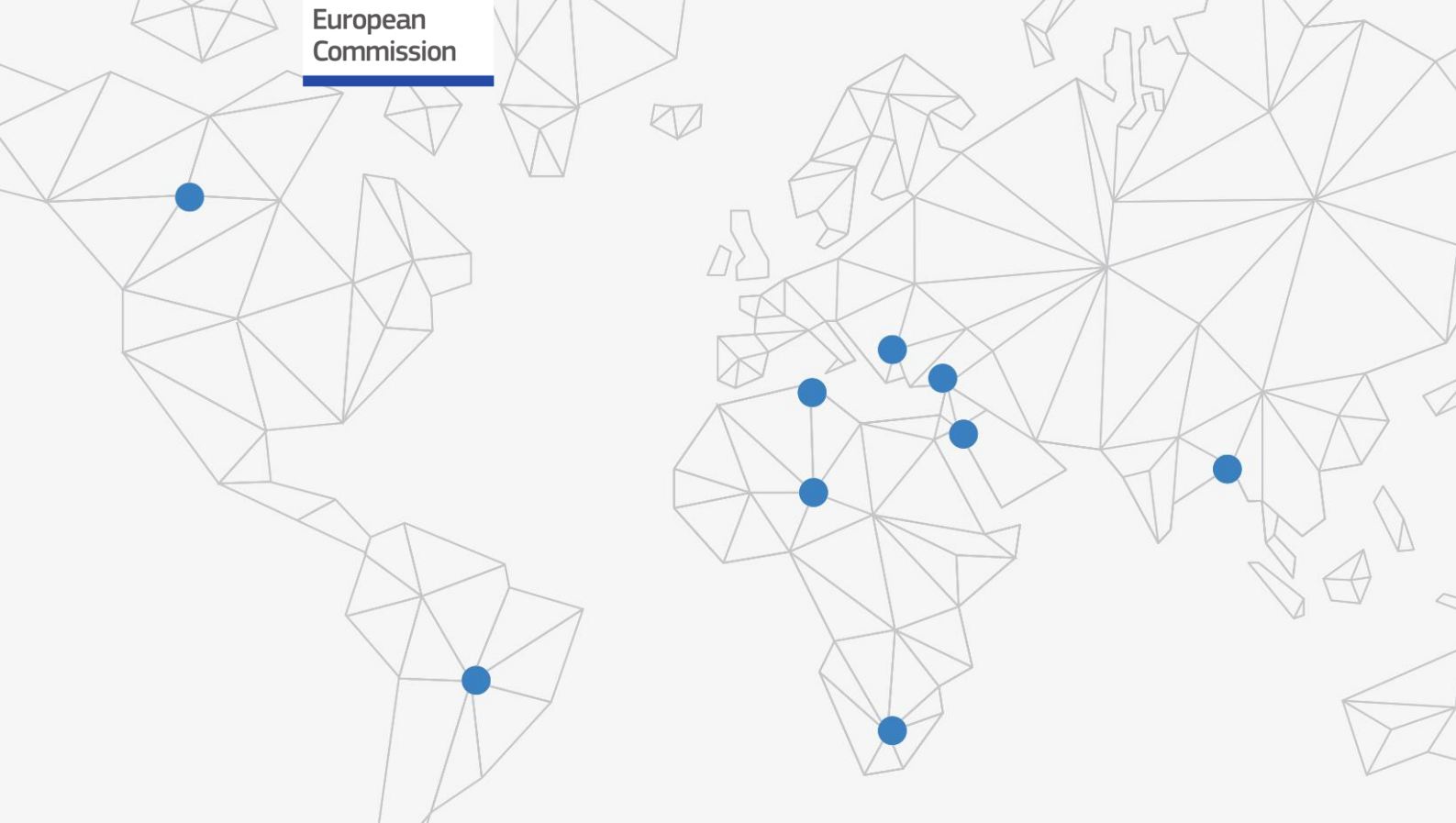




EUROPEAN POLICYBRIEF



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Asylum and Social Inclusion of Refugees, Asylum Seekers and Immigrants in Brazil

Natália Medina Araújo (Federal University of West Bahia)

Patrícia Ramos Barros (University of Brasília)

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ABOUT ASILE PROJECT

The ASILE project studies the interactions between emerging international protection systems and the United Nations Global Compact for Refugees (UN GCR), with particular focus on the European Union's role. Adopting an interdisciplinary perspective, it examines the characteristics of international and country-specific asylum governance instruments and arrangements, and their compatibility with international and regional human rights and refugee laws. A key objective of the project is to provide the cutting edge of academic knowledge, promising practices and a collection of evidence-based tools for the development of future asylum policies.

ASILE represents an advance in comparison to the current state of the art. It seeks to facilitate a ground-breaking understanding of the role and impacts of legal and policy responses - instruments and arrangements - on refugee protection and sharing of responsibility from the perspective of their effectiveness, fairness and consistency with international and regional legal and human rights and refugee law standards. It will do so through an interdisciplinary examination and mapping of UN GCR actors and key policy and legal instruments on mobility and containment, and the impacts of vulnerability and status recognition assessments over individuals in search of international protection.

Authors

Natália Medina Araújo (*Federal University of West Bahia*) and Patrícia Ramos Barros (*University of Brasília*)

Abstract

This Policy Brief examines Migration and Asylum Governance Instruments that are affecting asylum, refugeehood and socio-economic inclusion, especially the right to decent work. It analyses the main policy challenges characterizing the arrival of immigrants and refugees from the Global South in the last decade that spurred a series of innovative responses, including the creation of Operation Welcome and the prima facie recognition of Venezuelan refugees. The Policy Brief outlines the main results of fieldwork research conducted in Brazil. It then provides a set of policy recommendations aimed at promoting protection and social inclusion of refugees in Brazil, and ensuring the implementation of rights that are already protected both by international and national legal standards.

1. Introduction

Brazil has been seen internationally with enthusiasm, whether for the progressive aspects of its Refugee Law from 1997, which ensures the right to work for asylum seekers and refugees, or for the responses created in recent years to deal with large scale flows of migrants and refugees. ASILE research covering Brazil focuses on the design of instruments and their implementation in this context, with specific focus on status, vulnerability and the right to decent work. This Policy Brief is based on the [Country Reports](#) covering Brazil, which focused on the ways in which the country's instruments and their implementation impact questions related to *status* determination, the right to work and vulnerability issues. The research aimed at understanding fundamental aspects of these issues in the Brazilian reality, observing the successful experiences and the limitations of the Brazilian response, especially considering the current - and historically the most significant - arrival of refugees in Brazil, caused by the humanitarian crisis in Venezuela. Especial interest was devoted to one country-specific asylum governance instrument, "Welcome Operation", designed to deal with the influx of Venezuelans by land. Reflecting upon ASILE's concerns, the inclusionary and exclusionary aspects of the innovative solutions adopted in Brazil were examined.

2. Methodology

This Policy Brief is based on research undertaken on Brazil as part of the [ASILE Project](#), which comprises desk research on existing knowledge and state-of-the-art academic research, coupled with a set of 27 in depth interviews with relevant stakeholders – international organizations, civil society actors and Venezuelan migrants and refugees. The interviews were conducted between April/September 2021 (1st stage) and April/September 2022 (2nd Stage). Interviews were based on a common questionnaire which was developed and shared by WP4 coordination team to ensure consistency on the themes and issues covered comparatively across the various teams.¹ The questionnaire was fine-tuned and adapted in this instrument-focused case study of Brazil.

The fieldwork resulted in two Country Reports on Brazil, published in [2022](#) and [2023](#). A first draft of this policy brief was based entirely on the research outlined in those reports. The draft was then shared and discussed in ASILE's Regional Workshop in Brazil, which took place in Brasilia in September 2023. The workshop was attended by relevant actors from civil society, international organizations, academics, government actors, and regularized migrants, and included a discussion session on Policy Recommendations in which participants were divided up in three working groups, each responsible to further discuss and propose recommendations about one of three questions: 1 – How to promote the inclusion of migrants, and especially of women, in the labor market? 2 – How can the

¹ Interviewees signed an informed consent form, which explained the nature, benefits, and risks of their participation in the project and ensured anonymity and confidentiality.

Operation Welcome, civil society and local government promote the protection, inclusion, and autonomy of indigenous peoples in Brazilian society? 3- How to develop cooperation between the Federal Government (including the Interiorization Program) and local and regional governments in the socioeconomic inclusion of refugees and migrants in Brazil? The outputs of these discussions were taken into account by the final Policy Recommendations outlined in this Policy Brief.

3. Key Research Findings

Key finding #1 – Conceptual boundaries between refugees and migrants are blurred, and the length of Refugee Status Determination processes is pushing people in need of protection to be treated as migrants.

The large-scale human mobility from Venezuela to Brazil is characterized by being a south-south human mobility of a mixed nature, related to structural reasons. Since the beginning of this increased human mobility, in 2017, Brazil and the organizations that operate in the country have developed varied responses, sometimes considering Venezuelans as ‘migrants’, sometimes as ‘refugees’, making it difficult to assert which category they fit into. Brazilian Refugee Law includes an expanded definition inspired by the Cartagena Declaration of 1984, and Venezuelan nationals applied for asylum as soon as they entered the country. Nevertheless, regularization through residence inspired by the Mercosur Residence Agreement (RAM), began to be applied in 2018, before the start of prima facie recognition of refugee status in 2019. The fieldwork showed that the long duration of procedures and lack of legal deadlines has pushed asylum seekers to choose for residence instead of waiting for a final decision to determine refugee status. This limits the scope of the legal protection of the asylum institute endangering its effectiveness and consistency with refugee and human rights standards. This is because, although regular residence implies a certain level of security and regular stay, the rights guaranteed in refugee legislation -in addition to the protection which is inherent to refugeehood - are broader, including, for example, facilitated entry into academic institutions at all levels.

Key finding #2 – Operation Welcome has a prevailing border management and militarization-driven nature, justified ‘in the name of crisis’

This can be observed [from the beginning](#) of the Task Force, when ‘Venezuelan migration’ was officially framed as an emergency situation of exceptional character. International agencies and other humanitarian agencies have been fundamental in legitimizing the Operation, [lending their humanitarian character](#); but fieldwork has shown that cooperation between humanitarian agencies and the government has not been without tensions, with the military's approach leaning towards a more pragmatic solution to the issues and a priority given to ‘the management of migrants’. The strong militarization of the Operation and its border control aspect became evident during the covid-19 pandemic, due to the [closure of land borders](#) from April 2020 to July 2021. The measure

was [considered discriminatory against people coming from Venezuela](#). Land borders with Venezuela remained closed while asylum requests were considered "disqualified". This had serious [impairment on the principle of non-refoulement](#), as Venezuelans could not formalize their asylum claims and were subject to summary deportation even while there was a formal recognition by National Refugee Committee that Venezuelans were *prima facie* refugees. Such measures are inconsistent with international refugee protection standards, including the 1951 Convention relating to the Status of Refugees, which have been ratified by Brazil. Besides, [those who entered and remained in Brazil despite the orders faced extreme vulnerability, without access to social rights, including the shelter and internalization services of Welcome Operation](#).

Key finding #3 – Migrants, asylum seekers and refugees in Brazil do not have access to decent work.

The right to decent work, as put by [Cathryn Costello and Colm O’Cinnéide](#) is a composite right with its concerns for both the freedom, accessibility and quality of work and it is included within the substantive scope of the right to work in the International Covenant on Economic, Social and Cultural Rights. Although Brazil has a legal framework that recognizes the social rights of migrants, refugees, and asylum seekers, the access to work, and especially to decent work, is quite difficult. Labor inclusion occurs mainly in [low-skilled jobs](#) and informality rates are very high. Access to the formal labor market is particularly hard for women. Indigenous peoples have difficulty accessing any type of work, formal or informal. Following a socio-demographic change with an increase in the presence of nationals from the Global South in the last decade, the migrant worker in Brazil has become less qualified, which has great impact in income rates. There are also many bureaucratic and economical barriers in recognizing educational degrees and professional experience required for having access to highly qualified positions, which leads to many individuals accessing jobs below their actual qualifications. As the most qualified jobs are inaccessible, asylum seekers and refugees have found opportunities of inclusion in some economic sectors, as the meat production chain. Despite the high rates of formalization, [employment in slaughterhouses](#) stands out for its high accident rates and risks to the health of workers, besides being underpaid. Even though informal work is considered more precarious, it as a possible way out to generate income, especially given the shortage of formal jobs. By accepting informal work, ‘migrants’ and refugees sometimes exchange the social security and protection it provides for a somewhat higher income. Besides, informal jobs have more flexible hours, which is considered important especially between women with children, since there is a lack of social support in child care. Finally, refugees in vulnerable contexts are exposed to degrading work situations, and there has been cases of [rescued third country workers from modern slavery](#).

Key Finding #4 – Interiorization Program fails to promote labor inclusion as it lacks monitoring of “interiorized” and articulation with local authorities.

Although Brazil is a federative republic, there is no federal mechanism for federative coordination on the issues of migration and asylum. Interiorization Program has been conveyed as being the main strategy of the [Federal Government](#) to enable the socio-economic inclusion of immigrants into Brazilian society. The program consists, in general terms, of relocating asylum seekers from the region of arrival, close to the Brazil-Venezuela border, corresponding to the state of Roraima, to other regions of Brazil, where they should find greater employability and achieve socio-economic integration. In fact, employability and working conditions proved to be better in the “inner” parts of Brazil. Nevertheless, the Program does not promote labor inclusion beyond relocation. Our research indicates that it is not articulated with local authorities who receive Venezuelans “interiorized” and lacks monitoring of their social integration. This generates a shifting of responsibility to local governments and actors, as well as an overload on them, which need to create inclusion strategies and, in many cases do not have the capacity to do so. As a consequence, immigrants and asylum seekers are exposed to risks in the labor market, such as unemployment, exploitive working conditions and violation of labor rights. The responsibility for actual inclusion relies on local authorities, civil society, and individuals themselves, who must seek their self-reliance and build their ways in Brazilian labor market and society. Regional and municipal policies remain largely fragmented since there is no centralized or concerted action on the part of the federal government to coordinate policies and actions. The leading role in this effort to bring local governments in is mostly an accomplishment of UNHCR, which mobilizes the [Solidarity Cities Program](#).

Key Finding #5 – Brazilian instruments sometimes reinforce structural vulnerability of women and indigenous peoples.

Vulnerability and vulnerability assessments are under conceptualized among actors who work with refugees in Brazil. The term is even considered pejorative, so it is usually not used when referring to migrant population about their rights. As vulnerabilities are not understood as inherent features, but as part of social, political, and cultural structures, one must reflect on the extent to which these structures are co-responsible for creating vulnerabilities. In this sense, our fieldwork suggests that the Interiorization Program reinforces women's vulnerability, which can be seen from the feminization of shelters and the difficulty women find to be interiorized in the [employment-based modality](#). Additionally, racialized relations inherited from colonialism remain alive in Brazilian society, challenging the myth of racial democracy. Black and indigenous immigrants, asylum seekers and refugees face additional barriers when arriving in Brazil. As for indigenous peoples, field work has shown that the treatment promoted by Operation Welcome has negatively impacted their life possibilities in a discriminatory manner, hindering their socio-economic insertion and access to the right to education, besides reducing their autonomy, and impacting their collective identities as indigenous. This is due to life in shelters and difficulties in the internalization process of this population,

especially in the employment-based modality. The exclusion of indigenous peoples and the lack of public policies aimed at their inclusion are institutionalized manifestations of racism and discrimination.

4. Conclusions

ASILE research demonstrated that Brazil acted in an innovative and creative way to deal with the large-scale human mobility for asylum seeking purposes, including through policy and legislative innovations of an overall progressive nature. However, Asylum Governance instruments in Brazil have room for improvement, especially with regard to the transparency and legal certainty of procedures, such as the RSD in CONARE and the Internalization of the Operation Welcome, so as to achieve effectiveness, overall fairness, and consistency² with refugee and human rights standards - in asylum and inclusion policies, respectively. In addition, the socio-economic inclusion made possible by the legislation in theory is very distant from the practice of the right to work of immigrants, asylum seekers and refugees, which is inconsistent with international and regional legal standards, requiring targeted measures and collaborative work between the federation's entities. Finally, policies sometimes reinforce vulnerabilities of women, indigenous peoples and other minority groups, which makes these policies fail in the fairness evaluation criteria.

5. Recommendations:

Recommendation 1:

Establishing legal deadlines in RSD procedures, including prima facie procedures. Refugee Status Determination (RSD) procedures are overall considered fair but lack legal deadlines and predictability on the duration of the process, which undermines its effectiveness. The duration has pushed asylum seekers to choose other migratory

² ASILE Grant Agreement defines this criterion as follows: *Effectiveness* is assessed taking into account the extent to which 'policy objectives' of existing instruments and arrangements are met in practice, and their actual expected or unexpected outputs and on what has been specifically achieved by a policy in comparative terms; *Fairness* is examined from the perspective of states' responsibilities, and multistakeholder accountability, as well as standards of due process, legal certainty and accessibility (selection criteria) by individuals. It looks at the societal effects of policy instruments and arrangements on asylum seekers and those in need of international protection, in particular those qualified as 'vulnerable'. What are the effects of these practices on individuals' status, self-reliance and rights, as well as how is the assessment of their status and vulnerability performed?; The effectiveness and fairness of policy instruments will be assessed from the perspective of *Consistency* with international and regional human rights standards, as well as fundamental rights and EU Treaty principles when examining the EU

regularization alternatives, when they are available, as it is the case for Venezuelan nationals who can opt between seeking asylum or applying for residence.

Recommendation 2:

Ensuring greater civilian participation and increasing accountability in the Welcome Operation, de-emphasizing militarization. The role of military in the border strip - as defined by art. 20 of the 1988 Federal Constitution - should be restricted to security issues, while Operation Welcome should have its design focused on international protection and asylum, which should be carried out by civil authorities. As a consequence, the leadership of the Operation should fall on a civilian authority, such as the Ministry of Human Rights and Citizenship, whose mission is more related to the protection of minority rights, as well as combating all types of discrimination, including racial discrimination and xenophobia.

Recommendation 3:

Coordination between Federal, State and Municipal governments to promote the rights of refugees and migrants in Brazil.

3a. Regulation of art. 120 of the Migration Law (Law 13.445/2018), creating a National Migration Policy. This recommendation has already been made by a group of institutions during the 4th cycle of the UN Universal Periodic Review and there is a working group designated to discuss and propose the construction of such a national policy. It is essential that such efforts are carried out by reinforcing cooperation between federated entities.

3b. Articulation between Operation Welcome's federal authorities with local governments who receive refugees and migrants. It is critical that Federal government take on the leading role in coordinating the reception and integration of migrants in the vast national territory, promoting the training of local actors, exchanging information and allowing greater predictability for local authorities and ground actors who are the most directly affected by the arrival of refugees and migrants. Conditions of people who have been interiorized should be monitored by federal authorities.

3c. Replication of successful experiences in federative dialogues, such as: (i) coordination between border cities or cities with their own identity or geographic interests; (ii) Incentives, including financial, for municipalities to receive migrants, based on official data, with demographic balance in mind; (iii) Technical support to municipalities, by International Organizations and civil society organizations, to train local authorities in discussions with their legislative and executive powers; (iv) creation of State Consortia with their own budget that could include the migration agenda or creation of specific consortia to discuss the topic.

Recommendation 4:

Transparency and accountability in the "Interiorization" process, ensuring autonomy and equal opportunities for all: men and women, indigenous and non-indigenous, regardless of national origins. As the operation is set up to receive people arriving across the border between Brazil and Venezuela, it is assumed that only Venezuelans are in need

of asylum and international protection. However, people of other nationalities residing in Venezuela and in other neighboring countries may also potentially be asylum seekers. In this way, Operation Welcome ends up incorporating structural national discrimination due to the way it was designed. Such positive discrimination (in favor of Venezuelans) can easily turn against Venezuelan nationals, as it has when [Interministerial Order n. 120](#) made a direct reference to the entry ban on Venezuelan nationals by land, justifying it by Covid-19 pandemic. The measure was harshly criticised for being [discriminatory](#). Besides, as our fieldwork has shown that women and indigenous peoples have not the same access to interiorization in the employment-based modality, quotas should be created to ensure that companies that employ men and non-indigenous people also offer vacancies for women and indigenous individuals. Finally, there should be a continued and independent qualitative evaluation of the programme to access problems and promote improvements in its scope and implementation.

Recommendation 5:

More incentives for the employability of migrant and refugee women, taking into account the need to offer mechanisms that alleviate the disproportionate burden on women in childcare work and exposure to gender-based violence.

5a. Creation of day-care centers and full-time schools by the public authorities, incentives for companies that employ migrant women or that offer day care for the children of working mothers.

5b. Public authorities and other actors should open communication channels for refugee and migrant women to bring their own demands, mapping needs to better design labor inclusion policies with a gender focus, such as offering vocational courses that meet women's demands.

5c. Promoting access to information on existing public policies, on labor legislation and on protection from gender-based violence, as well as guarantee of access to labor rights and legal protection against gender-based violence.

5d. Inspection and monitoring by competent bodies of work activities, including informal activities and domestic work. The lack of supervision of domestic work is particularly harmful to women, who are the majority among workers in the sector.

Recommendation 6:

Facilitation of recognition of titles and diplomas, as a means of inserting migrants and refugees into better jobs, compatible with their education and capacity. Even if the process of recognition of diplomas is carried out in accordance with the constitutional principle of university autonomy, which prevents the standardization of requirements for the recognition of diplomas at the federal level, the federal government, through the Ministry of Education, should create a set of recommendations for simplifying the recognition of migrant and refugee diplomas, promoting information for universities,

especially with regard to the costs of legalizing foreign documents. Universities should create simplified notices for the recognition of migrant and refugee diplomas, with clear and detailed information aimed especially at the migrant and refugee public. Financing mechanisms for the costs of recognition of diplomas could be provided by the federal government and other institutions.

Recommendation 7:

Promotion of protection, inclusion and autonomy of refugees and migrants belonging to indigenous peoples.

7a. Guaranteeing of the right to accessible, inclusive and intercultural communication in all public services (education, health, social assistance) through the creation of a network of linguistic intercultural social mediators and training for government actors especially strengthening the capacity of local teams to understand the context of indigenous migration with its cultural specificities.

7b. Schools should be multi-lingual and intercultural. Indigenous languages should be present in schools where there are indigenous students. A pedagogical guide in indigenous languages should be developed considering the educational reality in Brazil. Indigenous teachers should be hired to promote an intercultural and multi-lingual environment.

7c. Support for local networks of indigenous refugees and migrants, recognizing the voice of their own leaders, which strengthens community bonds.

7d. Documentation and legal recognition of the condition of being indigenous regardless of nationality, ensuring equal access to all specific legal protection mechanisms for indigenous peoples in the country.

7e. Improving access to documentation through more flexible mechanisms, considering the need for digital inclusion since the documentation systems are mostly digital and exclude indigenous peoples and other vulnerable groups who do not have digital access. As pointed out by the [Collaborative Advocacy Network](#), digital inclusion is one of the main problems faced by the most vulnerable migrants and refugees, since access to documentation and, as a consequence, to basic rights and public policies, is restricted to migrants and refugees who have knowledge and financial resources to access digital platforms.

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