the following foundations:

As regards protection and promotion of indigenous peoples' social rights, the restructuring of Funai brought about by Decree No. 7,056 of December 28, 2009, has aligned state indigenist policy with national and international legal markers that defend, safeguard and protect those peoples' rights, indicating the government's readiness to reinforce a process by means of which previous political projects – based on welfarism and guardianship and characterized by patrimonial and patronizing practices of give-

and-take – are being left behind. Past projects have contributed to aggravate prejudice, differences and inequalities in the relationship between indigenous peoples and the Brazilian government and society.

Funai's activity is based on the understanding that social policies must prescribe indigenist actions that ensure respect and promotion of indigenous peoples' sociocultural and territorial particularities, as well as indigenous social control and leadership, so that indigenous peoples are able to act in institutional spaces that promote dialogue between the several agents present in the indigenist field and in the formulation of public policies.

Actions for the social promotion of indigenous peoples are undertaken in conjunction with partner agencies and in view of qualifying, implementing and/or monitoring the following thematic areas:

- Qualification of transfer payment policies in a partnership with the Ministry of Social Development and Struggle against Hunger (MDS), with an emphasis on the 'Bolsa Família' (Family Allowance) Programme;
- Monitoring and following up on health actions undertaken by the Health Ministry (MS);
- Promoting indigenous peoples' access to welfare policies, in a partnership with the National Institute for Social Security (INSS);
- Promoting indigenous peoples' access to basic documentation, in a partnership with the Human Rights Special Office of the Presidency (SDH/PR);
- Access to the Indigenous Birth Administrative Registration (RANI);
- Promotion of access to electric power, in a partnership with the Mines and Energy Ministry (MME);
- Emergency distribution of food to indigenous peoples in a situation of lack of food security and nutritional insecurity, in a partnership with the Ministry of Social Development and Struggle against Hunger (MDS), the National Company of Supplies (CONAB/MAPA) and the Indigenous Health Special Office (Sesai);
- Housing and communitarian infrastructure works, in a partnership with the Ministry of Cities.

All actions promoted and/or monitored by Funai for furthering social rights are aimed to indigenous peoples in contact with Brazilian society.

Ensuring and qualifying indigenous peoples' access to social policies by means of previous free and informed consultation is a guideline for Funai. It is up to a indigenous people to participate or not to participate in any given policy.<sup>93</sup>

The need for Funai's engagement with indigenous migrants is thus evinced. The indigenist agency must ensure the protection of indigenous social rights and collaborate in the process of devising and implementing specific policies for those peoples. To that end, it must take into account its institutional assignments as well as its knowledge and expertise in working with indigenous peoples in a governmental context and it should provide guidelines to federated entities – states and municipalities – regarding the treatment of indigenous peoples and the implementation of social protection policies.

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93 Funai. Direitos sociais. Available at: <<http://www.funai.gov.br/index.php/nossas-acoas/direitos-sociais>>. Accessed on 31 October 2017.





# 6

## RECOMMENDATIONS FOR IMPROVING ASSISTANCE TO INDIGENOUS MIGRATION FLOWS





Today's Brazilian legal framework accords protection to indigenous migrants' human rights without any discrimination and supports assistance for indigenous people in contexts of vulnerability associated with the migration flow. In addition to universally guaranteed rights, indigenous migrants are also entitled to the rights and safeguards laid down in migration laws, in binding international instruments and in the Brazilian indigenist legislation itself. These premises should guide the action of the State and its agents in providing a proper humanitarian response and protecting and promoting the rights of peoples in a migration situation, with full respect for indigenous peculiarities.

Indigenous peoples do not necessarily engage in a conventional migratory movement. It is necessary to take into account the ways of life of different indigenous groups and peoples; the historical process of pressure over their lands and natural resources; the absence or ineffectiveness of compensation given to them by the State for the loss of territory; the strategies drawn up by groups and peoples in the quest for decent living conditions, development and autonomy; and the presence or absence of relationships to be maintained at the border, across borders and also in urban and rural contexts.

To recognize the existence of a pendular movement in indigenous migration, as well as the yearning to settle down temporarily or permanently in certain areas or not to settle down at all, is the key for defining proper migratory and reception policies for indigenous peoples; these policies do not necessarily cease to apply to indigenous migrants when they settle in a certain place, and in that respect they differ from policies addressed to migrants who arrive with a firm intention to settle down. Nevertheless, special indigenist assistance in drawing up policies for indigenous peoples and especially for indigenous migrants should be an important topic of debate, for that demand cannot be considered transitory or short-term when those groups' context of vulnerability in the Bolivarian Republic of Venezuela is taken into account.

Today in Brazil, difficulties that prevent the implementation of rights guaranteed by law threaten the operation of this legal framework. It is thus necessary for the Brazilian government to improve governance of reception and assistance actions directed to indigenous migrants, starting from a clear division of responsibilities between the different federative levels and public administration agencies. In fact, a negative conflict of competencies between involved agencies can lead to a scenario in which migrant individuals' and groups' rights are substantially denied.

The migrant population, being also an indigenous population, is entitled to due protection offered by Funai, the state indigenist agency, in its mission of protecting and promoting the rights of indigenous peoples, which is a responsibility of the Union. Funai has a key role to play in coordinating and articulating specific policies so as to make sure that indigenous demands do not remain invisible and that indigenous rights – such as the rights to civil registration and to a nationality – are not denied as a result. The legal framework described in this study should, therefore, guide the creation of public policies aimed at indigenous migrants and also the implementation of existing policies aimed at all other indigenous groups in the country. However, without the political will to draw up hierarchical links between institutions and to implement measures, policies and actions that accord indigenous migrants the rights they are entitled to, there will be little progress even as regards the solutions already available in the country. It should be emphasized that such a commitment would entail, for instance, the inclusion of

indigenist actors in the spheres of dialogue and governance, as well as specific planning and budgetary actions for indigenous migrant assistance, because the indigenist agency doesn't have, at present, sufficient additional funds to assist the new migrant population.

Another significant aspect in facing situations that threaten the protection of indigenous migrants' fundamental rights is a multilateral and/or regional and international interaction around the issue. Dialogue and cooperation between governments of different countries should be at the forefront of efforts to deal with indigenous migration. For indigenous peoples in general, maintaining a relationship with their traditional or original territories is a central issue even inside a strategy of temporary or seasonal movement to other areas.

As this study has pointed out, recent discussions at Mercosur and ACTO show that the question of indigenous migration from the Bolivarian Republic of Venezuela to Brazil could be discussed in South American multilateral forums, in addition to being provided for in Brazilian domestic law and backed up by the Interamerican human rights system. The ACTO mandate, for instance, allows the organization to draw up its own plan of action regarding the issue and even to institutionalize specific protocols regulating border traffic for those populations, ensuring their human rights and access to basic documentation. Other similar initiatives have been implemented by this intergovernmental forum which both Brazil and the Bolivarian Republic of Venezuela are parties to.

In the specific case of indigenous migration from the Bolivarian Republic of Venezuela to Brazil, it is particularly important to understand the mobility of indigenous peoples and to support their traditional productive initiatives, such as selling handicrafts. In all this, however, the state should promote previous dialogue and consultation with the peoples involved.

Special protection for border residents should also be highlighted. That protection would take place by means of public policies that effectively implement the rights of the populations in question and work towards economic, political, social and cultural integration of Latin American peoples through the establishment of special spaces for citizenship and free movement of persons. This guideline is extremely relevant to the migratory movement of the Warao people, for instance, who now cross over Venezuelan borders; in devising reception policies for that population, it is important to create mechanisms that ensure freedom of movement. Lastly, taking into account that the recent approval of Federal Law 13,445 has instituted important mechanisms that ensure humanitarian treatment for certain populations, particularly regarding visa issuance and residence permits granted by reason of humanitarian reception, one can envisage the inclusion of international indigenous migrants in specific policies implemented by the Brazilian government on the basis of indigenous peoples' human rights.

Indigenous migrants have three kinds of rights:

1. Universal rights: human rights acknowledged by Brazilian domestic law or by international instruments.
2. Rights as migrants: those which all migrants are entitled to in Brazil, either under domestic law or international law.
3. Rights as indigenous peoples: those which are assured to all indigenous peoples in Brazil, either under domestic law or international law.

After listening to multiple stakeholders, conducting a case study, reviewing relevant legislation and promoting a workshop with active experts in the migration and indigenist fields, the study team presents the following recommendations:

### **6.1 Recognizing the indigenous status of migrants and according them due protection**

1. The place where indigenous migrants are – either urban, rural or traditional areas – does not eliminate or modify their right to indigenous identity, to implement their collective ways of life, to specific modes of social organization and to engage in specific cultural practices.
2. The Brazilian federal government should offer guidance and coordination in indigenist and migration matters to improve the assistance given to indigenous migrants with respect for their particularities.
3. The leadership of Funai in coordinating actions to be implemented in view of indigenous particularities should be encouraged in the roles of harmonizing, in the three federative levels, the agencies responsible for implementing social and migration policies; of offering indigenous guidelines to the federal government; and of acting as consultant and monitor to the Brazilian State and to indigenous peoples, so as to ensure non-discrimination and promote a culture of peace in Brazilian society regarding indigenous migrants.
4. The State should act proactively to protect indigenous migrants' lives, languages and ways of life. This calls for institutional arrangements and normative guidelines that meet international standards of human rights, as well as defining and allocating budgetary provision to an action plan to be carried out by Funai.
5. Migrant indigenous peoples and those indigenous peoples who have a stake in or are affected by policies of reception for indigenous migrants should be consulted in accordance with ILO Convention No. 169.
6. Public agents who work with indigenous migration flows should, with indigenist support, identify factors and potentials of resilience associated with indigenous migrants' situations of vulnerability, adopting a holistic approach that takes into account their collective way of life both in the Bolivarian Republic of Venezuela and in the process of migration.

### **6.2 Institutional aspects and governance**

7. In regulating article 120 of the new Migration Law (Federal Law No. 13,445/2017), which determines the creation of a National Policy for Migration, Asylum and Statelessness, the question of indigenous migrations must be considered, with special emphasis on the demand for federative coordination entailed by that migratory movement.
8. Public administration, and the federal government in particular, should pay attention to the special social dynamics related to the border context, establishing mechanisms that allow for budgetary flexibility and reallocation when it becomes necessary to make new plans and to put new public policies into effect pursuant to the arrival of new populations.
9. It is of fundamental importance to open up spaces of dialogue and engagement so that all federated entities involved in managing migration flows can have access to proper indigenist guidance.
10. The federal government, in a dialogue with states and municipalities and in consultation with the indigenist agency (Funai), should clarify responsibilities and give directives of action

for and between federative entities, considering that the topic of migration falls within the federal competence but the performance of the resulting public policies is at least a co-responsibility of states and municipalities.

11. To draw up a general action plan for migratory movements and specific action protocols for indigenous migrant assistance, allocating extra federal funds to state indigenist action.
12. To ensure the participation of Funai in planning mechanisms and in the governance of federal activities having to do with migration.
13. To ensure the right of consultation and previous free and informed consent for migrant indigenous peoples and to establish specific forums in order to incorporate understandings and concerns of indigenous migrant women.

### **6.3 Documentation**

14. Indigenous individuals born in Brazil are entitled to a nationality and, as a result, have the right to be registered and get their official birth certificate, as do the children of all immigrants born in Brazil.
15. Humanitarian reception can be an efficient channel to regularize the status of indigenous migrants, particularly when the need to ease the obligation of presenting parents' names is taken into account, for such names are not stated in documents shown by indigenous people arriving from the Bolivarian Republic of Venezuela.
16. All acts jointly signed by the Justice and Public Safety Ministry, the Foreign Office and the Labour Ministry that have to do with regularizing migrants' documents should provide for state action to facilitate access to basic required documentation, always taking into account migrants' indigenous identity.
17. The State should adopt differentiated measures to deal with the lack of documentation among indigenous migrants, so as not to penalize indigenous people who have not had their documents duly issued in their countries of origin.

### **6.4 Reception**

18. It is necessary to make available more information about dangers and assistance related to migratory movement, to the political and social context in which migrants enter when they arrive in Brazil and to the urban context of medium-sized cities such as Boa Vista.
19. An improved assistance to indigenous migrants, especially women, children and teenagers, is tied to a greater indigenist engagement not only in social assistance actions, but also in actions aimed at strengthening the internal mechanisms of control and social protection of indigenous peoples themselves in the context of shelter and migration.
20. Creating an ombudsman and establishing a system of assistance in defense of indigenous rights in case of violence and violation can be a significant step in the process of empowering and fortifying community relationships between indigenous peoples and groups in a context of migratory reception.
21. Current institutional sheltering policies should be understood as temporary measures and should be deployed along with the development and implementation of long-term policies that respect indigenous migrants' self-determination and social organization on the basis of previous consultation.

22. There must be indigenous participation in discussing internal rules for shelters and for reception in a general sense. Indigenous peoples, groups and families must receive information on the emergency and temporary nature of structures when that is actually the case.
23. To draw up participative solutions that ensure long-term rights to proper housing for migrant indigenous peoples. Even collective housing solutions should be considered, respecting indigenous ways of life and social organization.
24. As a short-term solution, actions must be developed to convert shelters into reference centers, with teams capable of informing migrants about local habits and of giving them information about how to relate to people, get documents, look for schooling or take Portuguese classes with a view to better autonomy and integration.
25. As a medium – and long-term solution, federal and state governments should consult indigenous peoples and offer them differentiated policies of collective housing in urban and rural areas, with indigenist support to ensure sustainability and autonomy for migrant indigenous peoples. The State should privilege specialized direct dialogue with indigenous migrants.
26. Establishing indigenous collective houses in cities and towns and setting aside rural areas to ensure the physical and cultural survival of indigenous peoples or groups should not be confused with the demarcation of original indigenous peoples' traditional lands, but are ways of implementing the right to adequate housing by taking into account indigenous specificities.

### **6.5 Educational processes**

27. As a short-term solution, sheltering policies should be accompanied by community education projects, valuing the knowledge and experience of indigenous educators, youngsters and elders, with a view to ensuring autonomous spaces for indigenous migrants' languages and cultures in the Brazilian context.
28. To provide information to and consult with indigenous peoples, offering them appropriate alternatives on the terms of the law in the quest for medium – and long-term solutions for indigenous migrants' presence in the country's educational system, always taking into account their right to bilingual, differentiated and specific education.
29. The federal government, in consultation with indigenous peoples, should ensure due monitoring by Funai and Secadi/MEC of all educational actions directed at migrant indigenous peoples so as to contribute with medium – and long-term migratory policies, particularly as regards forceful settlement policies and situations of discrimination and racism.
30. Funai should promote an interchange between indigenous migrants coming from the Bolivarian Republic of Venezuela and Brazilian indigenous peoples.

### **6.6 Health**

31. To ensure federative mechanisms and arrangements for differentiated health care aimed at indigenous migrants, also in an urban context and on an equal footing with Brazilian-born indigenous peoples.
32. To apply the indigenist expertise of Sesai/MS to indigenous migrants' health care, on an equal footing with Brazilian-born indigenous peoples.

## 6.7 Social Assistance

33. Funai and MPF should offer indigenist guidance to the social assistance network at state and municipal levels so as to ensure appropriate and specific assistance for indigenous migrants, understanding and explaining the notion of social risk from an intercultural point of view.
34. The social assistance network should be based on the federal Unified Register and should overcome obstacles that prevent indigenous migrants' access to the social assistance system.
35. The social assistance network, together with Funai and MDS, should implement processes of dialogue, information and consultation about social assistance programmes, services and benefits available to indigenous migrants.



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