HEALTH AS A HUMAN RIGHT: ASSESSING THE ACCESS TO HEALTHCARE SERVICES FOR VENEZUELAN MIGRANTS AND REFUGEES IN BRAZIL

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ABSTRACT

The recent major emigration waves out of Venezuela are rooted in a series of human rights violations, including violations of the right to health. These migrants often experience a deterioration of their health due to precarious conditions faced by them during the migration journey. In this context, the perspective of human rights is essential as the right to health is a fundamental human right that should be upheld for everyone, including migrants and refugees. Based on that, this research aims to understand to what extent Brazil upholds the right to health to Venezuelan migrants and refugees at two levels: in theory – through its legal framework – and in practice – through granting effective access to the country's healthcare system. The secondary aim is to point out what were the underlying factors that influenced migrants' ability to enjoy the right to health. To respond to these questions, this thesis relies on international and regional human rights documents, national law, reports from NGOs and the Brazilian government, and academic literature. To establish a human rights-based approach to health, the framework of availability, accessibility, acceptability, and quality was adopted. The findings of this research show that even though Brazil in theory has committed itself to provide access to Venezuelan migrants and refugees, in practice the country is not fulfilling its obligation in accordance with human rights standards. It is argued that the underlying cause of this can be attributed to (1) flaws in the political response, (2) inequality and discrimination, and (3) the absence of substantial reforms within the local healthcare system.

INTRODUCTION

In 2022, the global population of forcibly displaced individuals exceeded 100 million.[1] Among these, Venezuela ranked second with the highest number of people displaced across borders, reaching approximately 5.6 million people according to UNHCR.[2] In that context, the Brazilian Federal Subcommittee for Reception, Identification, and Screening of Immigrants had shown that, from January 2017 to February 2022, approximately 700,000 Venezuelans entered Brazil.[3]

The Brazilian constitution states that health is a fundamental right for all individuals and a responsibility of the state.[4] It ensures this right through social and economic policies aimed at preventing diseases and other health risks, as well as by guaranteeing universal and equal access to health services for promotion, protection, and recovery.[5] However, having the right to health enshrined in the Constitution, statutory laws, or international and regional standards does not necessarily guarantee its enjoyment. The effective enjoyment of the right to health depends on the government's commitment to ensuring the availability, accessibility, acceptability, and quality of healthcare.[6]

[1] UNHCR, "Refugee Statistics," USA for UNHCR, accessed January 26, 2023, https://www.unrefugees.org/refugee-facts/statistics/. This numbers encompasses internally displaced people, asylum seekers and refugees.
[2] UNHCR, "Refugee Data Finder," UNHCR, accessed January 26, 2023, https://www.unhcr.org/refugee-statistics/.
[3] International Organization for Migration, "Subcomitê Federal para Recepção, Identificação e Triagem dos Imigrantes," accessed June 5, 2023, https://brazil.iom.int/sites/g/files/tmzbdl1496/files/documents/informe-migracao-venezuelana-jan2017-jul022-v4.pdf.
[4] Original version: "Art. 196º A saúde é direito de todos e dever do Estado, garantido mediante políticas sociais e econômicas que visem à redução do risco de doença e de outros agravos e ao acesso universal e igualitário às ações e serviços para sua promoção, proteção e recuperação.". See, Brazil, "Constituição Da República Federativa Do Brasil de 1988," accessed January 27, 2023, https://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm.
[5] See, Brazil.
[6] Audrey R Chapman, "The Contributions of Human Rights to Universal Health Coverage" 18, no. 2 (2016). p.3.

The inclusive nature of the Brazilian constitution towards non-nationals, whether they are migrants or refugees, is being tested by the continuous and large influx of Venezuelans entering the country through the northern region. This is because this migratory flow has challenged the capacity of the already fragile public service infrastructure in the state of Roraima, especially in the healthcare sector.[7] As a result, this pressured Brazil to implement measures to address these challenges, which resulted in the implementation of Operation Welcome. [8]

The health challenges posed by the Venezuelan migration stem from three moments of the journey: before, during, and after migration. Scholarly literature has documented the dire state of Venezuela's healthcare system, despite the government's denial of a health crisis.[9] According to the literature, the system is suffering from inadequate facilities, insufficient medical equipment and medication, and a shortage of healthcare professionals. [10] Consequently, these challenges have severely hindered the prevention and treatment of health conditions, making it difficult for the population to access necessary healthcare services, resulting in outbreaks of vaccine-preventable diseases, measles, and the aggravation of health conditions. [11]

The health of forced migrants and refugees tends also to worsen due to the precarious conditions they face during their migration journey. This can include dehydration, malnutrition,

[7] Ariane Rego de Paiva and Gabriela de Paiva Gonçalves, "Operação Acolhida: Entre a Militarização e a Assistência Social," November 19, 2021, https://doi.org/10.14295/rbhcs.v13i26.12552.p.173.
[8] UNHCR, "Interiorização," ACNUR Brasil, accessed May 9, 2023, https://www.acnur.org/portugues/temas-especificos/interiorizacao/.
[9] Lancet, "The Collapse of the Venezuelan Health System," *Editorial* 391 (2018): 1331, https://doi.org/10.1016/S0140-6736(16)00277-4.; and Shannon Doocy et al., "Venezuelan Migration and the Border Health Crisis in Colombia and Brazil," *Journal on Migration and Human Security* 7, no. 3 (September 2019): 79–91, https://doi.org/10.1177/2331502419860138.
[10] See: Doocy et al., "Venezuelan Migration and the Border Health Crisis in Colombia and Brazil"; Rafael Muci-Mendoza, "Venezuela: Violence, Human Rights, and Health-Care Realities," *The Lancet* 383, no. 9933 (June 2014): 1967–68, https://doi.org/10.1016/S0140-6736(14)60947-8; Kathleen R Page et al., "Venezuela's Public Health Crisis: A Regional Emergency," *The Lancet* 393, no. 10177 (March 23, 2019): 1254–60, https://doi.org/10.1016/S0140-6736(19)30344-7.
[11] Page et al., "Venezuela's Public Health Crisis."

fatigue, violence, human trafficking, and other vulnerabilities.[12] As a result, they arrive at their destination with a greater need for healthcare services.[13] Therefore, the importance of the host country to provide them with access to healthcare services becomes evident.

The lenses of human rights become indispensable in this context, as the right to health is an essential human right that must be respected and protected for all, including forced migrants and refugees. Based on that, the focus of this thesis is to investigate to what extent the Brazilian government was able to provide access to healthcare for refugees from Venezuela following the availability, accessibility, acceptability, and quality framework. More specifically, this thesis aims to tackle the following questions:

1. To what extent does Brazil's national legislation framework embody and guarantee the human right to health? How effectively are these rights extended to Venezuelan migrants and refugees?

2. To what extent were the human rights to health of Venezuelan migrants and refugees upheld in terms of their access to the Brazilian health system, and what were the underlying factors that influenced their ability to enjoy the right to health?

To address these questions, this thesis is structured as follows: the first chapter provides an overview of the socio-political and economic scenario in Venezuela to understand the reasons behind the significant outflow of people from the country. Additionally, this chapter describes the characteristics of the migration flow from Venezuela to Brazil, highlighting migration patterns and the impacts on border cities. This contextual information is crucial for comprehending the impact of the high number of Venezuelans on the local healthcare system

[12] Doocy et al., "Venezuelan Migration and the Border Health Crisis in Colombia and Brazil."
[13] Doocy et al.

and, subsequently, gaining a better understanding of the healthcare access challenges faced by Venezuelans in Brazil.

In the second chapter, the focus shifts to the examination of laws concerning the recognition of refugee status and other legal designations granted to Venezuelans residing in Brazil, including temporary visas. Furthermore, the chapter delves into the legislation safeguarding the healthcare rights of this population. Understanding these legal provisions is crucial as it underscores that the legal status of Venezuelans within Brazil does not hinder the country's responsibility to uphold their right to healthcare, a commitment rooted in the inclusive framework of the Brazilian constitution.

In the third chapter, an overview is presented regarding the right to health as outlined in international and regional treaties, emphasizing Brazil's dedication to upholding this right through its ratification of these documents. The chapter further develops on the crucial role played by the Unified Health System (known in Portuguese as “Sistema Único de Saúde” or SUS) in ensuring access to healthcare for migrants and refugees, highlighting how its principles align with the commitment to delivering healthcare that is universally accessible, available, acceptable, and of high quality. The chapter concludes by discussing the challenges that SUS encounters, which is crucial for comprehending the implications for Venezuelan migrants and refugees. Chapters two and three, together, aim at responding to the first research question.

The fourth chapter is aimed at conducting the core of the analysis of whether Venezuelan migrants and refugees effectively had access to the Brazilian healthcare system, and to what extent. The first part describes the role of Operation Welcome in the implementation of healthcare measures for the reception of Venezuelans in Brazil, as a mitigation initiative to a situation defined as a crisis. Moreover, the chapter presents significant findings concerning the healthcare situation of Venezuelans and the obstacles they face that

impede the fulfillment of their right to health. Finally, drawing upon the information gathered from the previous chapters, I aim at responding to the second research question proposed at the beginning of this thesis, namely, to what extent were the human rights to health of Venezuelan migrants and refugees upheld in terms of their access to the Brazilian health system, and what were the underlying factors that influenced their ability to enjoy the right to health.

METHODOLOGY

This research piece employs a research methodology that relies on a human rights framework for access to health based on theory and practice. The theoretical sources stem from Brazil's ratification of international agreements, as well as its body of laws. The practice of access to health uses as source of information numerous reports from NGOs, government, and international organizations, as well as academic literature available.

To establish a human rights-based methodology, I adopt the framework of availability, accessibility, acceptability, and quality. This framework was first introduced by Katarina Tomaševski in the context of the right to education.[14] At the time the framework comprehended availability, accessibility, acceptability, and adaptability. [15] Later, the Committee on Economic, Social and Cultural Rights General Comment No. 14 (2000) on the right to the highest attainable standard of health presented the framework of availability, accessibility, acceptability, and quality, which is used in this thesis.[16]

This framework identifies crucial factors for effectively implementing the right to health within a human rights lens. It emphasizes that healthcare resources and facilities should be sufficiently available, accessible to all without discrimination, and culturally sensitive to diverse beliefs and communities.[17] Moreover, these aspects should align with high-quality

[14] Katarina Tomasevski and UN Commission on Human Rights Special Rapporteur on the Right to Education, "Preliminary Report of the Special Rapporteur on the Right to Education, Katarina Tomasevski, Submitted in Accordance with Commission on Human Rights Resolution 1998/33.," January 13, 1999, https://digitallibrary.un.org/record/1487535, paras. 51-74.
[15] Katarina Tomasevski and UN Commission on Human Rights Special Rapporteur on the Right to Education, "Preliminary Report of the Special Rapporteur on the Right to Education, Katarina Tomasevski, Submitted in Accordance with Commission on Human Rights Resolution 1998/33.," January 13, 1999, https://digitallibrary.un.org/record/1487535, paras. 51-74.
[16] UN Economic and Social Council, "General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)," *UN Committee on Economic, Social and Cultural Rights (CESCR)*, E/C.12/2000/4, August 11, 2000.
[17] UN Economic and Social Council.

standards in healthcare delivery. [18] According to Dainius Puras, former Special Rapporteur on the right to health, these requirements are integral to achieving Universal Health Coverage. [19] Therefore, in assessing the right to health of Venezuelan migrants and refugees and the capacity of the SUS, this framework serves as a guiding principle for evaluating the findings.

The source for laws and international treaties are the official websites of the Brazilian government, as well as treaty repositories from international organizations. Reports and academic literature were primarily sourced from online scholarly platforms such as Google Scholar and JSTOR.

[18] UN Economic and Social Council.
[19] Darius Puras, "Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health to the UN General Assembly on the 2030 Agenda for Sustainable Development and the Sustainable Development Goals," 2016.

1. BACKGROUND AND CONTEXT OF THE VENEZUELAN MIGRATION FLOW

The process that led to the recent Venezuelan migration flow has been developing over the last two decades. Understanding this process is key to the underlying issues that have evolved since, and that ultimately led to the outcomes we intend to investigate. The first chapter of this thesis will provide the background and context of the Venezuelan migration flow. This includes examining the historical, political, economic, and social context that has led to the forced displacement of Venezuelans, including the root causes and triggers behind it. Furthermore, the chapter focuses on the characteristics of the migration flows from Venezuela to Brazil. This description of the background and context of the Venezuelan migration, including the specific migration flows to Brazil, will provide a solid foundation for understanding the healthcare access challenges faced by Venezuelan migrants and refugees in Brazil and the impacts on the Brazilian healthcare system.

1.1. The Socio-political-economic Context of the Venezuelan Migration Flow

This section intends to organize in a time frame the socio-political and economic events that lead to the migrant and refugee crisis in the country. The first and longest-standing factor is an increasingly centralized and authoritarian regime, which is reflected by the same party being in power since 1999. The second element is economic, connecting to the international trade dynamics of oil, the country's primary commodity. The third factor is the continuing broadening of political instability. All three factors developed simultaneously and contributed to deepening one another.

Venezuela has been facing complex social, political, and economic issues for over two decades, despite being home to the world's largest oil reserves.[20] In 1999, the socialist party, along with Hugo Chavez, came to power and the party has remained in office ever since.[21] At the beginning of his presidency, poverty and extreme poverty rates were at around 70% and 40%, respectively.[22] To address this dire situation, Chaves implemented several social policies aimed at reducing poverty and improving the quality of life for Venezuelans.[23] However, the implementation of these policies required extensive spending, nationalization of oil industries, currency controls, and price controls. [24] These measures initially resulted in an increase in per capita income and a decline in unemployment and poverty. Nonetheless, in the long run, they contributed to the country's worsening economic crisis, which was exacerbated by oil price volatility.[25]

Under the government of Nicolás Maduro, the crisis has intensified. Maduro came to power after Chaves' death in 2013. As Chaves prepared Maduro to assume the presidency after him, many of the spending policies were continued, leading Venezuela into an extensive economic crisis that resulted in cuts in public spending and high inflation rates. The situation was worsened by the drop in the price of barrels of oil - the main export product of the country and a key source of foreign currency – and the consequent decrease in the government's income and reserves.

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[20] Carta Capital, "Para Entender a Venezuela," *Carta Capital - Brasil Debate*, 2017, https://www.cartacapital.com.br/blogs/brasil-debate/para-entender-a-venezuela/.

[21] Benjamin N. Gedan, "Venezuelan Migration: Is the Western Hemisphere Prepared for a Refugee Crisis?," *SAIS Review of International Affairs* 37, no. 2 (2017): 57–64, https://doi.org/10.1353/sais.2017.0027.

[22] Carta Capital, "Para Entender a Venezuela."

[23] Carta Capital.

[24] Gedan, "Venezuelan Migration."

[25] Rahima Nasa, "Timeline: How the Crisis in Venezuela Unfolded," 2019, https://www.pbs.org/wgbh/frontline/article/timeline-how-the-crisis-in-venezuela-unfolded/.

Subsequent embargos, sanctions, and reduced international commerce with Venezuela took place. These measures against Venezuela are officially reported as being imposed as reactions to the country's lack of cooperation in the fight against corruption and drug trafficking; anti-democratic actions of the government; and human rights violations.[26] Later on, however, they were reported as being used as a strategy to interfere in the political regime in the country by undermining Maduro and supporting the opposition led by Guaidó.[27] To further aggravate the situation, electoral fraud conspiracies and violent anti-government protests began to emerge. [28]

Further political rupture has led the country's government to a near-collapse. In 2017, the Supreme Court prohibited the opposition leader from participating in the elections for deputy to the Constituent Assembly. [29] This led to violent mass protests across the country that later led to calls for the president to step down. The situation has been worsened by a political power struggle between Maduro and Juan Guaidó, the leader of the opposition who, with the support of several nations, including the United States, declared himself interim president in January 2019. This, in turn, increased political tensions and instability in the country. [30]

As a result of the factors aforementioned, poverty in the country has skyrocketed. For the majority of the population, the salary is currently insufficient to cover their living costs, and the rate of inflation is increasing by the day. [31] Furthermore, the country's economic conjuncture has culminated in food, medicine, and medical supply shortages, resulting in

[26] Diana Roy, "Do U.S. Sanctions on Venezuela Work?," *Council on Foreign Relations*, 2022, https://www.cfr.org/in-brief/do-us-sanctions-venezuela-work.
[27] Roy.
[28] Nasa, "Timeline: How the Crisis in Venezuela Unfolded."
[29] Nasa.
[30] Nasa.
[31] Center for Strategic and International Studies, "The Venezuelan Drama in 14 Charts," *Center for Strategic and International Studies*, 2019, https://www.csis.org/analysis/venezuelan-drama-14-charts.

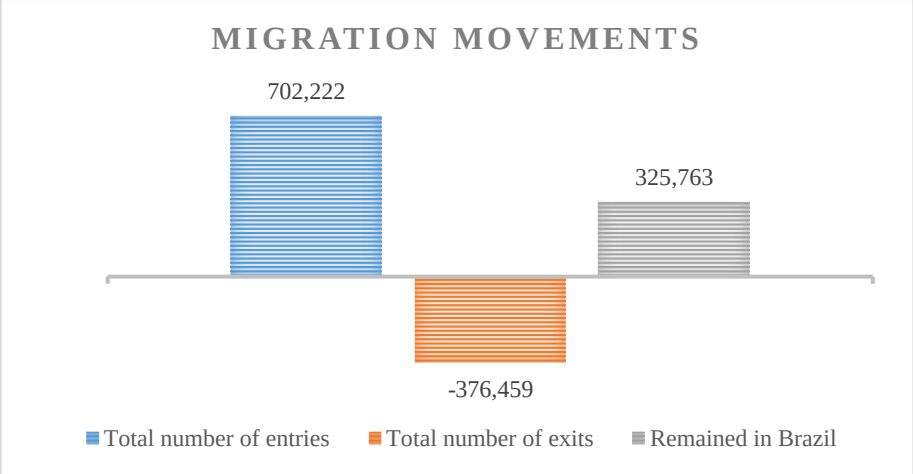
severe public health problems.[32] Thus, a political and humanitarian crisis developed in Venezuela which forced millions of Venezuelans to migrate to other nations in the region to pursue better living conditions.

The total number of forcibly displaced people around the world surpasses 100 million in 2022.[33] According to UNHCR, Venezuela, in mid-2022, ranked second with the highest number of people displaced across borders counting around 5.6 million people.[34] By the beginning of 2023, this number went up to 7,177,885 people (last updated 27 January 2023).[35] Owing to the proximity and the facilitated movement in South America, most of these people flee to neighboring countries such as Colombia, Peru, Chile, and Brazil. [36]

1.2. Venezuelan Migration Flows to Brazil

A sizeable influx of Venezuelan migrants into Brazil has taken place since 2017, with a considerable portion of the population opting to stay in the country. As per the findings of the Federal Subcommittee for Reception, Identification, and Screening of Immigrants, approximately 700,000 Venezuelans have entered Brazil since January 2017.[37] From this sizable population, circa 375,000 individuals have left Brazil, with 18% returning to Venezuela and 34% moving on to other countries. Meanwhile, the remaining 325,000 have decided to stay in Brazil.[38]

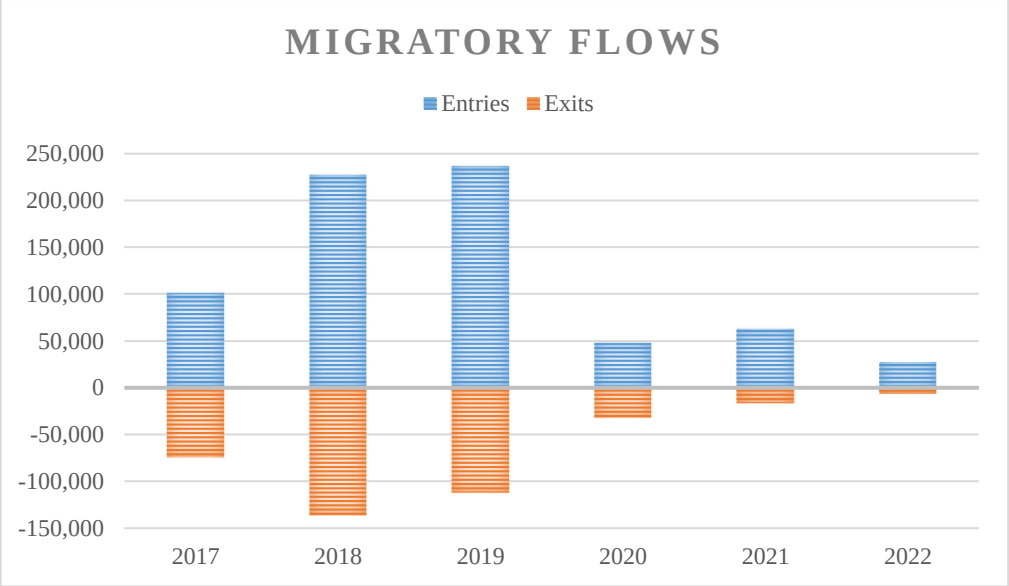
[32] Javier Ochoa, "South America's Response to the Venezuelan Exodus: A Spirit of Regional Cooperation?," *International Journal of Refugee Law* 32, no. 3 (2020): 472–97, https://doi.org/10.1093/ijrl/eeaa033.
[33] UNHCR, "Refugee Statistics." This numbers encompasses internally displaced people, asylum seekers and refugees.
[34] UNHCR, "Refugee Data Finder."
[35]Inter-Agency Coordination Platform for Refugees and Migrants from Venezuela, "Refugees and Migrants from Venezuela," accessed January 26, 2023, https://www.r4v.info/en/refugeeandmigrants.
[36] Inter-Agency Coordination Platform for Refugees and Migrants from Venezuela.
[37] Subcomitê Federal para Recepção, Identificação e Triagem dos Imigrantes, "Migração Venezuelana," 2022, https://brazil.iom.int/sites/g/files/tmzbdl1496/files/documents/informe-migracao-venezuelana-jan2017-jul022-v4.pdf.
[38] Subcomitê Federal para Recepção, Identificação e Triagem dos Imigrantes.



Source: Subcomitê Federal para Recepção, Identificação e Triagem dos Imigrantes (Federal Subcommittee for Reception, Identification, and Screening of Immigrants.)
Note: The source reports numbers from January 2017 to February 2022.

Upon examining the migratory patterns of Venezuelans entering and leaving Brazil in recent years, notable dynamics become apparent. The sharp escalation in inflows occurred in the aftermath of the deepening Venezuelan crisis in 2017, reaching its peak in 2019, and subsequently narrowing to more moderate levels. Significant movements of departures from Brazil are also observable across all the years under consideration. The decline in the migratory flow of Venezuelans into and out of Brazil in 2020 can be attributed directly to the closure of land borders in response to the Covid-19 pandemic. According to the government, the closure is due to challenges faced by the Brazilian Unified Health System in providing adequate treatment for foreigners infected with the SARS-CoV-2 virus and difficulties in containing its spread. [39]

[39] Walter Netto, Sergio Moro, and Luiz Henrique Mandetta, "Portaria Nº 120, de 17 de Março de 2020," *Diário Oficial Da União*, no. 3 (March 2020), https://portaldeimigracao.mj.gov.br/images/portarias/PORTARIA_Nº_120_DE_17_DE_MARÇO_DE_2020_002.pdf.

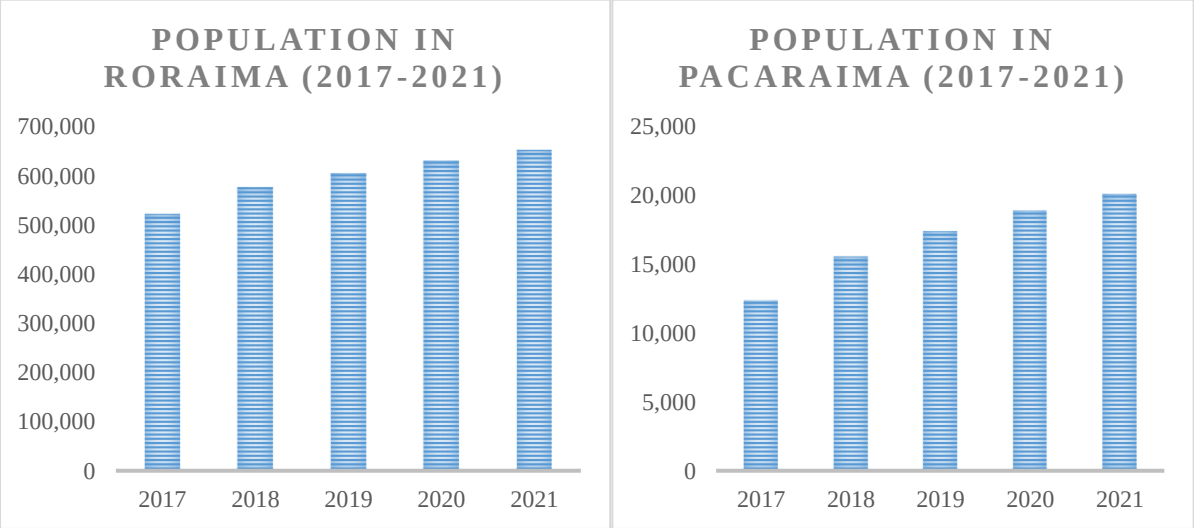


Source: Subcomitê Federal para Recepção, Identificação e Triagem dos Imigrantes (Federal Subcommittee for Reception, Identification, and Screening of Immigrants.)
Note: The source reports numbers from January 2017 to February 2022.

The pandemic has slowed down, but not stopped migration. The migration flow into Brazil, typically by the crossing of the border through the cities of Santa Elena de Uairén in Venezuela and Pacaraima in Brazil, [40] was disrupted by the border closure that was initially intended to last for only 15 days but was eventually extended for over a year.[41] Upon reopening, the number of individuals allowed to cross the borders per day was limited to a mere 50 people.[42] However, this did not imply that entries did not occur during this period, but rather that those who did not meet the entry requirements[43] sought alternative and irregular routes to enter the country.

[40] Gisela P. Zapata and Vicente Tapia Wenderoth, "Progressive Legislation but Lukewarm Policies: The Brazilian Response to Venezuelan Displacement," *International Migration* 60, no. 1 (February 2022): 132–51, https://doi.org/10.1111/imig.12902.
[41] Netto, Moro, and Mandetta, "Portaria Nº 120, de 17 de Março de 2020."
[42] Flávia Mantovani, "Brasil reabre fronteira com Venezuela após mais de 1 ano, mas limita entrada," Folha de S.Paulo, June 24, 2021, https://www1.folha.uol.com.br/mundo/2021/06/brasil-reabre-fronteira-com-venezuela-apos-mais-de-1-ano-mas-limita-entrada.shtml.
[43] Throughout the period of border closure between Brazil and Venezuela, entry into Brazil was limited to specific categories of individuals. These included Brazilian citizens by birth or naturalization, immigrants with prior authorization for permanent residency in Brazil, foreign professionals on a mission for an international organization with proper identification, and foreign officials accredited by the Brazilian Government (article 4). See, Netto, Moro, and Mandetta, "Portaria Nº 120, de 17 de Março de 2020."

The migration waves led to a sharp increase in the population of Brazilian bordering regions with Venezuela. Although the absolute number of Venezuelans arriving in Brazil is not high when compared with the entire population of Brazil, the migration period spanning from 2017 to 2021 led to overall population growth of 62.5% in the city of Pacaraima and 24.9% in the State of Roraima. [44] This proportionally high and fast influx of population into the border cities of Brazil has resulted in the incapacity of these cities in absorbing and accommodating the new population.



Source: Brazilian Institute of Geography and Statistics - IBGE (created by the author)

Addressing the legal status of Venezuelans is crucial as it sets the stage for understanding the rights afforded to them under the Brazilian legal framework. One of the key challenges faced in welcoming this large influx of Venezuelans is ensuring their human right to health, which forms the primary focus of this study. However, prior to delving into this discussion, it is crucial to establish an understanding of how the Brazilian legal framework perceives Venezuelans. The legal status assigned to individuals by Brazil plays a pivotal role in determining the level of protection they receive, be it as temporary protection beneficiaries, refugees, or irregular migrants. This legal status influences the level of protection and

[44] IBGE, "Instituto Brasileiro de Geografia e Estatística," accessed March 18, 2023, https://www.ibge.gov.br/.

assistance they are entitled to, including access to healthcare services. By examining the legal framework and its impact on their rights, it is possible to gain a comprehensive understanding of how the healthcare provision for Venezuelan refugees is shaped and identify potential gaps or challenges that need to be addressed.

2. STATUS DETERMINATION AND RIGHTS: THE BRAZILIAN LEGAL FRAMEWORK

This chapter focuses on the status determination and rights within the Brazilian legal framework, specifically examining international and regional documents that pertain to refugee status and their influence on national legislation. Additionally, this chapter traces the development of national migration laws and how they have resulted in the recognition of Venezuelans under various legal statuses. Furthermore, the chapter highlights the inclusive approach of Brazilian law towards the rights of non-nationals, particularly their right to health.

2.1. The Legal Framework Behind the Recognition of Refugee Status in Brazil

A notable demonstration of Brazil's persistent commitment to the refugee cause is exemplified by its early ratification of relevant international treaties on the subject. [45] The 1951 Convention relating to the Status of Refugees (herein as "1951 Geneva Convention"), the 1967 Protocol relating to the Status of Refugees, and the 1984 Cartagena Declaration, comprise international and regional documents that greatly influenced Brazilian legislation regarding the recognition of refugee status in the country. Brazil was the second South American country to the 1951 Geneva Convention, and the fifth in the region to ratify the 1967 Protocol relating to the Status of Refugees.[46] However, the ratification of the 1951 Geneva Convention and 1967 Protocol happened during the period of dictatorship in Brazil, which compromised the implementation of internationally accepted norms regarding safeguarding refugees. Additionally, the ratification of the 1951 Geneva Convention came with a geographical

[45] Liliana Lyra Jubilut, "Refugee Law and Protection in Brazil: A Model in South America?," *Journal of Refugee Studies* 19, no. 1 (March 1, 2006): 22–44, https://doi.org/10.1093/jrs/fej006.
[46] Jubilut. p.24.

limitation, which narrow its application solely to European refugees.[47] The limitation was withdrawn with the end of the dictatorship.[48]

In the following years, after the end of the dictatorship, the evolution of the treatment of foreign nationals within national borders had undergone significant changes over time. Two important steps regarding refugee status came with the withdrawal of limitations on the 1951 Geneva Convention and the implementation of elements of the 1984 Cartagena Declaration into national law, which expanded the possibility of refugee protection in the country.[49] This was consolidated in the promulgation of Law No. 9.474/1997, commonly referred to as the "Refugee Act, 1997", which was a landmark in defining the concept of refugee in a national document for the first time.

> Art. 1º Any individual who:
> I - due to well-founded fears of persecution for reasons of race, religion, nationality, social group, or political opinion, he/she is outside his country of nationality and is unable or unwilling to accept the protection of such country;
> II - not having nationality and being outside the country where he previously had his habitual residence, he is unable or unwilling to return there, due to the circumstances described in the previous item;
> III - due to serious and widespread violation of human rights, he is obliged to leave his country of nationality to seek refuge in another country.[50]

The definition of refugee, as stated in the Refugee Act, is based on the traditional and a more contemporaneous understanding of the term. It comprises the definition as outlined in the

[47] Jubilut.
[48] Jubilut. p.25-26.
[49] Jubilut. p.26.
[50] Original language: Art. 1º Será reconhecido como refugiado todo indivíduo que: I - devido a fundados temores de perseguição por motivos de raça, religião, nacionalidade, grupo social ou opiniões políticas encontre-se fora de seu país de nacionalidade e não possa ou não queira acolher-se à proteção de tal país; II - não tendo nacionalidade e estando fora do país onde antes teve sua residência habitual, não possa ou não queira regressar a ele, em função das circunstâncias descritas no inciso anterior; III - devido a grave e generalizada violação de direitos humanos, é obrigado a deixar seu país de nacionalidade para buscar refúgio em outro país. See, República Federativa do Brasil, "Lei Nº 9.474, de 22 de Julho de 1997," July 1997, http://www.planalto.gov.br/ccivil_03/leis/l9474.htm.

1951 Geneva Convention [51] and elements of the definition as outlined in the 1984 Cartagena Declaration. [52] By including paragraph III of Article 1, Brazil takes a step forward by transforming the non-binding definition of refugee suggested by the 1984 Cartagena Convention into law and, with that, expanding the number of people and situations that would benefit from the refugee status.

The significance of the 1984 Cartagena Declaration lies in its recommended definition, particularly for the region, as individuals forcibly displaced from Central and Latin America did not fit the refugee definition outlined in the 1951 Geneva Convention.[53] This resulted in their lack of a clearly defined legal status. In response, the 1984 Cartagena Declaration sought to expand the refugee definition, avoiding the establishment of a separate legal status mechanism and ensuring equal rights for these individuals, comparable to those falling under the 1951 Geneva Convention.[54] Despite being non-binding, the Declaration's substantial relevance and necessity influenced the development of national legislation in various Latin American countries, including Brazil. [55] Thus, the 1951 Geneva Convention's outdated

[51] The 1951 Geneva Convention states that a refugee is a person who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." See, Refugees, "Convention and Protocol Relating to the Status of Refugees." See, UN General Assembly, "Convention Relating to the Status of Refugees," *United Nations*, Treaty Series, 189 (July 28, 1951), https://www.ohchr.org/sites/default/files/refugees.pdf.

[52] ACNUR, "Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama," *Adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, November 22, 1984. The document expands the definition of refugee by considered also "people who have left their countries because their life, security or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances that have seriously disturbed public order."

[53] José H Fischel de Andrade, "The 1984 Cartagena Declaration: A Critical Review of Some Aspects of Its Emergence and Relevance," *Refugee Survey Quarterly* 38, no. 4 (December 1, 2019): 341–62, https://doi.org/10.1093/rsq/hdz012. p.357-360.

[54] Fischel de Andrade. p.357-360.

[55] Fischel de Andrade. p.357-360.

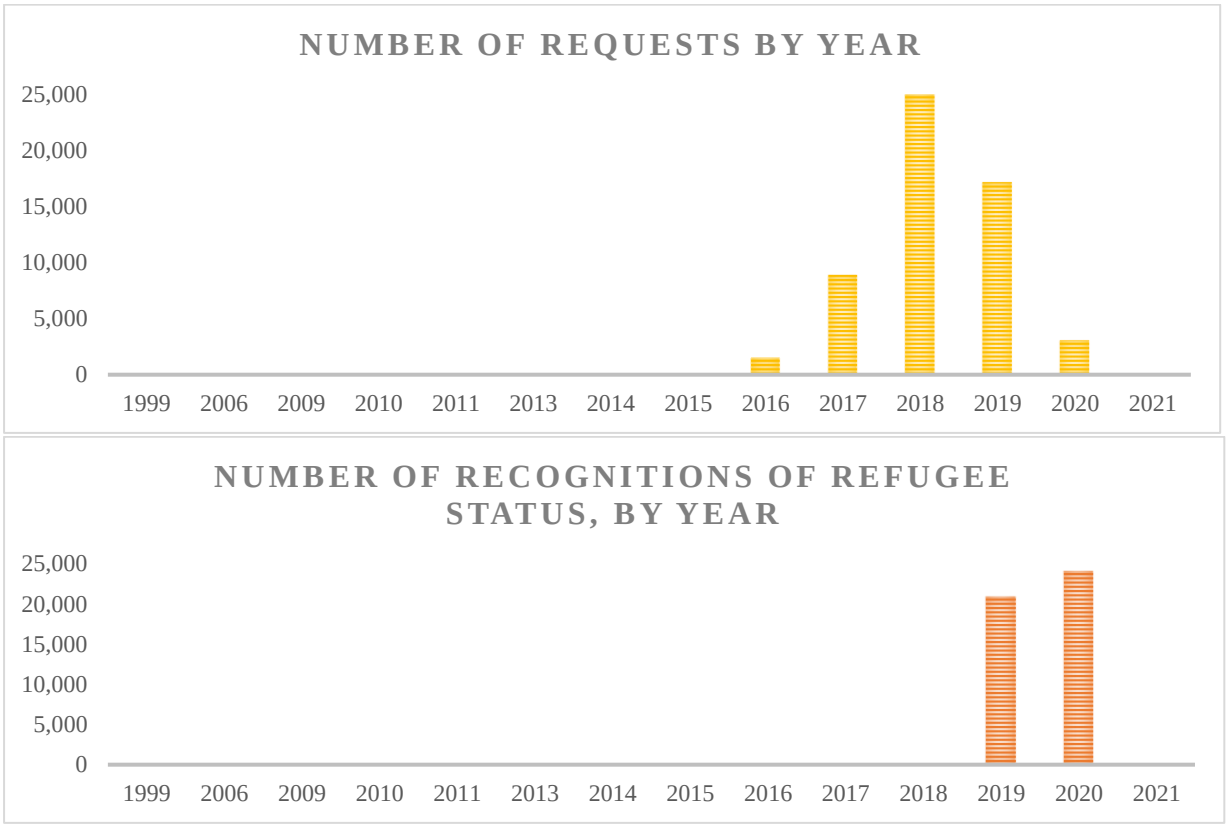
definition fails to align with the evolving reasons for forced displacement worldwide, particularly in understanding the realities faced by refugees from Latin America.

The case of Venezuelan forced migration is a good example of the importance of the 1984 Cartagena Convention and the implementation of this Declaration into national legislation of Latin American countries. The reasons why people are leaving Venezuela widely vary. According to the Inter-American Commission on Human Rights (IACHR), the main reasons are: violence and insecurity, persecution based on their political opinion, as well as "multiple and massive violations of human rights".[56] In 2019, the National Committee for Refugees in Brazil (CONARE)[57] acknowledged the extensive and severe human rights violations taking place in Venezuela, however, this does not directly grant prima facie refugee status to Venezuelans.[58] Nonetheless, it represented a crucial advancement in enhancing claim processing capabilities, as CONARE subsequently introduced an expedited procedure that waived the need for interviews.[59] This procedure targets individuals who satisfy predetermined criteria established by the committee.[60]

The following graphs highlight the simultaneous occurrence of Venezuelan refugee status recognition in Brazil and the acknowledgment by CONARE of the severe human rights abuses prevailing in Venezuela. This implies that a substantial number of individuals fall within this

[56] IACHR, "Forced Migration of Venezuelans," *Inter-American Commission on Human Rights*, Resolution 2/18, n.d., https://www.oas.org/en/iachr/decisions/pdf/Resolution-2-18-en.pdf.
[57] CONARE is the body in charge of processing applications for refugee status, deciding whether to grant it, and directing and coordinating the steps required to provide refugees with the best possible protection, support, and legal representation. Its establishment was another significant contribution of the Refugee Act, especially because of its diverse and unique composition which includes representatives from various government ministries such as Justice, Foreign Affairs, Health, Labor, and Education, as well as the Federal Police and civil society represented by CASP. Additionally, UNHCR holds a voice-no-vote status within the organization. See, "Lei Nº 9.474, de 22 de Julho de 1997."; and Jubilut, "Refugee Law and Protection in Brazil."
[58] Carolina Aguiar and Bruno Magalhães, "Operation Shelter as Humanitarian Infrastructure: Material and Normative Renderings of Venezuelan Migration in Brazil" 24, no. 5: Material Citizenship Politics: Connecting Migration with Science and Technology Studies (n.d.): 642–62, https://doi.org/10.1080/13621025.2020.1784643.
[59] Aguiar and Magalhães; ACNUR, "Brasil Reconhece Mais 7,7 Mil Venezuelanos Como Refugiados," ACNUR Brasil, 2020, https://www.acnur.org/portugues/2020/08/28/brasil-reconhece-mais-77-mil-venezuelanos-como-refugiados/.
[60] ACNUR, "Brasil Reconhece Mais 7,7 Mil Venezuelanos Como Refugiados."

category, thus underscoring the significance of the 1984 Cartagena Convention in shaping migratory patterns within the region.



Source: Ministério da Justiça e Segurança Pública (Brazilian Ministry of Justice and Public Security) – created by the author

Until Brazil started to facilitate the recognition of refugee status for Venezuelans, laws related to migration were important in guaranteeing greater protection and rights for this population. The latest law addressing the issue of regulating the status of Venezuelan migrants is Law No. 13.445/2017, commonly known as migration law.[61] The law has addressed the issue of temporary visas for humanitarian reception. This type of visa can be granted to individuals who are stateless or nationals of any country experiencing significant institutional instability, armed conflict, natural disaster, or severe human rights violations, as is stated in Article 14:

[61] República Federativa do Brasil, "Lei Nº 13.445, de 24 de Maio de 2017," May 2017, https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/l13445.htm.

> Art. 14. The temporary visa may be granted to immigrants who come to Brazil intending to establish residence for a specific period of time and who fit into at least one of the following hypotheses:
> I - the purpose of the temporary visa is:
> …
> c) humanitarian reception;
> § 3 The temporary visa for humanitarian reception may be granted to a stateless person or national 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 human rights. international humanitarian law, or otherwise in the form of regulation.[62]

This law replaces the aforementioned Statute of Foreigners (law nº 6.815/1980) and, together with law nº 13.684/2018, brought important contributions to the determination and protection of the rights of Venezuelan migrants and refugees in Brazil.

2.2. The Right to Health of Venezuelan Migrants and Refugees in Brazil

Brazil has demonstrated a strong commitment to regularizing the status of Venezuelans who have arrived in the country, either through the recognition of refugee status or by providing alternative visas. This section explores the rights of Venezuelans in the country, with a specific focus on their right to health.

The examination of the right to health for Venezuelan refugees and migrants in Brazil can be further elucidated through the analysis of the 1988 Federal Constitution, which serves as a crucial legal document in this context. The significance of the 1988 Constitution lies in its

[62]Original language: Art. 14. O visto temporário poderá ser concedido ao imigrante que venha ao Brasil com o intuito de estabelecer residência por tempo determinado e que se enquadre em pelo menos uma das seguintes hipóteses: I - o visto temporário tenha como finalidade: c) acolhida humanitária; § 3º O visto temporário para acolhida humanitária poderá ser concedido ao apátrida ou ao nacional de qualquer país em situação de grave ou iminente instabilidade institucional, de conflito armado, de calamidade de grande proporção, de desastre ambiental ou de grave violação de direitos humanos ou de direito internacional humanitário, ou em outras hipóteses, na forma de regulamento. See, República Federativa do Brasil.

transformative nature, as it introduced a new paradigm by granting equal rights to both nationals and migrants, including the fundamental right to universal access to healthcare. This shift is explicitly outlined in Article 196 of the 1988 Constitution, which states that "[H]ealth is a right of all and a duty of the State, guaranteed through social and economic policies aimed at reducing the risk of diseases and other harms, as well as ensuring universal and equal access to actions and services for its promotion, protection, and recovery." [63]

Interpretation regarding the right to health in Brazil is uncertain, leading to challenges in the implementation. By enshrining the right to health as an inclusive and universal entitlement, the 1988 Constitution establishes a framework that upholds equal treatment and access to healthcare services between nationals and Venezuelan refugees and migrants within Brazil. However, the language employed in the Constitution, particularly the phrase "health is a right of all," leaves room for interpretation by public officials, which can lead to challenges in implementation. Branco and Torronteguy (2013), in their study, delve into the issue of how the subjective nature of this terminology presents challenges in the provision of healthcare for non-Brazilians within the healthcare system since not everyone recognizes the right to health of this population.[64] Moreover, municipalities that recognize the right to health of the non-Brazilian population find it difficult to receive funds and appropriate resources, as neither the state-level government nor the federation recognizes this service.[65]

The law 9.474/1997 plays a significant role in expanding the definition of refugees, but further compounds the lack of clarity surrounding refugee rights, as it offers limited assurances

[63] Original version: "Art. 196º A saúde é direito de todos e dever do Estado, garantido mediante políticas sociais e econômicas que visem à redução do risco de doença e de outros agravos e ao acesso universal e igualitário às ações e serviços para sua promoção, proteção e recuperação.". See, Brazil, "Constituição Da República Federativa Do Brasil de 1988."

[64] Marisa Lucerna Branco and Marco Aurélio Antas Torronteguy, "The Brazilian Health System (SUS) in the Border and the Law: To What Extent the Foreigner Is Entitled to SUS," *Caderno Ibero-Americanos de Direito Sanitário* 2, no. 2 (2013), https://www.cadernos.prodisa.fiocruz.br/index.php/cadernos/article/view/133/175. p.936.

[65] Branco and Torronteguy. p.936.

for the rights of this population. This deficiency arises from the absence of explicit provisions within the law that address the economic, social, and cultural rights of refugees.[66] Instead, the law simply refers to the rights safeguarded by the 1951 Convention and emphasizes that refugees possess equivalent rights to foreigners in Brazil.[67] This highlights the significance of enacting suitable laws and regulations specifically tailored to address the right to health of migrants and refugees.

Law nº 13.445/2017 safeguards the rights of Venezuelan migrants and refugees by establishing principles and guidelines that should govern Brazilian migration policy. This law states, in Article 4, all the guarantees provided to the migrant within the Brazilian territory, such as access to public healthcare services without discrimination based on nationality and migration status.[68] These principles align closely with fundamental human rights principles that are vital for ensuring the right to health. These include principles of non-discrimination, non-criminalization of migration, and the universality, indivisibility, and interdependence of human rights. [69]

Recognizing the universality, indivisibility, and interdependence of human rights, as done by law nº 13.445/2017, is a fundamental aspect of advancing the right to health. For instance, in the context of Venezuelan refugees and migrants in Brazil, the realization of their right to health may be hindered by violations of other rights, including access to food, water, adequate living conditions, non-discrimination, and access to information, among others.[70] This particular situation shows how the realization of one human right might be dependent on the guarantee of many others.

[66] Liliana Lyra Jubilut, "Bases Legais de Proteção aos Refugiados". *O direito internacional dos refugiados e sua aplicação no ordenamento jurídico brasileiro* (São Paulo: Editora Método, 2007).p.195.
[67] Jubilut. p.195.
[68] Article 4. República Federativa do Brasil, "Lei Nº 13.445, de 24 de Maio de 2017."
[69] Article 3. República Federativa do Brasil.
[70] OHCHR, "The Right to Health," *Fact Sheet No. 31*, n.d., https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf.

In the context of migrants and refugees, the principles of non-criminalization of migration and non-discrimination are closely intertwined and have a reciprocal impact on one another, both of which are included in Law nº 13.445/2017. When migration is criminalized, it often leads to negative consequences for individuals who are seeking to regularize their status. Criminalization may result in their deportation or subject them to criminal penalties, which hinders their ability to access essential services, including healthcare.[71] This can create barriers to their enjoyment of the right to health. On the other hand, the principle of non-discrimination seeks to prevent any form of discriminatory treatment towards migrants and refugees. Studies show that discrimination poses a great risk to the health of the marginalized population, which can affect access to health services, the quality of care received and negatively impact the demand for health services.[72] This is highly important to highlight, given the context of how Venezuelans are arriving in Brazil, and their position of vulnerability when seeking medical attention in the country.

The implementation of law nº 13.684/2018 represents the latest advancement in Brazil's migration legislation. This law seeks to reassert Brazil's dedication to assisting individuals displaced from their home countries due to a "humanitarian crisis" by prioritizing the allocation of resources towards healthcare and public security initiatives. The legislation authorizes the federal government to augment the allocation of funds to state and municipal health, education, and social assistance funds for affected entities following the approval of budgetary credits.[73]

16/06/2023 00:41:00[71]Paola Pace, "The Right to Health of Migrants in Europe," *Migration and Health in the European Union*, n.d., 55–66.p.60.

[72] Lubin Lobo Pacheco, Robert Jonzon, and Anna-Karin Hurtig, "Health Assessment and the Right to Health in Sweden: Asylum Seekers' Perspectives," *PLOS ONE* 11, no. 9 (September 2, 2016): e0161842, https://doi.org/10.1371/journal.pone.0161842.

[73] República Federativa do Brasil, "Lei Nº 13.684, de 21 de Junho de 2018," June 2018, https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/l13684.htm.

The adoption of this law was necessary to address the significant influx of Venezuelan migrants and refugees entering Brazil due to the ongoing "humanitarian crisis" in Venezuela. This law, alongside various decrees, forms the legal foundation of "Operation Welcome" (Operação Acolhida), a government initiative designed to address the consequences arising from the significant influx of Venezuelan migrants entering the northern region of the country.[74] Further details regarding Operation Welcome will be elaborated upon in the subsequent chapter. Furthermore, this law serves as a reaffirmation of the government's commitment to ensuring that this population has access to the fundamental right to healthcare.

Understanding Brazil's commitment to refugee rights and human rights is important for assessing whether the country is implementing in its national laws what has been proposed by international laws. However, the inclusive language, particularly in Brazilian legislation, creates an obligation for the Brazilian state towards Venezuelans, whether they hold temporary residence permits or are recognized as refugees. In other words, the distinction in the classification does not affect the country's responsibilities to provide access to healthcare. Nonetheless, while there is no difference on paper, there is a difference in practice due to the ambiguity of interpretations allowed by national texts, which leads to insufficient funding to address the socioeconomic needs of this population. The next chapter dives into the Brazilian healthcare system in more detail and sheds light on the important steps taken by it in establishing the human right to health as a fundamental right in the country, but also the shortcomings of the system.

[74] Ministério da Defesa, "Operação Acolhida," Ministério da Defesa, May 28, 2022, https://www.gov.br/defesa/pt-br/assuntos/exercicios-e-operacoes/acoes-humanitarias/operacao-acolhida/operacao-acolhida.

3. THE IMPLEMENTATION OF THE HUMAN RIGHT TO HEALTH IN BRAZIL THROUGH UNIVERSAL HEALTHCARE

The upcoming chapter explores the significance of the right to health as a human right, focusing on its implementation in Brazil, particularly concerning healthcare access for Venezuelan refugees and migrants. It further explores the interplay between the implementation of the right to health and Universal Health Coverage (UHC), elucidating the association between these principles and the Brazilian Universal Health System (Sistema Único de Saúde, or SUS). Lastly, the chapter addresses the challenges faced in translating the principles of universality and equity into effective practices, highlighting the disparities and inequalities within the Brazilian healthcare system.

3.1. The Right to Health as a Human Right

The concept of the right to health was first introduced by the World Health Organization (WHO) in 1946, as stated in the preamble of the WHO Constitution. According to the Constitution, the right to health is considered a fundamental right for all individuals, regardless of race, religion, political belief, economic or social status.[75] Furthermore, the WHO Constitution defines health as not only the absence of disease or infirmity, but also as a state of complete physical, mental, and social well-being.[76]

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, incorporates the right to health as an integral part of human rights. Although the right to health was not explicitly enumerated as an individual right in the UDHR,

[75] WHO, "Constitution of the World Health Organization" (International Health Conference, April 7, 1948), https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1.
[76] WHO.

it was still recognized in Article 25(1), where it was grouped with other economic and social rights. [77] Article 25(1) of the UDHR stipulates that "everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services."[78] This demonstrates that the right to health was not disregarded, but rather incorporated as part of a broader set of rights within the UDHR.

In 1966, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) introduced the concept of the "right to the highest attainable standard of physical and mental health".[79] This right, articulated in Article 12 of the Covenant, emphasizes the obligation of States Parties to ensure that everyone is able to enjoy "the highest attainable standard of health." [80] The steps to be taken by States Parties to achieve the full realization of this right include provisions for reducing stillbirth rates, infant mortality, promoting healthy child development, improving environmental and industrial hygiene, preventing, and controlling diseases, and ensuring access to medical services during times of illness.[81]

Other international human rights treaties have set the stage or reaffirmed the commitment to the right to health. Namely, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), from 1965;[82] the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), from 1979;[83] the Convention on the Rights of the Child (CRC), from 1989;[84] the International Convention on the Protection of

[77] United Nations, "Universal Declaration of Human Rights," United Nations (United Nations, 1948), https://www.un.org/en/about-us/universal-declaration-of-human-rights.
[78] United Nations.
[79] General Assembly resolution 2200A (XXI), "International Covenant on Economic, Social and Cultural Rights," OHCHR, accessed April 7, 2023, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights.
[80] General Assembly resolution 2200A (XXI).
[81] General Assembly resolution 2200A (XXI).
[82] Art. 5 (d) (iv).
[83] Arts 12(1), (2).
[84] Art. 24.

the Rights of All Migrant Workers and Members of Their Families (CRMWF), from 1990;[85] and the Convention on the Rights of Persons with Disabilities (CRPD), from 2006.[86] These treaties not only recognize and confirm the right to health but also extend it to specific groups, underlining the importance of ensuring access to health and well-being for all individuals, regardless of prejudice or marginalization.

In the Latin American regional framework, two noteworthy human rights texts hold significance, although with diverging emphasis on the right to health. First is the American Declaration on the Rights and Duties of Man (herein as "American Declaration"), which was adopted in 1948. While the American Declaration does not possess legally binding authority, it holds significant relevance for human rights within the region. This is primarily due to its function as a point of reference for human rights within the Charter of the Organization of American States.[87] Nevertheless, the American Declaration predominantly focuses on civil and political rights, offering limited coverage of Economic, Social, and Cultural Rights (ESCRs).[88] The second is the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (herein as "Protocol of San Salvador"), adopted in 1988.

As opposed to the American Declaration, the Protocol of San Salvador holds significant importance concerning ESCRs, including the right to health. Article 10 of this Protocol explicitly establishes the right to health. According to this article, every individual is entitled to the right to health, which encompasses the highest level of physical, mental, and social well-

[85] Art. 25 (1) (a), 28, 43 (1) (e) and 45 (1) (c).
[86] Art. 25.
[87] Christina M. Cerna, "Reflections on the Normative Status of the American Declaration of the Rights and Duties of Man Anniversary Contributions - International Human Rights," *University of Pennsylvania Journal of International Law* 30, no. 4 (2009 2008): 1211–38. p.1212.
[88] Kathryn Sikkink, "Latin American Countries as Norm Protagonists of the Idea of International Human Rights Special Section: Principles from the Periphery: The Neglected Southern Sources of Global Norms," *Global Governance* 20, no. 3 (2014): 389–404. p.398.

being.[89] To ensure the realization of this right, States Parties commit to recognizing health as a public good and taking specific measures, including: providing primary health care to all individuals and families in the community; extending health services to all individuals under their jurisdiction; implementing universal immunization against infectious diseases; preventing and treating endemic, occupational, and other diseases; educating the population on health prevention and treatment; and addressing the health needs of the most vulnerable groups, including those at the highest risk and those living in poverty.[90]

Brazil has explicitly affirmed its commitment to the right to health as a fundamental human right through its ratification of various international and regional treaties. Concerning the United Nations System, the country has ratified t several treaties that pertain to human rights and the right to health, including ICESCR, CEDAW, CRPD, CRC, and CERD.[91] Furthermore, in the context of regional human rights treaties that emphasize ESCRs, Brazil has also ratified the Protocol of San Salvador.[92]

3.2. Universal Health Coverage and the Right to Health in the Brazilian Context

The recognition and implementation of the right to health, as enshrined in human rights treaties, has been particularly relevant in the Brazilian context, especially concerning providing refugees and migrants with healthcare access. To ensure the realization of the right to health in Brazil, significant changes were made to the healthcare system. Previously, access to healthcare

[89] Organization of American States (OAS), "Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights 'Protocol of San Salvador,'" November 16, 1999, https://www.oas.org/juridico/english/treaties/a-52.html.
[90] Organization of American States (OAS).
[91] See, IJRC, "Brazil," n.d., https://ijrcenter.org/wp-content/uploads/2018/04/Brazil-Factsheet.pdf; OHCHR, "UN Treaty Body Database," United Nations Human Rights Treaty Bodies, accessed April 7, 2023, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=24&Lang=EN.
[92] See, IJRC, "Brazil."

was limited to those who made contributions to social security.[93] However, the new Constitution paved the way for the establishment of a public health system known as the Universal Health System (Sistema Único de Saúde or SUS), which is deeply connected to the concept of Universal Health Coverage (UHC). The current Brazilian Universal health system, SUS, was created based on Article 196 of the 1988 Constitution and is regulated by laws 8080/1990 and 8142/1990.

The SUS aligns with UHC principles, as it strives to offer inclusive access to a diverse array of healthcare services of excellent quality.[94] According to the World Health Organization, UHC implies that "all people have access to the full range of quality health services they need, when and where they need them, without financial hardship. It covers the full continuum of essential health services, from health promotion to prevention, treatment, rehabilitation, and palliative care."[95] The guiding principles of the SUS include universalization, equity, and integrality.[96]

The principle of universalization asserts that health is an essential right that ought to be accessible to all individuals, free from any form of discrimination, and it is the duty of the State to ensure its provision.[97] In turn, the principle of equity emphasizes the need to reduce disparities by recognizing that different groups of people have diverse health needs.[98] Accordingly, healthcare services should be designed and implemented in a way that considers the varying needs of different groups.[99] As per the principle of integrality, the emphasis is on

[93] Eugênio Vilaça Mendes, "25 anos do Sistema Único de Saúde: resultados e desafios," *Estudos Avançados* 27 (2013): 27–34, https://doi.org/10.1590/S0103-40142013000200003. p.28.
[94] Mendes. p.28.
[95] Yoshi Shimizu, "Universal Health Coverage," WHO, accessed January 29, 2023, https://www.who.int/health-topics/universal-health-coverage.
[96] Translation from the original terms were extracted from OECD Reviews of Health Systems: Brazil 2021.
[97] Ministério da Saúde, "Sistema Único de Saúde," Ministério da Saúde, accessed April 7, 2023, https://www.gov.br/saude/pt-br/assuntos/saude-de-a-a-z/s/sus/sistema-unico-de-saude.
[98] Ministério da Saúde.
[99] Ministério da Saúde.

a comprehensive understanding of individuals and their necessities. Consequently, this principle promotes the integration of measures addressing disease prevention, treatment, and rehabilitation, along with public policies.[100] This comprehensive approach considers that health is not solely determined by access to healthcare services, but is also influenced by other determinants of health, such as sanitation, nutrition, and housing, which are collectively known as the social determinants of health. [101]

Notwithstanding, the implementation of aspirational principles found within human rights frameworks, such as those pertaining to UHC and the SUS often face significant challenges. The SUS, in conjunction with the UHC, embody a concrete strategy for realizing the right to health as articulated in human rights instruments. This is evident as the guiding principles of the SUS encompass crucial elements of human rights, including equity, non-discrimination, accountability, and participation. [102] These principles manifest the commitment to delivering healthcare that is universally accessible, available, acceptable, and of high quality.[103] However, in the Brazilian context, challenges directly tied to the principles of universality and equity can be observed, particularly among marginalized populations.

Long-lasting socio-economic problems in Brazil hinder the realization of the right to health, among other rights, which extend to the Venezuelan population in the country. The principles of universality, equity, and integrality, provide a crucial framework for effectively addressing the issue of Venezuelan refugees and migrants in Brazil. Nevertheless, the

[100] Ministério da Saúde.
[101] Ministério da Saúde.
[102] Audrey R. Chapman, "The Contributions of Human Rights to Universal Health Coverage Special Section on Universal Health Coverage and Human Rights: Editorial," *Health and Human Rights Journal* 18, no. 2 (2016): 1–6. p.3.
[103] Availability, accessibility, acceptability, and quality, are essential factors that must be considered for the effective implementation of the right to health within a human rights framework. This implies that healthcare facilities and resources should be adequately available in sufficient quantities, accessible to all individuals without any form of discrimination, and respectful of diverse cultures, beliefs, individuality, and communities. Furthermore, these aspects should be delivered within the context of a healthcare service that adheres to high standards of quality. See, Chapman. p.2-3.

translation of these aspirational principles into practical implementation faces obstacles. This is primarily due to Brazil's substantial income disparities, socioeconomic inequities, and health inequalities.[104]

Venezuelans arrive in the most resource-constrained regions, which has a direct impact on their access to local services. The country is geographically divided into five main regions, and among them, the northern and northeastern regions particularly endure a concentration of impoverished socioeconomic conditions. [105] These areas encounter pronounced disparities in the allocation of health services and resources, which become evident when contrasted with other regions in the country. [106]

An illustrative example is provided by Ferraz's study on health inequality in Brazil, which presents data on selected health indicators across different regions. [107] Notably, the northern region exhibited the most unfavorable health indicators in 2016 when compared to the other regions.[108] For instance, the northern region has the highest infant and maternal mortality numbers when compared to other regions and the average for Brazil. [109] Similarly, it has the lowest life expectancy, percentage of adults who consulted a doctor in the last 12 months, and number of doctors per one thousand population. [110] This discrepancy underscores the gap between the idealized conception of the right to health and its practical implementation. It is

[104] Celia Landmann-Szwarcwald and James Macinko, "A Panorama of Health Inequalities in Brazil," *International Journal for Equity in Health* 15, no. 1 (November 17, 2016): 174, https://doi.org/10.1186/s12939-016-0462-1. p.1.
[105] Célia Landmann Szwarcwald et al., "Inequalities in Healthy Life Expectancy by Brazilian Geographic Regions: Findings from the National Health Survey, 2013," *International Journal for Equity in Health* 15, no. 1 (November 17, 2016): 141, https://doi.org/10.1186/s12939-016-0432-7. p.2.
[106] Szwarcwald et al. p.2.
[107] Octávio Luiz Motta Ferraz, "Two Brazils: How Inequality Limits the Right to Health," in *Health as a Human Right: The Politics and Judicialisation of Health in Brazil*, Cambridge Studies in Law and Society (Cambridge: Cambridge University Press, 2020), 76–100, https://doi.org/10.1017/9781108678605.006. p. 79.
[108] Ferraz. p. 79.
[109] Ferraz. p.79.
[110] Ferraz. p.79.

within this context of health inequality that Venezuelan migrants and refugees have arrived in the northern region of Brazil.

4. ASSESSING THE ACCESS OF VENEZUELAN MIGRANTS TO THE BRAZILIAN HEALTH SYSTEM

The arrival of a significant influx of Venezuelans in the northern region of Brazil posed a challenge to the already fragile public services in the area. As discussed in Chapter Two, the inclusive nature of Brazilian laws towards migrant and refugee populations guarantees them the right to access public services, including all levels of healthcare. The concentration of migrant influx in time and space, to very low-populated areas, has led to severe stress in the already under-resourced local services.

The inclusive language of the Brazilian Constitution and the laws governing migration in the country, along with the aspirational principles of the SUS, face challenges in its implementation and acceptance. An example of this is the decree issued by the governor of Roraima state in 2018. This decree aimed to restrict and hinder the access of Venezuelans to public services, including access to the SUS. With an extremely nationalist character, the governor determined that the provision of healthcare should be regulated "to safeguard unrestricted access to such services for Brazilian citizens."[111] Additionally, the decree tried to criminalize migration and explicitly stated the possibility of deportation or expulsion if necessary. [112] Although the decree configures a clear political move to restrict the rights of Venezuelan migrants in Brazil, it was rejected by both political and judicial institutions at the federal level, since it was considered unconstitutional, and a violation of international treaties signed by the country.[113]

[111] Suely Campos, "Decreto Nº 25.681-E de 1º de Agosto de 2018," Tribunal de Justiça do Estado de Roraima, 2018, https://www.tjrr.jus.br/legislacao/index.php/decretos-estaduais/135-decretos-estaduais-2018/1686-decreto-25681-e-de-1-de-agosto-de-2018.
[112] Paiva and Gonçalves, "Operação Acolhida." p.175.
[113] Ministério dos Direitos Humanos e da Cidadania, "Nota pública - decreto nº 25.681, assinado pelo governo de Roraima," Ministério dos Direitos Humanos e da Cidadania, 2018, https://www.gov.br/mdh/pt-br/assuntos/noticias/2018/agosto/nota-publica-decreto-no-25-681-assinado-pelo-governo-de-roraima; G1 RR —

Although rejected by the federal government, the decree highlights the tensions in the region and the discriminatory approach regarding who should have priority access to public services such as healthcare. Simultaneously, various federal government agencies, and international organizations directly involved in human rights such as UNHCR, IOM, UNFPA, UNICEF, and civil society were working on the reception of Venezuelans in the region.[114] In this dichotomy of reception and hostility, Operation Welcome was initiated.

4.1. Operation Welcome

Operation Welcome was established in the first semester of 2018 in response to the intense influx of Venezuelans entering Brazil through the land border.[115] The operation, which involves coordination between the Federal Government, the Brazilian armed forces, the UNHCR, other UN agencies, and over 100 civil society organizations, concentrates its efforts in the cities of Pacaraima and Boa Vista. [116] Despite the significant presence of the UNHCR and civil society organizations, the operation has a heavy military presence in several areas of the operation.

The purpose of the operation, according to information taken from the official government website, was to "ensure the reception, identification, health surveillance, immunization, migration regulation and screening" of all Venezuelans entering the country. [117] The operation, according to official sources, is motivated by a "political, economic and social

Boa Vista, "Governo publica decreto que torna mais rígido acesso de estrangeiros a serviços públicos em RR," G1, August 3, 2018, https://g1.globo.com/rr/roraima/noticia/2018/08/03/governo-publica-decreto-que-torna-mais-rigido-acesso-de-estrangeiros-a-servicos-publicos-em-rr.ghtml.
[114] Paiva and Gonçalves, "Operação Acolhida." p.175.
[115] Casa Civil, "Sobre a Operação Acolhida," Casa Civil, accessed June 6, 2023, https://www.gov.br/casacivil/pt-br/acolhida/sobre-a-operacao-acolhida-2/sobre-a-operacao-acolhida-1.
[116] Casa Civil.
[117] Casa Civil.

crisis", in other places also described as a "humanitarian crisis". [118] Based on this purpose, it operates under three primary pillars: border and documentation control, reception and humanitarian assistance, and voluntary relocation facilitation. [119] The services provided under these pillars include reception, identification and control, immunization, migratory regulation, document issuance, social aid, emergency medical care, and temporary shelter for migrants and refugees. [120]

The healthcare provision of the operation was made through two distinct phases. First, initial contact with healthcare professionals occurs upon arrival, wherein individuals lacking vaccination documentation receive necessary vaccinations and basic healthcare to identify vulnerabilities and receive specialized referrals.[121] Subsequently, after being sheltered in one of the emergency shelters, this population has access to basic healthcare support on designated days.[122]

The importance of this operation to this research is the humanitarian assistance, which is intended to facilitate healthcare access for Venezuelan migrants and refugees. Nonetheless, the political context behind the implementation of Operation Welcome is relevant, as it sheds light on the approach taken by the operation. At the time of the beginning of the initiative, Brazil was undergoing a major political shift, which impacted its relationship with Venezuela. The bilateral agreement between Brazil and Venezuela, which was initiated during the government of Lula, had multifaceted aspects, including diplomatic, commercial, and energy cooperation.[123] This relationship between the two countries continued during the tenure of

[118] Casa Civil.
[119] Casa Civil.
[120] Casa Civil.
[121] UNHCR, "Interiorização."
[122] UNHCR.
[123] Lucas de Campos Gomes, "As Relações Entre Brasil e Venezuela Durante Os Governos de Lula e Chávez - 2003 a 2010" (Universidade Estadual Paulista "Júlio de Mesquita Filho" Faculdade de Ciências e Letras Departamento de Economia, 2012),

Dilma Rousseff as Brazil's president.[124] However, with the impeachment of Rousseff and her subsequent replacement by Vice President Michel Temer, the nature of these relations began to evolve and take on a different form.[125]

During this recent phase of Brazilian foreign policy, a notable shift occurred in the country's stance towards Venezuela, marked by a distancing from its previous approach. This change was evident through a series of actions taken by Brazil, including the issuance of robust statements by the Itamaraty (Brazil's Ministry of Foreign Affairs) that expressed disapproval of Venezuela's policies.[126] Additionally, Venezuela was suspended from Mercosur (Southern Common Market) at the end of 2016, citing non-compliance with the regulations of the bloc.[127] These actions, collectively, highlight a significant shift in Brazil's foreign policy towards Venezuela during this recent phase.

It may seem, at first glance, that welcoming refugees from Venezuela during this political context would be contradictory. Governments that held conservative ideologies and openly criticize the socialist regime of President Maduro in Venezuela, and yet, have been more receptive toward Venezuelan migrants. In contrast, countries that remain aligned with Maduro's government, such as Bolivia and Ecuador, have until very recently denied the existence of a migration crisis originating from Venezuela.[128] This might be explained by the rhetoric adopted by right-wing movements in the region.

https://repositorio.unesp.br/bitstream/handle/11449/119291/gomes_lc_tcc_arafcl.pdf?sequence=1&isAllowed=y.

[124] Gomes.

[125] Cesar Augusto Tavares Oliveira, "A Política Externa do Governo Temer: características e oportunidades de uma política pública negligenciada:," *Fronteira: revista de iniciação científica em Relações Internacionais* 17, no. 34 (November 14, 2018): 296–309. p.301.

[126] Pedro Silva Barros, Raphael Camargo Lima, and Helitton Christoffer Carneiro, "Brasil-Venezuela: Evolução Das Relações Bilaterais e Implicações Da Crise Venezuelana Para a Inserção Regional Brasileira, 1999-2021," *Instituto de Pesquisa Econômica Aplicada (Ipea)*, n.d.

[127] Silva Barros, Camargo Lima, and Carneiro.p.101

[128] Luisa Feline Freier and Nicolas Parent, "The Regional Response to the Venezuelan Exodus," *Current History* 118, no. 805 (2019): 56–61. p.59

Following Temer, Bolsonaro's government came with a strong narrative against Venezuela. The right-wing parties instrumentalize the situation in Venezuela to raise consternation and ill-founded fear against left-wing parties. So much so that the great catchphrase of right-wing electoral campaigns is "Brazil will become Venezuela".[129] This may explain why even with restrictions on public spending in Temer's government and even in Bolsonaro's far-right government, assistance measures for Venezuelans were maintained.

Another perspective that could elucidate the rationale behind Temer's decision to offer aid to Venezuelan refugees is the apprehension that the uncontrolled influx of refugees may have ripple effects on other regions of the country. This concern was articulated by Temer in his speech delivered in Roraima in 2017, wherein he stated, "I recognize that this substantial inflow of Venezuelans poses challenges for the State of Roraima, but it will inevitably engender challenges for other states if we do not proactively implement measures to address it."[130]

It can, therefore, be argued that the political context has shaped the approach taken by the operation, which had a strong security component. The operation was set as a crisis response and acts as such. For instance, healthcare provided within the operation primarily serves emergency purposes and does not fix underlying structural issues. The health services offered as part of the operation mainly revolve around sanitary control and initial healthcare assessments to identify any vulnerabilities. It is crucial to emphasize that the operation does not replace the need for the SUS to fulfill the right to health. Despite meeting immediate care demands, the SUS remains essential in providing comprehensive and continuous healthcare services. Corroborating this view, numerous studies carried out after the implementation of

[129] Lucas Estanislau, "'Brasil vai virar a Venezuela': o que está por trás do bordão da direita que segue vivo em 2022," Brasil de Fato, September 20, 2022, https://www.brasildefato.com.br/2022/09/20/brasil-vai-virar-a-venezuela-o-que-esta-por-tras-do-bordao-da-direita-que-segue-vivo-em-2022.
[130] Reuters, "Temer Diz Que Brasil Disciplinará Entrada de Venezuelanos Em Roraima," *Reuters*, February 12, 2018, sec. Nacional, https://www.reuters.com/article/politica-temer-venezuela-idBRKBN1FW28C-OBRDN.

Operation Welcome have highlighted the difficulties encountered by the Venezuelan population in accessing healthcare services beyond the immediate needs through the SUS.

4.2. Challenges of the Universal Health System in Brazil and its Impact on the Right to Health of Venezuelans Migrants and Refugees

As seen throughout chapters 2 and 3, according to Brazilian law, Venezuelan migrants and refugees should have full access to the Brazilian health system. Nonetheless, major obstacles bar their full enjoyment of the right to health in Brazil. These consist of discrimination, cultural insensitivity, language barriers, lack of information, cumbersome administrative processes, long distances to healthcare facilities, inefficient transportation, poverty, and institutional barriers. For example, the training for healthcare professionals for migrant and refugee populations is inadequate and insensitive. This leads, among other things, to a lack of knowledge about migrants' and refugees' right to health among health professionals and other professionals that should be guaranteeing that access.[131]

In the realm of health, the fundamental principle of non-discrimination is of the utmost importance for the realization of the right to the highest attainable standard of health. Studies have pointed out that discrimination against Venezuelan refugees and migrants seeking

[131] Doocy et al., "Venezuelan Migration and the Border Health Crisis in Colombia and Brazil"; Loeste de Arruda-Barbosa, Alberone Ferreira Gondim Sales, and Iara Leão Luna de Souza, "Reflexos da imigração venezuelana na assistência em saúde no maior hospital de Roraima: análise qualitativa," *Saúde e Sociedade* 29, no. 2 (2020): e190730, https://doi.org/10.1590/s0104-12902020190730; Ana Kaline Souza Lourenço et al., "Percepção dos refugiados venezuelanos a respeito do sistema único de saúde no extremo norte do Brasil," *Revista Eletrônica Acervo Saúde* 12, no. 12 (December 29, 2020): 1–9, https://doi.org/10.25248/reas.e5269.2020; Diego Chaves-González, Jordi Amaral, and María Jesus Mora, "Socioeconomic Integration of Venezuelan Migrants and Refugees: The Cases of Brazil, Chile, Colombia, Ecuador, and Peru," 2021; Alan Azevedo, "Vozes das Pessoas Refugiadas no Brasil," *ACNUR*, 2020; ReGHID, "Saúde Sexual e Reprodutiva de Mulheres e Adolescentes Migrantes Venezuelanas No Brazil: Sumário Executivo," *Fiocruz e UFM*, 2023, https://doi.org/10.35078/3B7S4N; UNHCR and REACH, "Information Needs Assessment: Venezuelan Migration in Northern Brazil," November 2018.

healthcare services has serious implications for their right to health. [132] A recent study conducted by UNHCR shows the story of a Venezuelan woman who was humiliated by a doctor in a hospital in Boa Vista due to her nationality.

> "I was very humiliated, once, in the hospital. The doctor, when he saw that I was Venezuelan, crumpled up my paper and threw it away. He said he wasn't going to answer me because he didn't understand me. I started crying until another doctor attended to me because he spoke Spanish. He was afraid of not being answered". [133] Venezuelan woman, Boa Vista.

Reports of Venezuelan refugees and migrants, like the one mentioned above, show how discrimination against this population can impact their right to health. This is because access to health and effective healthcare depends on a relationship of trust between the patient and the health professional. Breaching this trust can occur for several reasons and one of them is discrimination. As a result, this can prevent them from seeking healthcare and impact continuity of care, leading patients to drop out of treatment. This is corroborated by the study carried out by UNHCR, where the findings show that many refugees only seek medical attention during emergencies, and there is a clear distinction between Brazilians and Venezuelans in terms of the priority of care within healthcare services.[134]

The experience of the Venezuelan woman highlights an additional challenge to achieving the right to healthcare - the language barrier. In addition to impeding communication

[132] Doocy et al., "Venezuelan Migration and the Border Health Crisis in Colombia and Brazil"; Arruda-Barbosa, Sales, and Souza, "Reflexos da imigração venezuelana na assistência em saúde no maior hospital de Roraima"; Souza Lourenço et al., "Percepção dos refugiados venezuelanos a respeito do sistema único de saúde no extremo norte do Brasil"; Chaves-González, Amaral, and Jesus Mora, "Socioeconomic Integration of Venezuelan Migrants and Refugees: The Cases of Brazil, Chile, Colombia, Ecuador, and Peru"; Azevedo, "Vozes das Pessoas Refugiadas no Brasil"; ReGHID, "Saúde Sexual e Reprodutiva de Mulheres e Adolescentes Migrantes Venezuelanas No Brazil: Sumário Executivo"; UNHCR and REACH, "Information Needs Assessment: Venezuelan Migration in Northern Brazil."

[133] Original language: "Fui muito humilhada, uma vez, no hospital. O médico, quando viu que sou venezuelana, amassou meu papel e jogou. Disse que não ia me atender porque não me entendia. Comecei a chorar até que outro médico me atendeu pois falava espanhol. Fiquei com medo de não ser atendida". Azevedo, "Vozes das Pessoas Refugiadas no Brasil."

[134] Azevedo.

between healthcare providers and patients, as demonstrated in her story, this barrier also creates two other obstacles that have been identified in previous research.[135] Firstly, it restricts patients' understanding of their healthcare access rights. Secondly, it makes administrative procedures more complicated. The difficulty in understanding the language has a great impact on the knowledge of Venezuelan migrants and refugees about their rights. [136] This is because Brazil, unlike Venezuela, is a Portuguese-speaking country, so access to information, whether it comes from health service workers or information booklets, requires a certain level of understanding of the language since neither of these information will always be provided in Spanish.

Institutional barriers deepen the challenges of accessing information. A study carried out by UNHCR and REACH (2018) identified that the lack of information about the functioning of the health system and about the rights of refugees to access health goes even beyond the language barrier.[137] Study participants reported that they obtained information mainly through verbal communication with other Brazilians or Venezuelans, as well as directly from health professionals. [138] Evidence from the reports points to an institutional barrier arising from the lack of centralized information.

Studies have shown that administrative processes represent a significant obstacle for Venezuelans, especially undocumented migrants, in accessing health care.[139] For instance,

[135] Doocy et al., "Venezuelan Migration and the Border Health Crisis in Colombia and Brazil"; Arruda-Barbosa, Sales, and Souza, "Reflexos da imigração venezuelana na assistência em saúde no maior hospital de Roraima"; Chaves-González, Amaral, and Jesus Mora, "Socioeconomic Integration of Venezuelan Migrants and Refugees: The Cases of Brazil, Chile, Colombia, Ecuador, and Peru"; Souza Lourenço et al., "Percepção dos refugiados venezuelanos a respeito do sistema único de saúde no extremo norte do Brasil."
[136] Doocy et al., "Venezuelan Migration and the Border Health Crisis in Colombia and Brazil"; Arruda-Barbosa, Sales, and Souza, "Reflexos da imigração venezuelana na assistência em saúde no maior hospital de Roraima"; Chaves-González, Amaral, and Jesus Mora, "Socioeconomic Integration of Venezuelan Migrants and Refugees: The Cases of Brazil, Chile, Colombia, Ecuador, and Peru"; Souza Lourenço et al., "Percepção dos refugiados venezuelanos a respeito do sistema único de saúde no extremo norte do Brasil."
[137] UNHCR and REACH, "Information Needs Assessment: Venezuelan Migration in Northern Brazil."
[138] UNHCR and REACH.
[139] Doocy et al., "Venezuelan Migration and the Border Health Crisis in Colombia and Brazil"; Chaves-González, Amaral, and Jesus Mora, "Socioeconomic Integration of Venezuelan Migrants and Refugees: The Cases of Brazil, Chile, Colombia, Ecuador, and Peru."

obtaining a national health card (Cartão SUS), which is often required to access SUS services, has proven to be difficult for this group. [140] This is mainly due to the fact that to obtain the national health card, proof of residency in the country is required. [141] Consequently, undocumented Venezuelans tend to seek medical help only in critical situations when the Brazilian Health System permits treatment without requiring a national health card. [142] Undocumented migrants face additional obstacles, which may stem from their limited knowledge about their entitlements to receive medical care and their apprehension about being deported.[143]

Even when overcoming bureaucratic obstacles, Venezuelan migrants and refugees face other challenges in their journey to enjoy their right to health. The additional challenges highlight the already mentioned unequal distribution of resources in remote areas in Brazil. The region where the Brazilian-Venezuelan border is situated is a remote area of the country, which has a limited number of healthcare facilities and a poor transportation system.[144] For instance, Pacaraima, a city located in this region, lacks a maternity facility, and the nearest one is situated approximately 200km away in Boa Vista.[145] Long distances to access specialized health services, associated with an inefficient public transport system, put at risk the right to health of the population of that region as a whole. This is extended to Venezuelans who are

[140] Doocy et al., "Venezuelan Migration and the Border Health Crisis in Colombia and Brazil"; Chaves-González, Amaral, and Jesus Mora, "Socioeconomic Integration of Venezuelan Migrants and Refugees: The Cases of Brazil, Chile, Colombia, Ecuador, and Peru." p.86.
[141] Chaves-González, Amaral, and Jesus Mora, "Socioeconomic Integration of Venezuelan Migrants and Refugees: The Cases of Brazil, Chile, Colombia, Ecuador, and Peru."
[142] Tarcia Millene de Almeida Costa Barreto, Francilene dos Santos Rodrigues, and Fabrício Barreto, "Os Impactos Nos Serviços de Saúde Decorrentes Da Migração Venezuelana Em Roraima: Ensaio Reflexivo," *Humanidades Tecnol Em Rev [Internet]* 14, no. 1 (2018): 32–42.
[143] Chaves-González, Amaral, and Jesus Mora, "Socioeconomic Integration of Venezuelan Migrants and Refugees: The Cases of Brazil, Chile, Colombia, Ecuador, and Peru."
[144] ReGHID, "Saúde Sexual e Reprodutiva de Mulheres e Adolescentes Migrantes Venezuelanas No Brazil: Sumário Executivo."p.6.
[145] ReGHID.p.6.

already, in their vast majority, facing extensive vulnerabilities before, during, and after their migration journey to Brazil.

The distance between healthcare services becomes a greater challenge if coupled with financial vulnerabilities. A study carried out by Caritas Brazil in 2022 identified a large number of Venezuelans living on the streets in the city of Boa Vista.[146] Financial constraints resulting from poverty can limit the ability to access health services, purchase necessary medications, and even travel to receive treatment. [147] In addition, poverty can restrict the options available to individuals to carry out self-care actions and restrict access to food necessary for adequate nutrition, especially among the homeless population. [148] These data show that Operation Welcome is not enough to absorb the demands of this population. Neither concerning the inclusion of Venezuelan migrants and refugees in the formal labor market, nor in providing shelter for this population - therefore, directly impacting their right to health.

Increased demand for healthcare services met an already insufficient supply, worsening the overall access to healthcare in the region. The lack of healthcare professionals, supplies and the limited number of healthcare facilities, associated with a higher demand coming from the arrival of a large number of Venezuelans resulted in longer waiting times and the detriment of the effective access to healthcare and quality of healthcare offered. This is exemplified by the largest hospital in Boa Vista, which has experienced unprecedented shortages as the number of patients has more than doubled within a year.[149] Similarly, a smaller hospital in Paracaima has reported that 70% of their patients are Venezuelan, and they are facing shortages in medicine

[146] Cáritas Brasileira, "População Em Situação de Rua e População Migrante No Município de Boa Vista/RR: Um Diagnóstico Para a Formulação e Implementação de Políticas Públicas," 2022, https://caritas.org.br/storage/arquivo-de-biblioteca/October2022/VoJEetgxsEvvd08m0Jef.pdf.
[147] ReGHID, "Saúde Sexual e Reprodutiva de Mulheres e Adolescentes Migrantes Venezuelanas No Brazil: Sumário Executivo."
[148] ReGHID.
[149] Doocy et al., "Venezuelan Migration and the Border Health Crisis in Colombia and Brazil." p.87.

and supplies.[150] In yet another study, participants deemed the attendance at health units in Paracaima as poor, citing the low number of professionals.[151]

Other institutional challenges include an insensitive and unprepared professional approach. For instance, a study conducted by REGHID (2023) sheds light on insufficient and insensitive training of healthcare professionals in catering to the needs of migrant and refugee populations, as well as a lack of awareness among healthcare professionals regarding the right to health for this population. [152] These findings suggest that the transfer of government funds to this municipality is not taking into account the current needs of the population and is therefore not being distributed equitably. Likewise, the government's response to the situation of Venezuelan refugees appears to overlook the aspect of intersectionality, which is critical to a comprehensive understanding of their necessities and addressing the health needs of this population.

Overall, despite Brazilian laws granting Venezuelan migrants and refugees full access to national healthcare, in theory, the practice seems to be much different. Discrimination, cultural insensitivity, language barriers, lack of information, administrative complexities, long distances to healthcare facilities, inadequate transportation, poverty, and institutional obstacles all contribute to their limited access. These challenges impede trust, communication, and understanding between healthcare providers and patients. Unequal resource distribution, financial constraints, increased demand, and insufficient healthcare professionals further undermine access and quality of care.

[150] Doocy et al. p.87.
[151] ReGHID, "Saúde Sexual e Reprodutiva de Mulheres e Adolescentes Migrantes Venezuelanas No Brazil: Sumário Executivo." p.6.
[152] ReGHID.

4.3. Discussion and Analysis

While the international community has praised Operation Welcome as a reference to be followed by other countries,[153] the findings of studies after the implementation of the task force demonstrated that the provision of healthcare offered by the operation is insufficient to guarantee the right to health of Venezuelan migrants and refugees in Brazil. The underlying cause of this can be attributed to (1) flaws in the political response, (2) key human rights concerns prevalent within the SUS, namely inequality, and discrimination, and (3) the absence of substantial reforms within the local healthcare system. Together, these aspects hinder the realization of the right to the highest attainable standard of health.

Regarding the Brazilian political response to the waves of Venezuelan migration to the country (the first cause highlighted above), two aspects are pointed out in the literature as leading to sub-optimal outcomes. The first is (a) framing the situation as a crisis, and the second is (b) incorporation of robust security measures within humanitarian initiatives.

Framing the Venezuelan migration as a crisis (point a) instills a sense of urgency and the belief that these movements necessitate strict control and management. This, in turn, generates a greater emphasis on implementing security measures to address perceived risks associated with the migration wave.[154] This emphasis on security measures implicitly conveys the notion that these individuals pose a threat to the host population, further exacerbating negative perceptions and discrimination against them. Consequently, this might influence governments and societies to adopt discriminatory attitudes and policies towards Venezuelan migrants and refugees as evident in the discriminatory statement of the governor of Roraima

[153] OIM, "Operação Acolhida dá aos venezuelanos um novo começo no Norte do Brasil," 2023, https://brazil.iom.int/pt-br/news/operacao-acolhida-da-aos-venezuelanos-um-novo-comeco-no-norte-do-brasil.
[154] Cecilia Menjívar, Marie Ruiz, and Immanuel Ness, "Migration Crises: Definitions, Critiques, and Global Contexts," *The Oxford Handbook of Migration Crises,* (October 9, 2018): 1-18, https://doi.org/10.1093/oxfordhb/9780190856908.013.71.

in 2018. The governor called for the borders to be shut down claiming that the large number of Venezuelans living in poor conditions in Boa Vista had a significant impact on the rise in crime, overwhelming health facilities and public education, and posing a risk of epidemics.[155]

Labeling Venezuelans as potential threats to society and healthcare facilities (point b) can reinforce negative stereotypes and establish an unwelcoming atmosphere for these individuals when they seek healthcare services. Furthermore, this framing tends to prioritize quick fixes and temporary solutions, overlooking the deeper and more complex issues at hand.[156]

The implementation of Operation Welcome is the consolidation of the "crisis" framework. The operation has a major emphasis on border regulation and the exertion of control over the entry of Venezuelan migrants and refugees into the country,[157] while the implemented healthcare provisions do not consider the complexity of healthcare and structural healthcare problems that pre-existed in the country. Therefore, measures pertaining the right to health such as access to comprehensive and continuous healthcare services and other crucial determinants of health, including education, nutrition, and adequate housing conditions, have been overshadowed or relegated by this emphasis on border security.[158]

Structural healthcare problems in Brazil (the second cause highlighted above) are deeply intertwined with two crucial human rights issues: inequality and discrimination. These issues significantly impede the realization of the right to the highest attainable standard of health for all the individuals in the country who solely depend on the SUS for health, especially

[155] Ministra Rosa Weber, "Tutela Provisória na Ação Cível Originária 3.121 Roraima," *Supremo Tribunal Federal*, 2018, https://www.conjur.com.br/dl/rosa-weber-nega-fechamento-fronteira.pdf.
[156] Cecilia Menjívar, Marie Ruiz, and Immanuel Ness, "Migration Crises: Definitions, Critiques, and Global Contexts," *The Oxford Handbook of Migration Crises*, (October 9, 2018): 1-18, https://doi.org/10.1093/oxfordhb/9780190856908.013.71. p. 5-6 .
[157] Ariane Rego de Paiva, "Operação Acolhida: Entre a Militarização e a Assistência Social," *Revista Brasileira de História* 13 (2021).
[158] de Paiva. p.175.

in rural areas and underfunded federal states. However, it disproportionately impacts people living in the intersection of multiple axes of marginalization,[159] which is the case of Venezuelan migrants and refugees. Despite some progress made towards achieving UHC, Brazil continues to face substantial obstacles, especially in remote regions such as Roraima, due to disparities in resource allocation and inadequate public funding specifically dedicated to health.[160] Such disparities violate the principles of equality and non-discrimination, which directly implicates availability, accessibility, acceptability, and quality of the right to health.

The findings highlighted above demonstrate that significant disparities in healthcare spending across different geographic locations have a negative impact on the availability aspect of the right to health. This is because there is an inadequate number of healthcare facilities, healthcare professionals, and supplies to meet the demand, particularly after waves of migration. Furthermore, discrimination against this population violates the first dimension of accessibility, which entails ensuring that the right to health is universally available without any form of discrimination. Discrimination also affects the realization of the acceptability aspect of the right to health, as the research highlights instances of cultural insensitivity towards Venezuelans by both the healthcare system and professionals.

The third issue encompasses the absence of substantial reforms within the local healthcare system. In the implementation of Operation Welcome, the Brazilian government disregarded the fact that despite the operation meeting immediate care demands, the SUS remains essential in providing comprehensive and continuous healthcare services. As

[159] Shetal Vohra-Gupta et al., "An Intersectional Approach to Understanding Barriers to Healthcare for Women," *Journal of Community Health* 48, no. 1 (2023): 89–98, https://doi.org/10.1007/s10900-022-01147-8. p.90.
[160] Adriano Massuda et al., "The Brazilian Health System at Crossroads: Progress, Crisis and Resilience," *BMJ Global Health* 3, no. 4 (July 3, 2018): e000829, https://doi.org/10.1136/bmjgh-2018-000829. p.1and 4.

illustrated by Ferraz's study on health inequality in Brazil, the problems in the healthcare system in the region exist prior to the arrival of Venezuelans. [161]

The influx of migrants and refugees has put additional strain on an already overburdened system. In light of this situation, one could argue that the government may be making every effort to utilize the maximum available resources in order to progressively realize human rights. However, to sustain and operate Operation Welcome, the government has been allocating hundreds of millions of reais annually.[162] This raises concerns regarding whether the government is truly utilizing the maximum available resources to achieve the progressive realization of human rights. Some of this budget could have been directed towards enhancing the local healthcare infrastructure, rather than being primarily focused on border control measures with limited emphasis on comprehensive healthcare provision.

Civil society organizations participating in Operation Welcome, along with state and municipal public officials, have voiced apprehensions regarding the funding of the operation. These concerns primarily revolve around the inadequate monitoring of the funds originating from federal government sources, as well as the absence of meaningful social participation in the financial decision-making processes associated with the operation.[163]

All in all, the situation of Venezuelan migrants and refugees in the northern region of Brazil sheds light on the urgency to implement substantial reforms within the SUS. For instance, increasing funding for healthcare services, improving infrastructure, expanding healthcare facilities in areas with high migrants and refugees concentrations, and providing training and resources to healthcare professionals to better serve the specific needs of

[161] Ferraz, "Two Brazils." p. 79.
[162] Aurelio Toaldo Neto, "O acolhimento humanitário e a interiorização dos migrantes venezuelanos em Roraima," *Revista do TCU*, no. 150 (2022), https://revista.tcu.gov.br/ojs/index.php/RTCU/article/view/1816.
[163] de Paiva, "Operação Acolhida: Entre a Militarização e a Assistência Social." p.177-178.

Venezuelan migrants and refugees. However, no substantial measures seem to have been implemented[164] and the system continuously relies on temporary intervention and aid from international organizations to provide Venezuelan migrants and refugees access to healthcare that does not adhere fully to human rights standards.

[164] Adriano Massuda et al., "After a Far-Right Government: Challenges for Brazil's Unified Health System," *The Lancet* 401, no. 10380 (March 18, 2023): 886–88, https://doi.org/10.1016/S0140-6736(23)00352-5.

CONCLUSION

The socio-political and economic situation in Venezuela, characterized by a centralized and authoritarian regime, economic instability linked to fluctuating oil prices, and ongoing political unrest, has presented significant challenges for the Venezuelan population. As a result, many Venezuelans have migrated to neighboring countries, including Brazil, in search of refuge. In Brazil, the rapid influx of people into border cities like Pacaraima, as well as the overall population increase in the State of Roraima have placed considerable strain on the healthcare system's capacity to accommodate and provide proper healthcare to this new population, in line with principles of human rights.

Brazil has demonstrated its commitment to the refugee cause by ratifying international conventions and incorporating elements from the Cartagena Declaration into national law. The Refugee Act of 1997 has played a crucial role in defining the concept of a refugee in Brazil and expanding the scope of protection, benefiting a larger number of people. Moreover, the 1988 Federal Constitution establishes the right to health as a fundamental entitlement for both nationals and migrants, providing a framework for equal treatment and access to healthcare services.

Brazil's strong commitment to the right to health as a fundamental human right stems from a mixture of its engagement with international and regional human rights treaties, along with its post-dictatorship constitution and the national process that came thereafter. These findings hold significant importance in the context of providing the right to health for Venezuelan migrants and refugees in Brazil. The legal framework serves as a foundation for recognizing and safeguarding the rights of this population. Through the enactment of appropriate laws and regulations, Brazil, in theory, grants access to public healthcare services to all individuals without discrimination based on nationality or migration status. However, as

demonstrated throughout this thesis, in practice the healthcare system is not accessible to everyone based on equality. This implies that relying solely on legislation is insufficient to ensure access to healthcare for Venezuelan migrants and refugees and that proactive measures from the government are crucial.

Despite the introduction of the SUS in line with human rights principles being a central aspect to provide healthcare to the Venezuelan population, the practical realization of the right to health faces obstacles due to socioeconomic disparities and regional health inequalities. These have become more apparent due to the significant influx of individuals in the northern region of Brazil. Academic research has identified various obstacles faced by Venezuelan migrants and refugees in Brazil, including discrimination, cultural insensitivity, language barriers, limited access to information, complex administrative procedures, long distances to healthcare facilities, inadequate transportation options, poverty, and institutional barriers.

Operation Welcome, implemented by the Brazilian government, had a limited impact on guaranteeing the right to health for the new population of Venezuelan migrants and refugees, despite efforts to provide medical assistance. These can be attributed to flaws in the political response, key human rights concerns within the SUS such as inequality and discrimination, and the lack of substantial reforms within the local healthcare system. Collectively, these issues interfere negatively with four essential aspects of the realization of the right to health: accessibility, availability, acceptability, and quality.

Finally, ensuring the fundamental right to health for Venezuelan migrants and refugees, as mandated by the Brazilian Constitution, necessitates the implementation of measures that recognize the specific needs of this population and address its structural issues. To this end, the Brazilian government must prioritize efforts in the following areas: training of health professionals in border regions, where the influx of Venezuelans is particularly high, to ensure

that they are equipped to provide adequate care to this population; equitable distribution of resources, including medical supplies and personnel, to enable the provision of quality healthcare services to all migrants and refugees; and improve their awareness of their entitlements and facilitate their access to healthcare services. The last one could be effortlessly done by handing out guidelines with information including: the rights of refugees and migrants in Brazil, the functioning of the SUS, how to access and locate specialized services, and how to manage medical emergencies. Clearer information coming from official government bodies and aimed at the Venezuelan population would also make it easier for the population to deal with bureaucratic processes such as obtaining the national health card, the mandatory document for accessing health services.

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