



CONTRIBUTIONS FROM

The Federal Public Defender's Office

MIGRATION AND PROMOTION AND PROTECTION
OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
OF MIGRANTS IN THE CONTEXT OF THE
RECOVERY OF THE COVID-19 PANDEMIC


DEFENSORIA PÚBLICA DA UNIÃO

January/2023

Brasília, Federative Republic of Brazil, January 16th, 2022.

To the Office of the High Commissioner for Human Rights

Subject: Migration and promotion and protection of economic, social, and cultural rights of migrants in the context of the recovery of the COVID-19 pandemic

The Federal Public Defender's Office of the Federative Republic of Brazil, through its Working Group on Migrations, Statelessness, and Refuge, in response to the OHCHR call, offers this contribution regarding the promotion and protection of economic, social, and cultural rights of migrants in the context of the recovery of the COVID-19 pandemic.

The COVID-19 pandemic did not remove the reasons that led and lead to forced migration; on the contrary, it increased them due to the economic and social crisis it caused. States established restrictions to cross borders, and migration processes were even criminalized. There was an increase in xenophobia as migration was associated with the spread of the virus. Migrants faced bars from entering, summary deportations, underwent dangerous paths to escape border control, and many remained with irregular status. Thus, migrants were even more exposed to human rights violations and had one additional obstacle in their challenging path: the pandemic.

In the context of recovery from the pandemic, it is essential to think about good practices aimed at the economic and social rights of migrants.

This document will start with (1) Introduction: role of the Federal Public Defender's Office in the Brazilian migratory context. Next, (2) it will present some of migrants' challenges in the context of the pandemic and its recovery, and then (3) present good practices, most of them related to the Brazilian Federal Public Defender's Office, which is the institution in charge of the promotion of human rights, according to the Brazilian Constitution.

1. Introduction: role of the Federal Public Defender's Office in the Brazilian migratory context

The Federal Public Defender's Office (DPU) is an autonomous, permanent institution. According to article 134 of the Brazilian Constitution, its function, as an expression and instrument of the democratic regime, is of legal guidance, promotion of human rights and

defense, at all levels, judicial and extrajudicial, of individual and collective rights, integrally and free of charge, to those in a vulnerable situation.

Complementary Law n° 80/19942 regulates the Public Defender's Office in Brazil and establishes several functions of this institution. We highlight, for the present contribution, those of “representing the international systems of protection of human rights, pleading before their organs”, and “exercise the defense of individual and collective interests [...] [of] vulnerable social groups that deserve special protection from the State” (article 4, VI and XI, of Complementary Law n° 80/1994).

Law n° 13.445/2017, known as the Brazilian Migration Law, established a new regulation of the rights and duties of migrants in/from Brazil. It highlights the Public Defender's Office's role in the full and free-of-charge legal assistance (art. 4, IX) to migrants in need in administrative and judicial proceedings (such as deportation, expulsion, and extradition).¹

Considering the distribution of competencies in the Brazilian State, the DPU acts primarily before federal administrative and judicial bodies and considering that, for the most part, public policy for migrants is conducted by federal bodies, DPU instituted the Working Group on Migrations, Statelessness, and Refuge (GTMAR) to support DPU career and senior management members in articulating the defense of the interests of migrants.

Ordinance GABDPF DPGU No. 200/2018 establishes in its art. 3, VIII, the competencies of GTMAR, among which are “promoting the defense of migrants in vulnerable situations, stateless persons and refugees” and “monitoring sensitive cases related to the theme of migrations, statelessness, and refuge.”

2. Some challenges during the pandemic and in the context of its recovery

¹ Law 13445/2017 establishes in its art. 3rd the principles that govern the Brazilian migration policy, among them, several are directly or indirectly related to economic, social and cultural rights. Here, we emphasize the following principles:

I - universality, indivisibility and interdependence of human rights;

II - repudiation and prevention of xenophobia, racism and any form of discrimination;

VII - economic, touristic, social, cultural, sporting, scientific and technological development in Brazil;

VIII - guarantee of the right to family reunification;

IX - equal treatment and opportunity for migrants and their family members;

X - social, labor and productive inclusion of migrants through public policies;

2.1 Migration flows and the pandemic

Recognizing the COVID-19 pandemic in January 2020 by the World Health Organization (WHO), the Brazilian National Congress enacted Law 13.979, of February 6, 2020, to provide measures to address the pandemic in Brazil. Article 3, VI, “a”, provides for exceptional and temporary restrictions on entering and leaving the country via highways, ports, or airports, based on a technical recommendation by the National Health Surveillance Agency (Anvisa) (art. 3, paragraph 6- B, I). After that, the Federal Government issued various ordinances. The Law 13.979/2020 does not foresee sanctions for irregular entry into Brazil. Nonetheless, most of the Ordinances state that those who infringed the entry prohibitions were subjected to the sanctions of I- civil, criminal, and administrative liability II - immediate repatriation or deportation; and III - bar to request refugee status. Those ordinances violated the human rights of vulnerable migrants and refugees, as provided in international human rights treaties and case-law, Brazilian’s Constitution, and Laws on Migration and Refuge. As a result of those ordinances, borders remained mostly closed only to land or waterway flow of people. They discriminated against those arriving by land and sea, and breached international obligations of non-refoulement and bar to collective compulsory withdrawal. They created, thus, illegal discrimination against the most vulnerable people - like the Latin American groups that enter the country by land. Those who were admitted by plane were subject to the usual visa requirements and submission to COVID-19 tests. The ordinances violated the principle of non-criminalization of migration since they criminalized cross-border movements and did not assure due process before measures of compulsory withdrawal. This principle is stated in article 3, III, of Brazilian Migration Law. It is also rooted in the Inter-American Court of Human Rights case “[Vélez Loor versus Panama](#)”, in its Advisory Opinions [18/2003](#) and [21/2014](#), and in the Inter-American Commission of Human Rights “[Report on immigration in the United States: Detention and due process.](#)”

The restrictions imposed on the entry of non-nationals from other countries into Brazilian territory led to a sudden reduction in the official number of migrants entering the country. Based on data from the National Migration Registration System - SISMIGRA, in 2020 there was a 71.32% reduction in new records in the Federal Police system compared to the previous year.

However, concerning the specific situation of forced migration, it is essential to mention that due to its nature, motivated by the search for one's own survival or subsistence due to issues related to the country of origin, which makes migration an imperative need, there was not, even with restrictive measures on the entry of non-nationals into Brazilian territory during the COVID-19 pandemic, an interruption in migratory flows, especially by land or waterway. Migration routes become even more difficult and risky for migrants because they had to enter the country through border points without migration control. In summary, the denial of migrants' rights increased with the sanitary justification and migration restrictions led to a rise in the number of undocumented and irregular migrants. During the pandemic and in its recovery, DPU identified various challenges to migrants' ESC rights, such as health, education, social assistance, and work. Among the main reasons for such restrictions are (i) delay in the process of migratory regularization and (ii) doubts or lack of knowledge regarding the validity of the documents presented by migrants.² To this day, migrants' economic, social and cultural rights suffer the impacts of restrictive ordinances. Challenges to documentation negatively impact access to public services.

2.2 Health and the pandemic/ pandemic recovery

Concerning health, the principles of equity, universality, and comprehensiveness of the Brazilian Unified Health System - SUS guarantee all migrants in Brazilian territory access to public health services regardless of their migratory status. However, there are barriers, aggravated in the context of the COVID-19 pandemic, which create obstacles to the right to health. Lack of information for migrants who often do not even know about access to public health as a right. On the other hand, it is a constant reality in different parts of the country that public health workers are unaware of the migratory documents that qualify migrants as users of the public system and the need to assist migrants with the documents they have (or don't have).

Since the beginning of the implementation of the vaccination plan against COVID-19, there has been great difficulty imposed, especially on undocumented migrants, for access

² Informe Defensorial: situação dos direitos humanos no Brasil. [recurso eletrônico] / Defensoria Pública da União, Defensoria Nacional de Direitos Humanos – Brasília: DPU, 2022

to vaccination because public agents required documents that migrants do not have, in flagrant contravention of international pacts and the national legislation that deals with the subject.

Another health challenge with migrants in Brazil is the lack of training of health workers to deal with indigenous migrants who bear a different concept of health. Warao indigenous peoples, for example, don't believe that they may die of diseases. For them, “la brujería” might cause deadly diseases. Therefore they are often resistant to local health services. This is challenging in the context of the recovery of the COVID pandemic as they might disagree with vaccination, and health workers might not be aware of their traditional perspective of health and how to deal with it.

2.3 Education and the pandemic/ pandemic recovery

In the realm of education, the precariousness of information regarding documentation and migrants' rights creates challenges to enrolling children and adolescents in schools. This bar violates the Brazilian Constitution (art. 5 and 6), the Statute of Children and Adolescents (art. 53 and 55), and the Law of Guidelines and Bases of National Education (articles 2 and 3), in addition to the Migration Law (art. 3 and 4) and Law 9,474/97, which provides for mechanisms for the implementation of the Refugee Statute (art. 43 and 44).

Another situation that deserves attention is related to the difficulties encountered by migrants in the procedures for revalidating diplomas issued by foreign higher education institutions. According to the United Nations High Commissioner for Refugees - UNHCR, among the difficulties encountered are the high fees charged by universities, the cost of translating documents, and the requirement to present documents issued in the country of origin.

In this sense, it is essential to remember that, in Brazil, Law n° 9.474/97, which defined mechanisms for the implementation of the Statute of Refugees, expressly disciplines that

there must be flexibility in the requirement of presenting documentation for refugees and, specifically, facilitation for recognition of certificates and diplomas issued abroad³

Subsequently, the Migration Law - Law 13.445/2017, foresees in its article 3 that, among the principles and guidelines that govern the Brazilian migration policy is the promotion of academic recognition and professional practice⁴

However, in the context of the recovery of the pandemic, especially for migrants in a situation of social vulnerability, bureaucracy and procedures' high costs are obstacles to the revalidation of documents that attest to their technical and academic training. Consequently, the development of professional activities for which they are trained, social integration, and financial independence faces a threat.

3. Examples of good practices in the promotion of ESC for migrants

3.1 Pacaraima Mission

In 2018, with the intensification of the Venezuelan migratory flow due to the humanitarian crisis, and in support of the federal response of emergency assistance to Venezuelan migrants in vulnerable situations, called Operation Acolhida, the DPU established the Pacaraima Mission.

The Pacaraima Mission has the objective of, in addition to monitoring and promoting human rights in this border region with Venezuela, to promote the care of children and adolescents in particular migratory difficulties. In 2021, in order to strengthen the DPU's response in the border region, the Specialized Thematic Committee for Pacaraima (CTE Pacaraima) was created.

The Pacaraima Mission is organized based on the presence of 2 (two) members of the DPU who work in rotation every 15 days. The Federal Public Defenders assist children

³ Art. 43. In the exercise of their rights and duties, the atypical condition of refugees must be considered when it is necessary to present documents issued by their countries of origin or by their diplomatic and consular representations.

Art. 44. Recognition of certificates and diplomas, requirements for obtaining resident status and admission to academic institutions at all levels should be facilitated, taking into account the unfavorable situation experienced by refugees.

⁴ Art. 3 The Brazilian migration policy is governed by the following principles and guidelines:

(...)

XXI - promotion of academic recognition and professional practice in Brazil, under the terms of the law;

and adolescents with special migratory difficulties, provide legal guidance to immigrants, promote periodic visits to monitor the sensitive installations and emergency shelter of the Acolhida Operation, as well as act to prevent situations of human trafficking, seeking to guarantee the safe, regular and orderly entry of people into Brazilian territory.

Since the beginning of the Pacaraima Mission, in 2018, there have been approximately more than 13,000 legal assistance services for children and adolescents, indigenous and non-indigenous, at this border point. Every six months, the DPU publishes a Defensorial Newsletter on the steps taken, and assistance carried out.

In the context of ESC and recovery from the COVID-19 pandemic the Pacaraima mission develops an essential role in ensuring the right to legal assistance, childhood protection, housing, assistance to the homeless, and documentation to ensure the right to education, health, and work.

3.2 Joint efforts and legal assistance to migratory regularization

During the COVID-19 pandemic, many migrants, especially forced migrants had to enter States through unofficial borders to escape a bar to entry. In the context of the recovery from the pandemic, it is very relevant to make the regularization of migratory status possible.

DPU acted in many individual cases in this regard and promoted joint efforts for migratory regularization. In the State of Minas Gerais, DPU, in a joint effort with ACNUR, Caritas international, and the Townhall of Belo Horizonte, The Federal University of Minas Gerais Pontificia Catholic University of Minas Gerais trained volunteers. After the training, the joint effort assisted many Venezuelan migrants from the Warau ethnicity to regularize their migratory status and get documents. Documentation in the host State is often a milestone in the exercise of economic, social, and cultural rights, such as education, health, and work.

DPU and partner entities also make an effort to disseminate which are migrants' valid identification documents so that public and private entities become knowledgeable about them.

3.3 Examples of good practices in the promotion of the health of migrants

DPU has acted both in individual cases and in collective health claims.⁵ The institution has issued technical notes and recommendations to foster access to the health of migrants, regardless of their migratory status and documentation. DPU also acted to prioritize the vaccination of Warau indigenous migrants,⁶ aiming to ensure the same rights as Brazilian indigenous peoples.

3.4 Examples of good practices in the promotion of education for migrants

In the context of the recovery from the pandemic, public universities' special application processes for refugees are an important good practice to ensure their right to education. Nonetheless, in some situations, those with other migratory statuses but in a similar factual situation as refugees remain excluded. This has often happened in Brazil with Venezuelan migrants. In this sense, DPU has acted through a recommendation to ensure that those who are in the same factual situation despite different migratory statuses shall also enjoy the right to participate in special application processes to access universities.⁷

Resolution No. 1, of November 13, 2020, must also be cited as a good practice. It deals specifically with the right to enroll migrant children and adolescents, refugees, stateless persons, and asylum seekers in the Brazilian public education system, expressly providing that they should not require documentation proving previous schooling, also ruling out any form of discrimination based on nationality or immigration status:

“§ 1 Enrollment, once requested, will be immediately ensured in compulsory basic education, including youth and adult education and, according to the availability of vacancies, in day care centers.

§ 2 The enrollment of foreign students as migrants, refugees, stateless persons and asylum seekers must occur without discriminatory mechanisms.”

The Resolution advises that the lack of personal documentation from the country of origin or from Brazil will not constitute an impediment to enrollment, in addition to the fact that, in case of lack of school documentation, students will be evaluated and enrolled at any stage, according

⁵ See for instance Nota Técnica nº 09 – DPGU/SGAI DPGU/GTMR DPGU

⁶ <https://www.dpu.def.br/noticias-rio-grande-do-norte/150-noticias-rn-slideshow/61748-warao-saovacinados-no-rn-apos-recomendacao-do-ceram-e-da-dpu>.

⁷ <https://promocaodedireitoshumanos.dpu.def.br/recomendacao-n-5186748-dpgu-sgai-dpgu-gtmr-dpgu-equiparacao-de-pessoas-migrantes-venezuelanas-detentoras-de-outras-formas-de-autorizacao-de-residencia-e-solicitantes-de-refugio-a-refugiadas-em-edi/>

to their development and age range. In the case of enrollment in kindergarten and in the first year of elementary school, only the age of the child should be taken into account as a criterion.

In addition, the following are indicated as general guidelines to be observed by schools in procedures for receiving migrant students, refugees, stateless persons and asylum seekers:

I - non-discrimination;

II - prevention of bullying, racism and xenophobia;

III - non-segregation between Brazilian and non-Brazilian students, through the formation of common classes;

IV - training of teachers and employees on practices for the inclusion of non-Brazilian students;

V - practice of activities that value the culture of non-Brazilian students; and

VI - offer of teaching Portuguese as a host language, aiming at the social insertion of those who have little or no knowledge of the Portuguese language.

DPU adopted measures throughout Brazil to ensure that educational institutions enroll migrant children regardless of document regularity, based on Article 4, X, of the Migration Law and, after November 2020 on the resolution above.

3.5 Examples of good practices in the promotion of work rights for migrants

Another concern of the DPU is the labor exploitation of migrants which might occur, among other reasons, due to lack of documentation, irregular migratory status, and xenophobia. Among other actions, an example of good practice is a 2021 term of adjustment of conduct DPU and the Regional Labor Superintendence of São Paulo signed with a transport company that provides services to two multinationals in Brazil. The term ensures compensation for 49 Venezuelan migrants and 1 Haitian migrant rescued from work in slave-like conditions.

3.6 Examples of good practices in the promotion of social security rights for migrants

DPU has acted both in individual cases and in collective social security claims. In March 2021, as a result of a class action filed by DPU, the Federal Justice recognized that migrants are entitled to social security benefits.⁸

3.7 Human Rights Education

Human Rights education is an important strategy to address ESC rights challenges in the context of the recovery from the pandemic. The lack of knowledge of rights is often an unsurmountable barrier to its exercise.

The Federal Public Defender's Office has the mission to promote human rights knowledge and education, according to Complementary Law n° 80/1994. In this regard, it promotes talks and public speeches, develops written materials,⁹ and promotes rights knowledge through social media. This good practice needs to be enhanced to promote migrants' economic, social and cultural rights in the context of the recovery from the COVID-19 pandemic.

4. Final Considerations

In the context of the recovery from the COVID-19 pandemic, the reality is that many migrants are pending migratory regularization, exploitation of migrants, informal work, difficulties accessing public health, discrimination, lack of education, and endangered children.

DPU has developed an essential role and acted throughout Brazil to promote and protect migrants' human rights.

The present contribution presented some challenges and good practices regarding migrants' economic, social and cultural rights.

Lutiana Valadares Fernandes Barbosa
Federal Public Defender

Member of DPU's Working Group on Migration, Statelessness, and Refuge

⁸ https://www.dpu.def.br/images/stories/pdf_noticias/2022/informe_defensorial_dpu_dh_2022.pdf p. 34 e Nota Técnica nº 09 – DPGU/SGAI DPGU/GTMR DPGU

⁹ Such as <https://promocaodedireitoshumanos.dpu.def.br/educacao-em-direitos-dpu-e-oim-lancam-cartilhas-com-orientacoes-juridicas-para-migrantes/>