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MIGRATION POLICIES AND REGULATION IN BRAZIL (1980-2025): BETWEEN SECURITIZATION AND HUMAN RIGHTS

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ABSTRACT

This article´s aim is to develop a critical review of the two last Brazilian migration laws and regulations, as well as of the decrees issued as amendments to laws. It analyses the changes in the State's dynamic capacities necessary to develop mission-oriented policies and its shortcomings in Brazil. This descriptive study is based on a bibliographic analysis and documental revision of Ministries' websites, as well as on reports from academics and international organizations. The Statute of Foreigners, an authoritarian law oriented towards guarding national security, was issued in 1980 during the military dictatorship, and it disregarded the protection of migrants´ human rights. It had become obsolete long before the new law of 2017 was passed. The last was approved during democracy after extended negotiations between different sectors in Congress and under the pressure of civic society organizations. Though globally considered as advanced in a humanitarian sense, it reflects a hybrid mixture between two antagonistic political positions: a perspective oriented towards national security/securitization and one towards human rights. The study concludes by discussing the role played by social engagement in the ongoing design of a public National Plan for Migration, Refuge and Statelessness and its implications for migrants´ human rights in Brazil.

Keywords: migration laws, legal decrees, Brazil, migrants´ human rights, securitization, national security, migration policy, state's dynamic capacities.

1.0 INTRODUCTION

The International Organization for Migration (IOM) estimates that the number of international migrants has increased in the last five decades, reaching 281 million in 2020, which represents 3.6% of the total global population. Between 2015 and 2020, there was a global increase of 49% of South American migrants in one decade (IOM, 2023). At present, rising poverty and inequalities between and within countries, human displacements due to climate change and globalization processes have resulted in this unprecedented amount of migration flows.

According to Moreira (2018), Brazil experienced two recent migratory booms, one in 2010 and another in the period of 2013-2014. The author explains that the Brazilian economic image was boosted and attracted migration, and that more restrictive migration policies were implemented in Northern countries after the 2008 financial crisis. In the case of Brazil, measured through a proxy - the permanent and temporary residence permits granted by the National Migration

Registry System (SisMigra) that runs an Observatory of International Migration (OBMigra) – international migrants increased between 2010 and 2023, from 46,000 to over 200,000 (Oliveira et al., 2024), which recently corresponds to around 1% of the total population. In the Southeast Region, international migrants represented 30.2% of Brazilian residence registries, involving approximately 60.2 thousand people.

However, according to the Information Bulletin on Migration N 4 (SENAJUS, Ministry of Justice and Public Security, October 2024), many more migrants entered the country in 2024, led by Venezuelan nationals. Between January 2010 and August 2024, Brazil registered 1,700,686 migrants, a category that includes permanent and temporary residents, as well as border migrants, i.e. the citizens from a border country who keep their habitual residence in the neighbouring country. According to IOM (2024), this would correspond to around 1% of the total population.

The logic of global capitalism and the exploration of natural resources impact the lives of people, especially those of the most marginalised. People do not want to stay within their territories because, for different reasons, they are displaced by natural disasters or suffer political persecution and violence, difficulties in economic survival and so on.

Except for some specific agendas, such as those of refugees and stateless people, which are ruled by international conventions, the regulation of international migration is mainly defined by national states. Even though a historically natural phenomenon, human mobility is often politically considered an abnormality or an exception. As Sutcliffe (1998) comments, this situation translates into a 'normalization' of the policies of contention, restriction or criminalization of human migration movements. Migrants can be legal in the country of settlement when the State authorizes it or clandestine, irregular or illegal concerning the state, which will use its strength to reject them (Redin, 2015). This political phenomenon is so extended that migrants´ rights and guarantees can be partially or totally ignored due to the relationship between nationality and the State (Redin org., 2020).

Understanding migration demands to comprehending the National State's architecture that conditions the legitimacy of migration to "national interests". When nationalism prevails politically, the state tends to take action to control migration. However, the transnationalisation of migration can form part of migrants´ experience who have bonds and interaction in two or more places, the one of origin and the one of residence, through: financial remittances, virtual presence, activism networks, or international trade; a shaping of transnational communities (IOM, 2010). Often, the idea of migration as an opportunity for development is promoted, and transnational agendas are developed, mostly by international organizations that deal with the issue in a logic of cost and benefit analysis and contribute to building an imaginary of desirable or undesirable migration, to State interests (Domenech, 2008).

The new migration reality becomes a great challenge for the country of settlement that requires a transformation of state structures, infrastructures and services to accommodate the social integration of these migrants, as well as the need to raise public and official awareness about their presence to avoid discrimination. Migration policies and State capacities need upgrading and actualization to deal with these complex processes.

The present article aims to revisit historically the two most recent public policies on migration in Brazil. It analyses the following interrelated questions:

- What characteristics do the two main last migration policies in Brazil have?
- Are they mainly oriented to maintain national and border security or to the protection of the human rights of international migrants?
- How have the States and their agencies' dynamic capacities operated in policy design, regulation and implementation?

2.0 MATERIALS AND METHODS

2.1 Theoretical and Methodological Considerations

To develop migrant and refugee resilience and social integration it has been proven that the role played by the state is central, through its public policies directly and indirectly focused on international migration, as well as the capacities with which State agencies develop and implement them (Laurentsyeva & Venturini 2017; Hatton & Leigh, 2011). Lately, in such a critical situation of humanitarian crisis, one that is in constant modification according to the composition and intensity of migration flows, public policies associated with migration must integrate dynamic capacities within the public agencies that formulate and implement them.

Adapting the model developed by Kattel & Mazucatto (2018) to migration policies, the concept of 'policies oriented to missions' will be applied in this analysis. These types of policies address concrete problems through actions with specific objectives, especially in contexts of risk, uncertainty, and continuous transformation. The drivers of these changes are not purely political or economic but also relate to social well-being. Thus, they require structuring consensus and favourable arguments among bureaucracies. Dynamic capacities must ensure within institutions a permanent ability to evaluate, reconfigure and redefine frontiers.

For policy-oriented missions to be effective, state coordination must define clear aims, have social legitimacy and display leadership. Public policy requires predefined objectives, a high degree of coherence, and the possibility of experimentation and evaluation. Additionally, there is the need for bureaucracies to develop substantive operational capacities for those policies to be implemented, evaluated, and adjusted so that they can be productive for society as a whole, the most vulnerable groups and migrants – in the case of this study – while maintaining a perspective that respects and promotes civic and human rights. Also, public policy implementation is in the hands of officials who have their personal beliefs and visions regarding migrants. Migration agencies also behave differently according to the hegemonic political context and the tensions and conflicts generated by different political perspectives present in government. Through negotiations, a consensus has to be reached in order to pass a migration law, regulate it and design specific policies.

Painter & Pierre (2005) establish a difference between State capacities in public policy and administrative capacities. The former refers to obtaining the appropriate resources, legitimacy and consensus. Administrative capacities, on the other hand, are related to the effective management of the different types of resources within the cycle of each policy.

In the Brazilian case, there was an early law of 1980, The Statute of Foreigners (Law n 6.815/19800), passed during the military dictatorship, which continued to be amended for decades till the Migration Law nº 13.445/2017 was passed. The first one had a repressive character, in tune with the authoritarian government in place, and its regulations were centralized and rigid. All state agencies were tightly coordinated to fulfil this role, though it had little legitimacy. However, as such, it presented some of the characteristics of a mission-oriented policy in a negative sense: one-way focused and with the clear aim of avoiding the entrance of potential 'subversive' political activists that could disturb peace and order. However, by no means did it care for migrants´ well-being, a central factor in mission-oriented policy. Its aims were clear and focused, and the military had the necessary operational capacities to put them into practise. They did not experience any major contradiction as the law was based solely on national security and disregarded human rights. On the other hand, neither did the state have legitimacy nor allow for public engagement in the design or implementation of migration policies. The availability of data on the matter was largely in the hands of the police or the intelligence services. The laws' main clauses will be described in some detail in the next section.

Table 1 summarises the main aspects involved in the type of dynamic state capacities involved during the implementation of the 2017 law that remains in place today – though it plans to be replaced shortly. They do not strictly display the contents of mission-oriented policies. These characteristics will be analysed in detail throughout the text.

Table 1: State Dynamic Capacities in Migration Policy in Brazil (Law nº 13.445/2017)

Levels	Aims	Characteristics	Factors
State	Clearly directed aims based on national security. Human rights' aims are dispersed and discontinuous.	Initial considerable legitimacy that changes throughout time.	Strong leadership, contradictions in coordination, and selective public engagement
Public Policies	Contradictions between Law & regulations. Polarization between national security and human rights.	Ambivalences, gaps & incongruent flexibility. Deficiencies in coordination between agencies.	Focused on experimentation, though somewhat differential in each Brazilian Region.
Administrative and Operational	Scarce knowledge & preparation to implement actions adequate to migrants' needs.	Insufficient coordination between agencies and stakeholders.	Unplanned or unforeseen changes. Lack of data availability & evaluation strategies.

Source: The research, based upon an adaptation of the approach by Kattel & Mazucatto (2018).

Finally, a word needs to be said to define national security and securitization. National security focuses upon the state's internal and external duties to ensure society remains stable, prevents

Volume: 08, Issue: 03 May - June 2025

ISSN 2582-0176

detrimental changes, and enforces organizational norms aimed at social cohesion and implemented by specific institutions, for example, the armed forces, Congress, the police, and so on. Meanwhile, the concept of securitization (from the Copenhagen School) refers to the possibility of a certain topic beginning to be regarded as a threat to the existence of the state itself, which would trigger a public emergency action located outside the habitual politics of the government (Cordeiro & Pereira, 2019).

Methodologically, the study is based on a bibliographical and documental review of government websites, texts of the laws, decrees and amendments, academic work (mainly, a Google search on specific topics and a revision of articles in specialized journals) and reports from national and international organizations. Among websites, the data collected was mainly from the Ministries of Justice and Public Security, that of External Relations and of Human Rights, the Observatory of International Migration (OBMigra), as well as the texts of the two migration laws under study and their regulation. The categories of content data researched were: national security/sovereignty/ securitization, types of migrant visas, processes of regularization, decrees, presidential instructions and vetoes, regulatory exemptions, relevant international conventions, political interests in conflict and government negotiations. The study develops a qualitative analysis of the information prioritized in a descriptive-deductive approach within a historical and monographic perspective.

2.2 The Statute of Foreigner (Law 6.815/1980)

This law was passed during the Brazilian military dictatorship (1964-1985), under the rule of General João Baptista de Oliveira Figueiredo and regulated by Decree no 88.715, of December 1981. It was an authoritarian law elaborated towards the end of the Cold War, allied to the perspective of the United States of America, which, after the Second World War, consolidated its domination over Latin American countries. In this process, conventional wars were replaced by ideological ones (Ansaldi & Giordano, 2012). It also aimed to prevent the eventual reproduction of the threat posed by communist Cuba to other Latin American countries. The 1980s were a period of large-scale emigration of Brazilians abroad, given either political opposition or their difficulties in obtaining work and social benefits at home.

This law was based on the internal doctrine of the National Security Law (Cepik, 2001) – only revoked in 2021 by Law No. 14,197. It sought to reduce the entry of foreigners, considered a threat to the country's law and order and judged as potentially subversive to the regime because they were presumed to hold communist ideologies – securitization was the background of these statements. Political activists entering the country could disrupt its cultural and social peace. There existed in the government's imaginary a paranoid 'ghost' which was 'communism', and foreigners were regarded as dangerous activists and criminalized.

This law had migrants under surveillance and tried to immobilize them. They could not change address, work or residence to any other of the country´s States, besides the one initially declared, without previous permission from the corresponding Ministry. Its logic, conditioned to State interests and national security, was announced in its articles 2° and 3° (Brasil, 1980; Senado Federal, 2013):

Volume: 08, Issue: 03 May - June 2025

ISSN 2582-0176

Art. 2º In the application of this law, will be prioritized national security, institutional organization, the political and socioeconomic interests of Brazil, as well as the defence of the national worker.

Art. 3º The concession of visas, their extension or transformation would always be conditioned by national interests.

The National Council of Migration (CNIg) was created by this Statute to centralize and judge atypical and exceptional cases (Vainer, 2000). This Council was a collegiate body of a deliberative, normative and consulting character that, linked to the Ministry of Labour, had among its aims: to formulate migration policy and give its opinion on legislative alterations proposed by the Executive, coordinate and orient migration activities, collect information on local labour market needs suitable for foreigners, as well as develop studies (Reis, 2011). The CNIg was formed by representatives of federal agencies, of entrepreneurs´ and workers´ associations, of civic society and the scientific community.

The Law omitted important issues regarding human rights, such as the capacity for migrants' family reunification. Some of these types of omissions were regulated in parallel through ordinances, for example, Decree No. 606 of 1991, which considered the possibility of family reunification. According to article 107, the law prohibited migrants from forming political associations or engaging in Brazilian public businesses, as well as applying for jobs related to public agencies. They could not relate to political parties of their country of origin, exercise individual actions to adhere to the norms of any other country or develop public protests and elections. In article 5, it specifies that no visas will be issued to under 18 years old unaccompanied minors without a legally responsible adult; to anybody considered dangerous to public order or national interests; previously expelled from the country; criminalized in another country for intentional crime that is susceptible of extradition according to Brazilian law or who does not meet the health conditions established by the Ministry of Health. During visa-granting procedures, criminal records were required from the country of origin. No more than 365 consecutive days of absence from the country were granted to migrants in order not to lose their visas, most of which were for temporary residence.

The Law's character was also compulsively hygienic and presented, at least, ten health conditions (Decree 86.715 from 1981 in its article 52) that excluded migrants from entry into the country, among them: mental health problems, hereditary and congenital familial conditions, lesions that could incapacitate them from developing their professions, physical defects, alcoholism and drug addiction, malignant neoplasia, disability and communicable diseases – such as tuberculosis and other. They were all considered a threat to public security, even in the case of physical defects!! This clause on health was revoked only ten years later, during the Presidency of Fernando Collor de Mello (Decree 87), due to its incongruences and mainly, due to public pressure. An exemption on health conditions and political association was also considered for people of Portuguese origin, due to what had been agreed upon in the 2000 Treaty of Friendship, Cooperation and Consultation between both countries.

Considering the humanistic principles of the new Federal Constitution of 1988, passed during (re)democratization and the new migration dynamics from and towards the country, the Statute of Foreigners became obsolete and required changes, some of which were temporarily solved

Volume: 08, Issue: 03 May - June 2025

ISSN 2582-0176

by issuing decrees and norms. Moreover, Brazil had not incorporated the principles of the International Labour Organization (ILO) of 1990, "International Convention on the Protection of the Rights of Working Migrants and the Members of their Families" which was then the main norm referring to the matter (Marinucci, 2012).

2.3 Amendments

There was a subsequent proposal to modify the Statute on Foreigners through the Law Project 5655/09 presented by the Ministry of Justice and being processed at the Deputy Chamber during democracy. It is a bit more attentive to generating a list of migrants' human rights (article 3) and it suppresses mentioning 'national security', but it still maintains a general authoritarian and bureaucratic character. For example, in its article 7, foreigners are prohibited from owning a journalistic firm or radio station and from being responsible for the editorial content, selection and direction of programmes in any media of social communication. (Ventura & Illes, 2010). It contains many other incoherencies, for example, temporary visas could be more easily transformed into permanent visas in the case of some type of migrants – mainly those of Portuguese origin and: scientists, professors, technicians under a work contract, or religious ministers (article 69).

However, none of the demands of the migrants' movement were contemplated, such as: the reduction of bureaucracy and time frames for the regularization of documentation, and the creation of a political agency to rule migration policy instead of attributing it to the police (Marinucci, 2016). It introduces a list of general and abstract migrants' human rights, but then it is regulated in a rigid way, which is shocking, as it was presented during Luiz Inácio Lula da Silva's second term in government. In parallel, the CNIg proposed to publicly evaluate a proposal on the 'National Migration Policy and the Protection of the Migrant Worker[1], more aligned with the ILO Convention mentioned before. Here, we already detect the lack of agreement and polarization between state agencies' positions.

Formally, both initiatives, those of the Ministry and those of the CNIg try to overcome the previous view of migrants as a threat or as enemies to the country. However, the Ministry proposes the creation of a unique National Migratory Authority (ANM) to centralize migration policies. This separation of migrants from nationals seems to contribute to diminishing their potential integration and could be used in favour of or against migrants, according to the government in power.

There was at the time a tension between positions at the state level between this vision and the one that supported the continuity of the CNIg, which had had, in the past, a more open approach towards the resolution of migrants' needs than the law that had created it. It had supported progressive aspects such as gender, the humanitarian visas for Haitians and family reunification. Finally, in the future, the CNIg will become dependent on the Ministry of Labour and attend practically solely to migrants' labour market conditions.

The proposal of the Ministry of Justice regarded migrants as labour force and the one developed by the Ministry of Labour and Employment, presented migrants as a source of resources. The case-by-case approach towards unprecedented situations of the CNIg was heavily criticized

[1] See, www.mte.gov.br

Volume: 08, Issue: 03 May - June 2025

ISSN 2582-0176

within the government, and the agency was left exclusively to carry out migration regulation and coordination.

The spirit of this 2009 project brought a certain advance relative to the original authoritarian Foreigners' law. For example, migrants' immobility was greatly reduced, though police control and excess documentation were kept. However, it left room still for the criminalization of migrants and established hierarchical differences between them (Amaral and Costa, 2017). For example, naturalization required good knowledge of the Portuguese language, leaving aside the many other languages spoken in Brazil by indigenous populations. The 2009 project proposal – which was shelved in Congress in 2016 – oscillated between a very limited humanitarian perspective in some aspects and a continuity with the previous national security approach.

2.4 Mercosur

The opening of the Common Market- Mercosur- in 1994 (Treaty of Asunción) led later on to other migration facilities. The Agreement of Residence for Mercosur Citizens and Associated States, applied since 2010 (Decree nº 6.975/2009), had the idea of promoting the free circulation of people through the initial Mercosur's founding members: Argentina, Brazil, Paraguay and Uruguay, to which gradually other countries of the Region began to be associated. The agreement could be applied to nationals from the founding countries – plus Bolivia (2015) and Venezuela (2006) – called State Parties, as well as associated ones, such as Chile, Colombia, Ecuador, Guyana, Surinam and Peru.

Visa permits had privileges for these inhabitants, as well as allowed them to hold work permits. In this project, "good social behaviour" of the foreigner is not mentioned, unlike the previous police-like condition present in the Statute of Foreigners. Mercosur inhabitants could reduce the years of residence in Brazil to be allowed to apply for naturalization, from 10 to 5. Between January 2023 and August 2024, 64,814 of this type of temporary visas and authorizations were approved for Mercosur residents, with a majority corresponding to Bolivians (Ministério de Relações Exteriores- Secretaria de Comunicação Social, 2024). Instead, for Portuguese nationals, as well as those whose mother tongue was Portuguese, citizenship as nationals could be acquired after a year of uninterrupted residency in Brazil. For any migrant till then, only 4 years of permanent residence were needed to apply for naturalization, though under very restrictive conditions, such as the guarantee of means of subsistence for him/herself and their family. This period could be reduced to 5 years in total in specific conditions, such as having a Brazilian child or spouse or a special professional or scientific capacity. According to Machado (2024), a new hierarchy between types of migrants´ nationalities was intrinsic to this position.

3.0 RESULTS AND DISCUSSION

3.1 Founding of COMIGRAR

The increase in the flow of migrants, changes in the composition of their nationalities, new asylum seekers and the return of Brazilians abroad, as well as the obsolescence of the Statute on Foreigners and the contradictions in the new project proposal of 2009, all contributed to a new initiative of social engagement (Claro, 2020).

Volume: 08, Issue: 03 May - June 2025

ISSN 2582-0176

At the beginning of 2014, during the Presidency of Dilma Rousseff, through a proposal from the Ministry of Justice and National Security, a new preliminary project draft of a law was elaborated. This was motivated largely by the pressure exercised by civic society organizations active in preparing for the First National Conference on Migrants, Refugees and Stateless People (COMIGRAR), coordinated by the Ministry of Justice through its National Secretary for Justice and the Department of Foreigners (DEES) and carried out in São Paulo. The Conference was developed in partnership with the Ministry of Labour and Employment, the Ministry of External Relations and had the support of a number of United Nations Agencies, such as the IOM, The International Labour Office (ILO), UNHCR and the United Nations Development Programme (UNDP).

The initiative to motivate migrant participation for eventual policy design was an initial success, though fewer migrant delegates attended than expected. Among its objectives were: "To advance in the transversalization of the migration and refugee themes within public policy in order to favour the engagement of migrants and migrant collectives in all the processes that led towards the main National Conference" (Granja, 2014, p. 12).

Its dynamic aimed at a national and international mobilization of different social actors interested in the topic and in the debate of the central concepts of Brazilian public policy (Petaccia, et al. 2014). Most specifically, it intended "the deepening of the diagnosis on the demands and desires of migrant communities [...] the creation of mechanisms to prevent and treat severe violations of the rights of migrant people, [...] the proposal of strategies for equal treatment in the modalities of the Federal Constitution [...] the upgrading of an institutional governance for policies that favour an expedite insertion of the migrant person in Brazil" (Granja, 2014, p. 2).

COMIGRAR represented a method to institutionalize the relationship between government and society. Representatives from the state, international organizations, associations of civic society and migrants themselves were engaged in the process. In summary, all the processes programmed involved the development of National and State-level conferences, municipal ones and free ones, beyond the virtual conferences, with the aim of collecting proposals to upgrade Brazilian migration policy (CSEM, 2014). According to the final report, the preparatory events developed in Brazil and abroad engaged a total of 5,280 participants, with 36% of them coming from the South Region, followed closely by the Southeast Region. This number would increase after computing the number of participants assisting the 24 virtual conferences carried out abroad in 16 cities and organized by the Ministry of External Relations.

The National Conference congregated 778 participants (Brazil, 2014) of whom 556 were delegates with the right to voice and vote, elected during the preparatory phases, and representing 28 nationalities. The majority had documents that proved their regular situation as migrants, although those undocumented were not excluded. Another 232 participants, corresponded to observers, volunteers, the press and the organizing team. These conferences promote an indirect form of engagement, i.e. one through the election of representatives (Cunha, 2012).

At COMIGRAR, 50% of vacancies were designated to delegates from civic society, a third of whom should not be migrant citizens (a small amount, but who gained visibility and

Volume: 08, Issue: 03 May - June 2025

ISSN 2582-0176

legitimacy), and 50% of vacancies were for the public sector. To apply as a candidate delegate, it was required, among other criteria, to be a representative member of organizations or NGOs and have documents of personal identification (Petaccia, et al. 2014). For migrants and refugees with difficulties integrating in Brazil – those most vulnerable – these requisites became an obstacle to exercising their right to participate.

At the Conference held in the Federal District, for example, the profile of the representatives from civic society showed a minority participation of migrants (7.2%) and refugees (2.4%), an important participation of representatives from institutions that defend migrants (19.3%) and the predominance of representatives from organizations without a direct involvement with the theme being debated (50.6%). This unequal distribution was probably a reflection of the invisibility of this topic in the Federal District (CSEM, 2014). It also shows that, given the lack of having their own organizations, migrants delegated their demands to organizations of civic society, as they tend to defend the recognition of civic, political and social rights, most especially, citizenship (Ruano & Botega, 2014).

There were polarized perspectives relative to proposals that defended equal rights between national citizens and migrants regarding, for example, access to public services in health, education, employment and income (Marinucci, R. 2016). Representatives from civic society defended also the rights of gypsies and internal migrants. The event showed the need to innovate in the channels of contact with migrants and refugees who are geographically dispersed and, hence, more vulnerable. The most important aspect regarding state-level transversalization of this topic in the Federal District was the participation of 16 public officials from: the Secretariat of Social Development and Income Transfer (SEDEST), the Secretariat of Justice, Human Rights and Citizenship (SEJUS), the Secretariat of Government (SEGOV), the Secretariat of Finance (SEFAZ) and the Secretariat of the Metropolitan Region.

The First National Conference of COMIGRAR included 190 preparatory events in all five Brazilian regions and a total of 2,840 national-level proposals (Brasil, 2014). The only stable deliberative public forum on this question was, up to then, the Council for the Follow-up of Civic Society (CASC-Migrante), which could become an institutional platform to lead the early management of the proposals approved. These do not become policies immediately due to legal, financial obstacles and programmatic constraints (Avritzer & Souza, 2013), so alternative management and control mechanisms should also be devised.

3.2 Migration Law 13.445/2017

During the democratization process, many different projects for the modernization of the old law had been presented to Congress. In Luiz Inácio Lula da Silva's first and second governments (2003-2010), there was an attempt to generate a new law, but it did not prosper, as we have seen. The National Migration Council (CNIg), a multi-actor agency, had enacted legislation aimed at updating the restrictive national migration law inherited from the dictatorship, as it had played a key role in liberalizing Brazil's migration policy and had given voice to a wide range of state and non-state actors.

However, during the first two terms in office, Luiz Inácio Lula da Silva's foreign policy had prioritized the construction of South American regional governance mechanisms, in which

Brazil played a decisive role, as a way of positioning the country as a regional leader. These conditions somehow served as a basis for the current approach to migration being developed in Lula's ongoing third term mandate.

Questions regarding international migration were navigating a sea of advances, paralysis and setbacks. From the central government, different signals on how to approach the problem were emitted. For example, the Secretary of Strategic Matters (SAE) followed the perspective of attracting a qualified professional labour force to help the country's development and economic growth (El Universal, 2014). On the other hand, the National Secretary of Justice (SNJ) voiced a paradigm related – at least on paper – to the rights of migrants. It formed a Commission of Specialists that elaborated a project proposal on migration and the promotion of migrants´ rights that was presented to civic society during the first National Conference on Migration, Refuge and Statelessness (COMIGRAR) and was forwarded to the Presidency to be submitted for discussion at Congress (Brazil, 2014). As we already mentioned, the CNIg had its own project proposal.

Different versions of law projects were discussed in the Senate. Disagreements between representatives included: migrants' forms of expulsion, deportation, repatriation, border migrants, humanitarian visas and the notion of citizenship and migrants' human rights. Some representatives of the Chamber of Deputies were closer to the security project of the Federal Police, and others to the protection expressed by civic organizations working in favour of migrants. This situation led to many obstacles in approving a final version of the law.

The Federal Government tried to develop a unified action seeking some majority consensus around a proposal formulated in the Senate. This happened during Dilma Rouseff's government (2011-2016). Senator Aluício Nunes presented, in 2013, the Project 288, which led to the project proposal 2.516/13 – approved by the Commission of International Relations and Defence – that afterwards reached the Deputy Chamber with adjustments. It then suffered more vetoes by President Michel Temer. Project 288 somehow became the precursor of the present 2017 Migration law, though subjected to major adjustments.

In the final Migration Law of 2017 (in articles 3 and 4), the principles of human and fundamental rights were incorporated, in accordance with the Brazilian Federal Constitution of 1988. These tended towards a quality protection of migrants that had been absent before. For example, article 3 – with 22 subsections- states that Brazilian migration policy is ruled by I. universality, indivisibility and interdependence of human rights; II. the rejection and prevention of xenophobia, racism and any other form of discrimination and III. the non-criminalization of migration. In section XI, the law guarantees equal and free access of migrants to services, programmes and social benefits, public goods, education, legal public integral assistance, work, housing, banking services and security. This was the tenor of the law in writing.

Many changes had been made applying new principles and rules oriented to guarantee the subjective rights of migrants, reversing some aspects of the old legislation. In this sense, it represented a great conquest for activists, migrant movements and associations of civic society that were well articulated and mobilized intensively, especially considering the restrictive process for migration ongoing at the global level, with the closure of borders partly due to the Covid-19 pandemic. However, the hard core of the Nation-State actors remained; it submitted

Volume: 08, Issue: 03 May - June 2025

ISSN 2582-0176

migrants to its discretion just for being foreigners. The principle of searching or attaining social equality was more a claim than a reality (Minchola, 2019).

According to Redin (org.) (2020) – who counted on the support of UNHCR – the policy of control was maintained within the discretionary realm of public administration, and this still constitutes an open dilemma. The law did not recognize the human right to migrate as a right – a right to enter a country and stay.

As seen before, this law claimed 'on paper' a concern for the human rights of migrants and refugees and for the prevention of the violation of those rights, though many of its clauses were similar and, often more police-like than those of the Statute of Foreigners. For example, the everyday management of cases was unresolved and left in the hands of the Federal Police as administrator, which is originally an institution formed to deal only with security topics, i.e. migrants defined by law would be framed, distributed and approved or not by the police. The way to reject the logic of criminalization attached to migration would have been – as expressed by the principles described in the law initially– that the question of migration should have been administratively totally delinked from the Federal Police and left in the hands of a more adequate institution. In this sense, the law's flexibility in adapting to the new flows of migrants coming into Brazil was largely reduced.

However, it had a key article (n 14, 3rd) that tended toward the protection of migrants, i.e., the concession of humanitarian visas: "a temporary humanitarian shelter visa […] that may be granted to stateless persons or nationals of any country in a situation of serious or imminent institutional instability, armed conflict, major calamity, environmental disaster, or serious violation of human rights or international humanitarian law[…] that does not require individual case analyses or proof by the applicant. It is granted through ordinances issued by Brazil in response to disasters" (Oliveria et al., 2024, p.31). In other words, this humanitarian visa, initially issued to Haitians and Venezuelans, could be extended to other nationalities of migrants. However, Decree 9.199/2017 maintained the expression: 'could apply', referring to any nationality, i.e. it kept the administrative channel open to judge on opportunity and convenience about which nationalities would be included in the humanitarian sphere in the hands of the Ministry of Justice – creating a new barrier (Machado, 2024).

The present system of migrants´ entrance and permanence was altered; for new migrants, the direct access to permanent residence was extinguished. The law widened the scope of new situations for temporary residence to all possible situations; altered their manner of concession, and, as a whole, reaffirmed a provisional character of entrance and permanence. It defined five types of visas: visit, temporary, diplomatic, official and courtesy and stated that the visiting visa would not be required from foreigners whose flight makes a connection in Brazilian territory, with the traveller remaining in the area of international transit. It maintained the restriction of visas to be granted only at Consulates and Embassies. Moreover, all applicants were required to present negative criminal records from the last five years in their country of origin, which means that whoever had previously committed a crime and served the concomitant prison time was rejected from entry to Brazil – a violation of fundamental rights. The approach was full of incongruences, as pointed out by Mendes & Brasil (2020). In the case of migrants already in national territory without a visa, they could only apply for temporary visas or refugee status if the requirements applied.

Volume: 08, Issue: 03 May - June 2025

ISSN 2582-0176

The legal framework presents a restrictive role in terms of the labour market, requiring documents that confirm only formal work (though not informal labour); study; health treatment; relevant activities in the scientific, technological and economic fields, human welcoming and other situations of national interest. It also accepts various professions that, even without any employment contract, could apply for residence with a work permit, such as those of technical assistance services, technology transfer, activities with entrepreneurial, artistic and sports aims, among others.

Regarding family reunion, though foreseen in the new law as a right, bureaucratic processes could make it difficult, as well as the fact that through one of the President's vetoes, the definition of family became traditional again and did away with the idea that kinship could be more widely considered to include affective dependency and sociability factors (Redin org., 2020).

One of the other crucial setbacks of the law is the lack of an approach to 'gender' in the text, due to the pressure exercised by religious actors within Congress that consider gender as disrespecting their values. As a result, there is no special protection for migrants being persecuted for gender reasons. Article 3 of the new law was an ideal place to explicitly include this topic. Up until now, there has been no manifestation from public agencies that recognize the immensely greater situation of vulnerability of female migrants – which is still worse in Roraima – and that tries to protect them through mechanisms foreseen by law (Campis, 2019; Human Rights Watch, 2017). For example, there are numerous narratives about Venezuelan women, who, around 2016, were working as domestic employees in a prison-like situation and were sexually exploited by employers. Having no other way of survival, they ended up subjected to humiliations, offenses, and aggression (Globo, 2018; Metropoles, 2019).

The law was also very insistent about the forms of limiting migrants' entry into the country. Migrants could be stopped from entering (article 45), could be repatriated (article 47), could be deported (articles 48, 49 and 50) and could also be expelled (articles 53 to 58); categories that take up a lot of room in the law project (Machado, 2024). Only after establishing these clauses, the forms of acquiring citizenship were defined. For this purpose, migrants had to have lived in Brazil for four years and be able to communicate in the Portuguese language, as if this fact could reflect migrants´ ability for social integration. Time periods for naturalization were diminished to a year under certain circumstances: have as origin a country whose language is Portuguese, have a Brazilian son/daughter or spouse, be an inhabitant of a Mercosur country, carry out relevant services or have a recognized professional capacity – two undefined and vague categories. Provisional naturalization could be acquired if they entered the country before they were 10 years old, i.e., having a Brazilian education in the future.

Those migrants who had lived in the country undocumented (article 70) for more than 15 years were also allowed to apply for citizenship, but during that time, they had had no access to any basic rights. What had seemed a certain advance from the security-oriented approach of a large part of the law project was only apparent. A precarious second-level type of worker, quite close to slavery, was thus being created, becoming a symbolic legitimation of inequality. A study by UNICAMP shows, for example, that 35% of those individuals rescued during actions of persecution for slave work are migrants (Brasil de Fato, 2018).

Volume: 08, Issue: 03 May - June 2025

ISSN 2582-0176

President Michel Temer vetoed eighteen paragraphs of the version of the law that arrived from Congress, previous to its final approval (Presidencia da República, 2017). The following are key limitations found in these vetoes that affect the relative tenor of human rights in the law approved by Congress: (a) In the category of border migrants, their movements were restricted, and the category as such was eliminated. In this way, they would lose the potential equality with nationals in access to public services and retirement. The veto is justified as if those inter-border human movements brought also a potential lack of police control over the borders; (b) It was considered that there was an increase in the law in the type of visas obtained through simple regulation which created an excess of flexibility that was also vetoed, possibly due to a fear of potential voting outcomes during less reactionary future governments; (c) Due to Evangelic beliefs among members of Temer's government, the widening of the category of family to other kinship for the effect of family reunion was reduced to the traditional categories-based upon the argument that such a change could contribute to the trafficking of children ; (d) Constraints were also placed upon the entrance of foreigners where country-level agreements had been previously signed on visa waivers, stating it limited the rights of the local police; (e) Clauses that accepted differential periods for application to citizenship for certain categories of individuals – inhabitants of Mercosur countries and those belonging to countries where Portuguese was the official language – were also done away with. Obviously, this was intended to limit their voting rights and reduce the electoral collegiate. Moreover, naturalization can only be applied for after having a permanent indeterminate visa and a clean criminal record in the country of origin;(f) It was considered improper that those individuals being sentenced for crime in freedom be considered as part of the group of vulnerable migrants and it was stated that those that had committed severe crimes, having lived in Brazil for 4 years, could still be expelled or imprisoned if they were undocumented; (g) An amnesty for those migrants that entered the country before July 2016 was also discarded; (h) It was established that the circulation of indigenous populations in their traditional territories brought national insecurity; so the practice was banned; (i) The clause on revoking acts of expulsion decreed before October 5, 1988, was also banned; (j) Rights of tourists were also limited, restricting their access to public services; and (k) It was prohibited the access of migrants to public tenders to apply for State positions and public careers, among other.

Many of the justifications presented in the veto messages invoked questions of security, sovereignty or national interests, for example, in article 44 on the role of the Federal Police and in article 188 on migratory amnesty. Camila Asano, member of Conectas-SP states: "A very questioned veto was that of the banning of amnesty. […] since the dictatorship, Congress approved those amnesties every decade since 1981. The last one was in 2009, that regularized forty thousand people. As logic is changing, we were expecting that people in irregular situations could regularize because access to documents is central to their access to rights. Even undocumented people can have access to basic rights, like the public health system (SUS), but in practice, this is very difficult. This veto is bringing lots of negative consequences" (Conectas & Missão Paz, 2022, p. 23).

All these vetoes contradict the spirit of the 2017 Migration Law and many of its clauses. Migrants are established in a condition of precariousness respect to the power of the state (Redin, 2013; 2015). Permanent provisional situations are assigned to migrant subjects; state discretion conditions migrants´ possibilities and hence, leads to their potential social exclusion (Sayad,1998).

After the vetoes were approved by the Chamber of Deputies, the law was regulated by Decree No. 9.873 of November 2017, when it officially came into force during Temer's short government. That regulation has also been widely considered by scholars as anti-democratic, as, for example, it postpones the regulation of humanitarian visas for an uncertain future, which had been an important advance in the new law of 2017 (Ribeiro de Oliveira, 2017).

3.3 Setbacks: Nationalism and the Predominance of Securitization

With the move towards the right in Brazil, critiques to the new migration law became stronger, bringing up an imaginary that "it opens Brazil's frontiers" or "puts the country at risk". Migrants tend to disturb nationalistic social sectors. For the anthropologist Giralda Seyferth (2008, p. 4), [...] "foreigner, or alien, especially the migrant that settles in another country subjected to a specific legislation, restrictive and without full rights to citizenship, for his/her condition as different and as a stranger, disturbs the unity of the nation because he/she introduces, at least, cultural or ethical difference, something almost intolerable for nationalism" (own translation).

There had already been a setback regarding human rights in the 2017 Migration Law due to the vetoes of President Michel Temer and within other government measures, such as, the breaking of diplomatic relations with the regime of Nicolás Maduro, the open support of the Venezuelan opposition and 'Operation Sheltering or Welcoming' of 2018 to 'interiorize' Venezuelans in the North i.e. sending them towards other Brazilian States. When the Venezuelan humanitarian crisis became stronger between 2018 and 2019, its management was trans passed to the military forces, and some of the migrants were concentrated in hybrid refugee camps controlled by the military forces, the Army especially, and with the support of international organizations. This measure removed them from Boa Vista, the roads of the capital of the State of Roraima in the North Region, in tune with the xenophobic perspective of the far-right government that had assumed power (Machado & Vasconcelos, 2022).

Already in 2015, when he was a federal deputy, Bolsonaro had qualified migrants that reached Brazil as a "threat" and as "the slag of the world", at an event on Criminal Justice held at Goiás and reported by Journal Opção (Azevedo, 2015; Vitor, 2015). When the law was being negotiated, Bolsonaro was among the only ones of the Deputies who in the Chamber plenary said about the migration Law of 2017: "you are opening Brazilian doors for every and any kind of people" (Fernande, 2016). In November 2018, he made a new criticism: "How this migration law sees matters… France accepted something similar, the disgrace is theirs. We are humans, want to respect human rights, but nobody wants to put certain kind of people inside our home. And Brazil is our home. Such a thing went unnoticed" (Maia, 2018).

When President Jair Bolsonaro came into power, the securitization aspect of the law became even stronger. One of his first declarations, made on his first day in government, involved instructing Brazilian diplomats abroad, the UN General Secretary and the Director-General IMO about Brazil's withdrawal from the United Nation first inter-governmental binding agreement on migration: The Global Compact for Safe, Orderly and Regular Migration (GCM) or Pact of Marrakesch (Morocco, December 2018). It had been signed by 164 countries to cover all dimensions of international migration in a holistic and comprehensive manner. This Pact has 23 objectives, among them, the reduction of the structural factors that make people

Volume: 08, Issue: 03 May - June 2025

ISSN 2582-0176

migrate, the war on human trafficking and the elimination of all forms of migrant discrimination (UN, 2018). Bolsonaro thus broke the longer-term vision and tradition of multilateralism in Brazilian migration governance.

The President aligned his position with that of Donald Trump and other world anti-migration leaders. Bolsonaro's words later on were: "It is not just anybody who enters our home, nor will anybody enter Brazil through a Pact adopted by third parties" (Conectas, 2019). Without considering the reciprocity principle, through a decree, the President implemented a unilateral waiver of visas for tourists from the USA, Canada, Japan and Australia, arguing also at TV Fox News that "the majority of potential migrants do not have good intentions. They do not pretend to do the best, or do good for the USA population", words for which later on he had to retract himself for having interfered in USA's internal matters (Duchiade, 2019).

Another important initiative taken by Jair Bolsonaro was the signing of the widely controversial Decree No. 666 by the Ministry of Justice in 2019, that mentioned migrants as "dangerous people". The Decree regulated processes of expulsion, repatriation and impediment to the entry of migrants, thus establishing new parameters that reinterpreted the 2017 Law. Most of the motives claimed to justify this change argued that they could contribute to the facilitation of international crime, trafficking of people and drugs. Some of the facts this Decree facilitated, for example, were the extradition of a Turkish migrant who opposed the Erdoğan regime – though it was then cancelled unanimously by the Supreme Federal Tribunal (STF) – and the loss of the refugee status of three citizens from Paraguay (Coelho, 2019). This Decree was highly criticized by the High Commissioner of the United Nations for Refugees and by entities that defend the rights of migrants (Sacchetta Ramos Mendes & Bezerra de Menezes,2019).

Another declaration by Bolsonaro in the 2018 campaign was about the Cuban medical doctors´ families that were related to the programme "More Doctors", which he discredited, signed in 2013 during the government of President Dilma Rousseff. He said, during his electoral campaign, that Cuban brothers would be liberated and that their families could migrate to Brazil. In 2018, he also defended the opening of Venezuelan migrant camps in Roraima to exercise rigorous control at the frontier and limit new entries. This ideology eventually turned into a programmatic document of his campaign that proposed limited access to Brazil from those individuals from countries that did not "agree with the ideas of the Brazilian Nation" (Sassine & Bresciani, 2018).

The Decree No. 666 effectively gives absolute power on decision-making on these issues to the Federal Police. Their ruling is based on distrust and suspicion instead of robust evidence. However, it also establishes that the police could consult international and national intelligence records to decide on those issues, though with no obligation to present the information gathered to the rest of society (Machado, 2024).

Another measure taken by Bolsonaro was to modify Decree No. 9.873 of 2019 about restructuring the role of the CNIg, which had become a mere consulting agency. According to the regulation of the law of 2017, the Ministry of Justice was responsible for formulating migration policies, a function that was retaken by the CNIg, which itself was now integrated massively by members in favour of the ongoing securitization process. Before, among its 19 members, the CNIg had had a majority of representatives from civic society; now it became

Volume: 08, Issue: 03 May - June 2025

ISSN 2582-0176

reduced to 14 members, where not only representatives from the Federal Police were included, but there were fewer representatives from civic society. Under those conditions, the CNIg becomes politically hegemonic as an expression of the securitization trend. (Machado, 2024).

The 2017 law's return to a securitization character can also be attributed to certain vacuums in the law and its hybrid character (Courtis, 2006), as the product of negotiations between social sectors and a temporary agreement between different politically conservative sectors present in the ongoing government (Canelo et al., 2018).

3.4 Latest Initiatives

Lula continued developing a higher profile of Brazil in regional fora and promoted regional and multilateral solutions to common challenges in the area of migration, in line with Brazil's foreign policy priorities. To this end, his first foreign policy move was to re-join the GCM. He also actively participated in several rounds of repatriation of Brazilians living in countries at war, such as Lebanon, Palestine, Ukraine and Syria.

The migration law of 2017, in its Article 120, foresaw the development of a National Policy on Migration, Refuge and Statelessness (PNMRA) which also considers internal migrants. Such policy should also include and define the role of other actors in migration governance, including private businesses, international organizations and civic society. It is likely that, once developed, a new institution for migration and asylum could be created in charge of those policies – possibly located within the Ministry of Human Rights – and could also assume some responsibilities away from the Federal Police (Brumat, & Pereira, 2023).

In that context, the Ministry of Justice and Public Security (MJSP), through Decree No. 290, issued in January 2023, created a Working Group regarding the construction of this policy (PNMRA). The Group had broad participation of representatives from civic society, public power, international organizations, public and private universities, research institutes and class associations (Ministério de Justiça e Segurança Pública, 2023). Its aim is to produce norms for the creation and organization of initiatives that would make instrumental the management of this policy in a decentralized, inter-sectoral and participative manner, such as (i) a National Plan of Migration, Refuge and Statelessness; ii) National Conferences on the topic (COMIGRAR); (iii) a National Council on the issue (CONAMIGRA); (iv) an Inter-Ministry Committee on the topic; (v) a forum of Articulation with the States and the Federal District; vi) the National Network of Welcoming Cities; (RNCA); (vii) A Portal of Data on the subject; (viii) Centres for the treatment and integration of migrants/refugees/stateless individuals (CEIAM) and (ix) the Programme of Qualification on this theme. During the first semester of 2024, consultations were carried out within government on the text of the Decree that would establish the PNMRA[2], with the objective of promoting the contribution and engagement of the Ministries related to the questions of migration, refuge and statelessness[3].

[2] See, https://www.gov.br/mj/pt-br/assuntos/seus-direitos/migracoes/politica-nacional-de-migracoes-refugio-e-apatridia-1

[3] See. https://www.gov.br/mj/pt-br/assuntos/seus-direitos/migracoes/politica-nacional-de-migracoes-refugio-e-apatridia-1/relatorio-de-atividades-da-cgpmig-janeiro-de-2023-a-maio-de-2024.pdf

Volume: 08, Issue: 03 May - June 2025

ISSN 2582-0176

Brazil counts with quite an extended network of federal, state and municipal councils, conferences, participative budgets, referendums, plebiscites and possibilities of developing projects based on popular initiative, which characterize democracy. In the new political climate, since Luiz Inácio Lula da Silva's third term government beginning in 2023, one of the instruments for State-social dialogue most articulated has been the development of National Conferences on specific issues. During the conservative governments, since Dilma Rousseff's impeachment, this form of relationship with society was avoided or even repressed.

The Second Conference of COMIGRAR took place ten years after the first one, in 2024, with the participation of 700 individuals. It was held at Foz de Iguaçú (PR), at the Federal University of Latin American Integration (Unila)[4]. It debated the topic of "Citizens in Movement" and was significantly expanded to 300 elected delegates, 180 from the State Conferences and 120 from the Free National conferences. Six thematic axes for discussion were previously defined. These were: Socioeconomic insertion and the promotion of decent work; Confrontation of violations of rights; Governance and social participation; Migration and documental regularization; Inter-culturality and Diversity. There were two Working Groups per theme, which, after debates and discussion, substituted, added or suppressed amendments. Each one of them sent 12 proposals to the mini-plenaries that tried to harmonize them. In turn, each mini-plenary selected 12 proposals for the Final Plenary session.

Debates approached different crucial questions: the rights of indigenous people, inclusive education, eradication of slave work, revalidation of foreign degrees and governance of migrants, refugees and stateless people. There was a strong defence of universal access to health and of the creation of data platforms on the topic, as well as, the structuring of specific institutions to manage the subject, like the National Council of Migration, Refugee and Statelessness. The delegates emphasized the need to simplify regularization processes and access to services and policies of social assistance, placing special attention on gender and the protection of vulnerable groups. Sixty proposals were prioritized among the six thematic axes, and 34 motions were approved.

4.0 CONCLUSIONS

The present study set out to present a general panorama of the design and passing of the two most recent Brazilian migration laws – out of the four passed historically altogether in Brazil. It showed the ups and downs involved in the process between different or opposed political and administrative perspectives, especially regarding the last 2017 law. This law, initially socially and globally praised as presenting an advanced human rights' position regarding migration, ended up as an amalgam between a humanitarian and a securitization perspective. Table 1, in the second section of the paper, describes the state's dynamic capacities, emphasizing especially: (a) the political and social legitimacy assigned to changing the old law; (b) a strong state leadership for the present law, that varied in quality throughout time; (c) contradictions between the law and its regulations; (d) an often antagonistic character of what is defined and actually practised, most especially regarding migrants' human rights; (e) deficiencies in the coordination of positions between different state agencies; and

[4] See, acnur.org/br/ii-comigrar

operationally; f) an important lack of knowledge on migrants among policymakers, insufficient reliable data and discontinuous policy evaluation.

The strong social engagement and proposals that resulted from the First COMIGRAR National Conference – a conquest of the social movements – were interfered with when the far-right came into power. Temer first vetoed key aspects of the law and then, disregarded it almost completely in the government of President Jair Bolsonaro, using declarations and decrees contradictory to the law's initial spirit. However, the initial formulation of the law – a mission-oriented policy that proposed measures of a wider protection of migrants – was retaken lately and deepened through extended social engagement in COMIGRAR during the Second National Conference. This involved a nationwide exercise in direct and representative democracy.

Moreover, the last Conference forms part of a state-led mission-oriented policy, i.e. the development of an ongoing National Migration Plan. If most of COMIGRAR´s proposals are successfully integrated into the clauses of the future new National Policy on Migration, Refuge and Statelessness (PNMRA), as well as in its norms and regulations, various steps forward in the direction of migrant protection and social integration will be taken. However, the necessary consensus needs to be reached, at government level, about the founding of a National Council that can articulate the different demands related to migration of the States and develop a coherent national programme to upgrade official capacities for policy implementation. Future decisions need to be taken based upon evidence that is now lacking or incomplete. In this last sense, it is a must to gather this migration data with an intersectional approach to gender, race/ethnicity, class, age, year of arrival, documentation and employment status (including informal work), geographical location of settlement and so on; in Haraway's words (1988): to compile a data base using 'situated knowledges.

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