



# **Governing Strangers: How Brazil is managing immigration policy reform in a new era of immigration.**

A Research Paper presented by:

***Sara Pereira Fernandes***

(Brazil)

in partial fulfillment of the requirements for obtaining the degree of

MASTER OF ARTS IN DEVELOPMENT STUDIES

Major:

**Governance, Policy and Political Economy**

(GPPE)

Members of the Examining Committee:

Prof. Dr. Helen Hintjens

Prof. Dr. Desmond Gasper

The Hague, The Netherlands

November 2014

***Disclaimer:***

This document represents part of the author's study programme while at the Institute of Social Studies. The views stated therein are those of the author and not necessarily those of the Institute.

***Inquiries:***

**Postal address:**

Institute of Social Studies  
P.O. Box 29776  
2502 LT The Hague  
The Netherlands

**Location:**

Kortenaerkade 12  
2518 AX The Hague  
The Netherlands

Telephone: +31 70 426 0460

Fax: +31 70 426 0799

# Acknowledgements

This work would not have been possible without a number of people who have contributed in different ways.

To my dear fiancé Donald de Jong for all the support, incentive, kindness and precious words. Thank you very much, *querido!*

To Dr. Rosalia Passos and to Ilma Brito for all the encouragement, support and guidance.

To Dr. Helen Hintjens, my supervisor and my reader Dr. Desmond Gasper, thank you for your supervision, patience, support, encouragement and guidance over this period. Especially Dr. Hintjens I would like to express my gratitude for her patience during this process.

To my mother, thank you.

# Contents

List of Tables	<b>Error! Bookmark</b>
<b>not defined.</b>	
List of Appendices	6
List of Acronyms	7
Abstract	
1. Introduction	8
1.1 Defining the Research Problem: the question of immigration in Contemporary XXI	8
1.2 A brief review of Challenges of Institutional Reform in Immigration Policies in Brazil	9
1.3 Research question	10
1.4. Research Methodology	11
1.5. Analytical Model: Concepts and Methods	12
1.6 – The organization of this Research paper	15
2. The Evolution of immigration policy discourses in Brazil until 1980	16
2.1 From subsidies to the whitening discourse	17
2.2 The Laws of the 1930s-1960s	19
3. The Foreigner Statute (Law 6815/1980) and the Brazilian Diaspora	23
3.1. The Foreigner Statute	23
3.2 The Priority of the Brazilian Diaspora (1980-2005)	27
3.3 Conclusion Remarks	29
4. Analysing discourses for reform since 2009	30
4.1. The Proposed Law 5.655/2009 – Ministry of Justice	30
4.2. The National Immigration Policy, CNIg	33
4.3 The Proposed law 288/2013 – Chamber of Senators	36
4.4 - COMIGRAR	39
4.4.1. COMIGRAR and its collected proposals	40
5. Conclusion	42
References	44

**List of Tables**

Table 1 – Types of migration governance	14
Table 2 – Chronologic Summary	16
Table 3 – Main Governmental Initiatives	28
Table 4 – Destination of Brazilians abroad	29

# List of Appendices

**Appendix 1** – Refuge requests (Percentage) from 2010-2012

**Appendix 2** – Age and gender of the refuge seekers

## List of Acronyms

ACNUR	High Commissioner of Human Rights, UN
CF	Federal Constitution
COMIGRAR	National Conference about Migrations and Refuge
CNIg	National Immigration Council
INSS	National Institute of Social Security
MJ	Ministry of Justice
MERCOSUL	Southern Common Market
MRE	Ministry of Foreign Affairs
MTE	Ministry of Labour and Employment
MINUSTAH	United Nations Stabilization Mission in Haiti
OIM	International Migration Organizatio
PF	Polícia Federal
PL	Proposed Law
UNASUL	Union of South American Nations

## **Abstract**

Despite the fact Brazil is recently advocating for social justice and human rights in supranational organizations and forums, the country faces, among other social problems, the sad reality of having a very archaic and discriminatory immigration policy. The Estatuto do Estrangeiro (Foreigners' Statute) from 1980 was written during the dictatorship years and considers, inspired by the Cold War, basically the paradigm of "national security", seeing the foreigner as a potential threat. Brazil now faces though a new reality and challenges with a much higher inflow of immigrants and different economic needs. The current immigration policy seems therefore outdated and not suited to the new era of immigration.

This research paper studies the historical immigration process in Brazil and the recent initiatives from the Brazilian government to reform its immigration policy to indentify the goals and values shaping the immigration policies and to see if there is a change of paradigm underway towards a policy with more emphasis on the immigrants' human rights.

### **Keywords:**

Estatuto do Estrangeiro, immigrants, PL 5655/2009



# 1. Introduction

Today, the kinds of anti-immigrant politics that one hears in Europe and sometimes in North America, or Australia and South Africa, and also in the Gulf, can also be heard in Brazil. The first waves of immigration into Brazil started from 1820 until 1907. The first Japanese ship to anchor in Sao Paulo with Japanese immigrants was in 1907. Before 1907 only European ‘white’ people had been allowed to immigrate into Brazil. In 2007 big events celebrated the *Kasato Maru* (the ship bringing the first Japanese to Brazil), however, the Japanese immigration also faced resistance from Brazilian sectors/authorities, fearing miscegenation, even though Japanese and Chinese were only considered better than Africans. This element illustrates how the immigration policies in Brazil evolved: from the first decades of XX century until 1945 the immigration policy in Brazil is marked racism and even elements of eugenics. After this period and especially considering the military dictatorship, Brazil was not concerned with the rights of immigrants and even considered them as a potential threat.

However, from 1980 the situation takes a new trajectory with the shift to democracy, the economic crises and the Brazilian diaspora. Brazilian government now turns its attention to Brazilians abroad and all the cases of exploitation. With the new government (middle of 2000s), improvements in the country’s economy and other factors, comes a new situation: a president more concerned with the rights of immigrants and, for the first time since 1980s, the number of immigrants in Brazil is bigger than the number of Brazilians leaving the country. To deal with this new scenario, new measures, especially a new immigration policy, have to be adopted. But how is Brazil dealing with this challenge? How Brazil treats its immigrants today?

## 1.1 Defining the Research Problem: the question of immigration in Contemporary XXI

The reciprocal agreement<sup>1</sup> with Portugal means that Portuguese are the only group that are able to immigrate into Brazil relatively freely. However, Portuguese are the only group of immigrants treated almost like full Brazilian citizens, able to work, to take part in public life, in politics, join trade unions etc. For most other immigrants, who are not Brazilian, they cannot speak in the media in public about political issues, as they face possible sanctions from the police and the law. These are laws that date from 1980s. Most immigrants can invest, own a home, and have a job or small business, but they may not get involved in social movements and in politics. Mainly it is left to the Catholic church – the part of it known as *Pastoral do Migrante*, to voice the concerns of immigrants in public, since even legal immigrants are not allowed to form associations or parties.

How do you become a Brazilian? For the Portuguese this is relatively easy as it is covered by a bi-lateral agreement. Those with grandparents can assimilate into each country, whether Brazilians in Portugal or Portuguese in Brazil. Spain and Brazil are also working on new arrangements to recognize at least some of one another’s nationals as citizens. Other immigrants have to remain in the country for ten years before they can apply to become Brazilian through naturalization.

---

<sup>1</sup> Decreto 3927/2001 (Treaty Brazil-Portugal, celebrated in 22/04/200) establishes portuguese citizens can request from the Ministry of Justice in Brazil political rights which is called “Equality Statute” between Brazil and Portugal

Actual scenario: the vicissitudes of being a regional power - the country is receiving flows of immigrants from Africa and South America. The focus is on some of the contradictions and paradoxes of Brazilian immigration policies. The period studied starts from the early 1900 in order to understand the mentality behind those immigration policies, how it evolved until reach the actual immigration law. This Research paper gives more attention to the period of 1980 (end of the dictatorship): the analysis of the Foreigner Statute, the Brazilian diaspora. The studies proceeds with the exam of the recent governmental initiatives to promote a new immigration policy. Despite the pressures to change the Foreigner Statute, the most distinguished efforts to promote change only came with the mandate of president Luís Inácio Lula da Silva<sup>2</sup> (Partido dos Trabalhadores, PT). To justify the importance of the theme approached by this Research paper, a number of the paradoxes that motivated this study are listed below:

1. Brazil is leading MINUSTAH, The United Nations Stabilization Mission in Haiti). Brazilians were present after the earthquake, and they hoped to go to Brazil, having been turned back by the US for decades, and unlikely to get protection in France with the tough EU asylum policies.

2. Despite this, Haitians face racism in Brazil and Africans from Congo and other West African countries, who have refugee status, are also not being welcomed as they might be expected, and face a great deal of red tape and discrimination, as in Europe and North Africa. These refugees have come to Brazil due to the dangerous route to Europe being closed (VENTURA, 2012); the myth of Brazil as a rainbow nation, like South Africa in a previous decade, seems just a myth. Africans also face harsh treatment; thus Congolese who arrive in the country, face a 6-month wait for documents to legalize their condition in the Brazilian territory, even when they have already been granted refugee status, usually by UNCHR

In the policy context, it is important observe that Brazil is the only Mercosul member that has not incorporated the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families into its legal system. The basic rule in Brazil is the Foreigners' Statute (Estatuto do Estrangeiro/1980) – legacy of the dictatorship (which lasted from 1964 to 1985). It follows the North American notion of immigrant seen as threat. Immigration is basically treated as a “Federal Police” issue (VENTURA, 2012)

## **1.2 A brief review of Challenges of Institutional Reform in Immigration Policies in Brazil:**

The first project to reform the immigration laws in Brazil came at the end of 2009, during the last mandate of President Luís Inácio Lula. This initiative is still paralyzed facing many bureaucratic obstacles. Recently the Ministry of Justice formed a Commission of Specialists whose first meeting was in July 2013 to discuss issues such as naturalization and the rights of refugees, among others. The members agreed that the immigration policy system in Brazil was very bureaucratic and did not assure basic democratic rights for immigrants. (Ministry of Justice, 26/07/2013)

---

<sup>2</sup> Lula is the first left-wing president of Brazil.

The Chamber of Deputies is still analyzing the PL 5655/09, pressured by recent numbers and facts which suggest the old *Estatuto do Estrangeiro* must be reformed or switched to a more modern and embracing type of legislation. In the first nine months of 2012 the number of visas for low skilled workers more than tripled a 246% rise in comparison to 2011. The Haitian immigrant flows since the earthquake helps to explain the statistics demonstrated above (O Estrangeiro, 2013).

Deputy P rpetua Almeida of the Brazilian Communist Party, member of The Committee of Foreign Affairs, is pressuring for urgent reforms in the area of immigration policy. She observes that the debate is still around policies to improve tourism in Brazil. In opposition, Deputy Paulo Silveira (Democratic Labor Party) was against deep reforms, since he considered that: “foreigners steal good jobs from Brazilian citizens and the government needs to impose limits” (Camara dos Deputados, 30/01/2013).

Immigrants in Brazil, especially those in an irregular legal situation, are seen by the Federal Policy (PF) as criminals and receive authoritarian treatment from Federal Agents. These agents are not trained in questions concerning human rights and normally ignore International Treaties and Amnesties, making procedures more difficult and bureaucratic than they should be. The agents normally make their own interpretations of the laws creating disparities in how different groups of immigrants are treated since understandings can vary not only from city to city and state to state but also from nationality to nationality.

Recent studies affirm (Carta Capital, 14/03/2012) a rising number of complaints, xenophobia, restrictive interpretation by officials of laws justifying an intervention by the Ministry of Justice to solve the problem. There have been demands that expressly define the number documents in the immigration process as an obstacle to justice. Maladministration of immigration is viewed as a clear form of social control and a case of prioritizing national security over human rights.

According to Deisy Ventura (Carta Capital, 14/03/2012) even the PL 5655/09 is not ideal considering the Brazilian reality. The PL assures access to work, education and health but on the other hand increased the minimum time-limit for asking for naturalization from 4 to 10 years. The project is basically designed to attend to the needs of Brazilian companies, privileging highly skilled immigrants only. Foreigners still have no right to vote or to be elected, creating two classes of citizens. The scenario is even worse for immigrants without visas: they can only become regularized immigrant the Brazilian government provides them with an Amnesty. The only exceptions are those citizens from the Mercosur.

### **1.3 Research question:**

This Research paper aims to contribute to the existing literature on immigration policies and integration, specifically on the institutional reforms being proposed in Brazil in order to respond to the challenges of “the new era of immigration” in a democratic Brazilian polity. To achieve this end, the main question is followed by several sub-questions, as follows:

*Main Question: Is there presently a change of paradigm underway in the immigration policy of Brazil, away from security towards more emphasis on respect of immigrants and the human rights?*

Sub-questions:

a) How have immigration policy discourses evolved in Brazil in recent years? Who are the major policy actors?

b) How do migration policy discourses in Brazil today differ in terms of values, assumptions and policy proposals from those of recent past?

c) What goals and values are shaping (new) policy agenda in immigration in Brazil?

d) What are the constraints on a move from a policy focus on security towards to an immigration policy that respects the immigrants and their rights?

#### **1.4. Research Methodology:**

This study is mainly a qualitative study in which secondary data is used extensively, including examples from policy reforms and debates, found in official and other documents, case studies from academic journals and media articles among others. On the other hand, some quantitative data is also referred to in the study since it important to make use of relevant statistics, including from the national census and other databases. This helps to demonstrate immigrant flows, and other issues that are debated during the course of the debates around reform of the immigration policies of the country, the central theme studied in this Research paper.

The main question above is closely interconnected with sub-questions which are treated in individual chapters. To answer the main questions it is important to analyse, briefly the role of the various actors and institutions involved, and how immigration laws have evolved in Brazil in recent years, as well as the thinking behind proposals for reform. The role of the Brazilian diaspora in the 1980s is quite interesting as well, and may have influenced proposals for reform of immigration law since 2005. The last two aspects of the research are inter-connected: in the early 2000s the Brazilian government started to direct its efforts towards Brazilians abroad and to investigate more protectively cases of their exploitation, human trafficking and other cases when the rights of Brazilian emigrants were violated. In many speeches, for example, at United Nations Human Rights Council in 2009, President Luis Inácio Lula criticized the xenophobia and racism directed towards immigrants (including Brazilians) in other countries. He cited the amnesty given by Brazilian government to thousands of illegal immigrants as an example of good practice worldwide, and promised to direct future efforts towards promoting new immigration policies in Brazil that would be driven by the search for more egalitarian treatment of immigrants generally as an example of good practice worldwide, and promised direct future efforts towards promoting new immigration policies in Brazil that would be driven by the search for more egalitarian treatment of immigrants generally.

Given the explanation above and considering the research questions, the table below demonstrates how various methodologies and sources will be used in this Research paper. The literature used consists mainly of official government documents (Brazilian congress, congressmen speeches, Brazilian ministries, ILO), as well as academic literature and in some cases relevant media debates.

a) Methods:

<b>Methods</b>	<b>Data Used (qualitative and quantitative):</b>
Literature Review	Academic Literature: case studies, journals, etc
Narrative Analysis	Governmental documents, archives, as well as NGO documentation. Online databases (files, studies, law projects) from the main Brazilian Ministries involved in the question of this paper will be analyzed as well as legislative acts, parliamentary speeches and other
Shift towards a law oriented (or more oriented) by human rights	Governmental documents, archives, as well as NGO documentation. Online databases (files, studies, law projects) from the main Brazilian Ministries involved in the question of this paper will be analyzed as well as legislative acts, parliamentary speeches, ILO documents, Corte Interamericana de Derechos Humanos and other

## 1.5. Analytical Model: Concepts and Methods

This paper seeks to understand the immigration policy reform processes in Brazil in recent years and how the country is managing these issues in relation to a so-called “new era of immigration” globally. The context is one of the efforts to bring about institutional reforms in the country. To achieve a better understanding of this change process, it is important to comprehend the concepts used within the study. In particular we will outline in turn the key concepts of institutional reform and inter-governmental co-ordination, securitization, global immigration, governance and embeddedness.

### *a) Institutional Reform and Inter-governmental coordination*

The immigration law in Brazil (Estatuto do Estrangeiro, Lei 6815/1980), is considered part of the administrative and legal apparatus left over from the time of the dictatorship years (from 1964 to 1985). The law thus still views immigrants through a national security lens, using a paradigm of national security. This means it may not be adapted to meeting the economic and human realities of immigrants or their basic rights. The “guardians” of the Estatuto are the Ministry of Justice and the Federal Police. It is important to note that Law 6815/1980 even denies even the most basic rights provided under the Brazilian Constitution, elaborated in 1988, 8 years after the Estatuto do Estrangeiro was introduced, during the period when Brazilian democratic politics was already a reality.

From another perspective, social movements propose that a new organism should be responsible for immigration policy issues within the scope of the UNASUL (Union of South American Nations). According to Ventura (2010) the dialogues are at a stalemate since bureaucrats and high level policy makers remain aligned with developed world paradigms and are willing to shift their perspectives to become aware of civil society and social movements perspectives, emphasizing the dire situation and human rights of immigrants and refugees.

In the Brazilian national arena, two new projects are underway, each aimed at extinguishing the Estatuto do Imigrante: the first is proposed by the National Immigration Council (CNIg) and the second involves proposed Law 5.655/09 put forward by the Ministry of Justice (MJ). According to Ventura (2010), the two projects do not cohere. Whilst CNIg aims to protect the “migrant worker” the MJ insists on “a new statute for foreigners” and has adopted a national security oriented model. In law 5655/09 highly bureaucratic processes are still present as well as excessive

requirements in terms of documentation, costly fees and fines for irregular immigrants. Much of this resembles, therefore, the Estatuto do Migrante (Ventura, 2010).

### ***b) Securitization***

To open up the discussion around securitization, it is important to consider the words of Foucault (1980 in Maltman, 2013) concerning power : “power does not operate simply in a negative, prohibitive manner but is a widespread and productive aspect of all relations”. The power/knowledge nexus ensures that power operates in mediating the existing social order of the world with its representation in discourses. Thus: “how the world is known affects how it is acted within and upon” (Maltman, 2013, 3)

According to Maltman (2013, 7), the theory of securitization elaborates the character of relations between “any social actors and objects that can be attached to the concept of ‘security’ ”. In this respect, the concept of security varies, and “as a political problem is neither unchanging nor semantically homogenous. Complex processes of accommodation, rejection and reformulation take place in the interstices between global, national and local representations of the problem of security. These processes, in turn, are related to the political history of the local ontological ways in which danger, risk and (in) security are defined” (Bubants 2005: 276 in Maltman , 2013)

In consideration of the multiple meanings of the concept of securitization, it is important to avoid seeing ‘everything’ as becoming a security issue. Therefore , at least three steps need to be identified as part of any useful definition of securitization (Taureck, 2006, 3):

- 1) identification of existential threats (‘If we do not tackle this problem, everything else will be irrelevant, because we will not be here or will not be free to deal with it in our own way’)
- 2) emergency action;
- 3) effects on inter-unit relations by breaking free of rules (Buzan et al. 1998: 6 Taureck, 2006).

For successful securitization, a securitizing ‘move’ is fundamental. By securitizing move we mean “an option open to any unit because only once an actor has convinced an audience (inter-unit relations) of its legitimate need to go beyond otherwise binding rules and regulations (emergency mode) can we identify a case of securitization” (Taureck, 2006, 3). What is concrete is that securitization is far from being open to all actors within a particular situation, and their respective subjective threats can only be securitized broadly based “on power and capability and therewith the means to socially and politically construct a threat” (Taureck, 2006, 3).

The conceptions of Wæver and Buzan seem relevant here as well. To Wæver and Buzan (1998 in Taureck, 2006): ‘security should be seen as a negative, as a failure to deal with issues of normal politics’ (see also Buzan et al. 1998: 29). This said, the option for desecuritization whereby securitization is ‘reversed and issues are moved out of the threat — defense sequence and into the ordinary public sphere where they can be dealt with in accordance with the rules of the (democratic) political system’, may not be as easy as it seems (Taureck, 2006, 4). In a similar way, Claudia Arandau criticizes the idea of securitization, viewing it as something mostly quite negative, when she defines it as:

[...] a technique of government which retrieves the ordering force of the fear of violent death by a mythical replay of the variations of the Hobbesian state of nature. It manufactures a sudden rupture in the routinized, everyday life by

fabricating an existential threat which provokes experiences of the real possibility of violent death (Aradau, 2001).

In the case of Brazil, it is suggested in this study, the treatment of immigration issues has sometimes taken the form of a securitized discourse. The research question is thus also a question about whether there is a move towards ‘desecuritisation’ of immigration policies in Brazil.

### c) Global Immigration Governance

For Alexander Betts (2010), global governance can usually be seen as roughly the same thing as the formal rules of multilateralism. However, global governance is also the variety of “norms, rules, principles, decision-making procedures” that exists above the units of the international system, the nation states.

#### I) Multilateralism

According to Betts (2010, 2) “much of what exists at the multilateral level globally today, originally emerged during the Inter-War Years, with the creation of the ILO, the League of Nations High Commissioner for Refugees (LNHCR) and the modern passport regime”. In the present period, we have an international refugee regime as one of the few areas of global migration governance where there is a strong formal multilateralism, at least in theory and in law. Betts (2010, 2) concludes: “the limited ratification of the UN Convention on the Rights of All Migrant Workers and Their Families and voting patterns within the UN around the UN High-Level Dialogue on Migration and Development in 2006, serve to illustrate how states express their reluctance to pursue multilateralism in practice in relation to any areas of migration besides those concerning refugees”.

#### II) Embeddedness

The existent institutes, rather than being ‘migration institutions’, are ‘embedded’ within the global governance of other policy fields. As an example, the author cites the Migration Law as a “not an independent body of law but a law based upon drawing together the implications of states existing obligation within other areas of public international law such as international human rights law, WTO law, and international maritime law” (Betts, 2010, 2). In the same way, many other international organizations have mandates “that touch upon international migration, which is illustrated by the participation of 18 organizations within the UN’s main migration coordination structure, the Global Migration Group (GMG)” (Betts, 2010, 2).

In the table below, Alexander Betts (2010, 3) sums up the levels of migration governance according to the *type* of immigrant:

Table 1 – Type of migration governance

<b>Migration Governace</b>	<b>Level or Main level of Governance</b>	<b>Type of good</b>
Refugees	Multilateral	Public good
Irregular/low-skilled migration	Regional	Club good
High-skilled	Unilateral/bilateral	Private good

migration		
-----------	--	--

Source: Alexander Betts, 2010, 3.

## 1.6 – The organization of this Research paper

Having established the main focus of this Research paper in this chapter, Chapter 2 will discuss the evolution of immigration policy discourses in Brazil until the 1980s. The analysis of this period forms the backdrop for an analysis of the period since 2009, examining the continuities and elements of change compared with the past.

Chapter 3 discusses the Foreign Statute, which is the current immigration law in Brazil, and the changing position of the Brazilian diaspora. This is an important aspect of the immigration policy context in Brazil, and is relevant with current attempts to reform future Brazilian immigration policies.

Chapter 4 analyses the discourses around proposed immigration reforms from 2009 onwards, and critically evaluates the advances and setbacks in these proposals which seek to promote new immigration policies. It asks whether such proposals are more aligned with egalitarian values and human rights than policies of the past. To conclude, Chapter 5 returns to a discussion of the central research questions and considers how successful attempts have been to reform immigration policies and laws in Brazil in recent years.



## Chapter 2

### The evolution of immigration policy discourses in Brazil until 1980

#### Introduction

The present chapter will briefly discuss how immigration policies in Brazil have evolved, and covers three main phases: the phase of subsidized immigration from the 1890s to 1907 or so; the eugenic model which started in the early twentieth century, and immigration law shaped by national security discourses, from around the 1960s to the 1980s. The latter was translated into Law 6815/1980, the Foreigners' Statute which also forms the backdrop for an analysis of the period since 2009. We examine some of the continuities and elements of change in the recent past of immigration policy in the country. It is important to understand the processes and the mentalities shaping immigration policies in Brazil for at least three reasons. The first is that we need to understand the past if we are to understand how present discourses have evolved. The second reason is that being able to critically examine new proposals helps to appreciate the trajectories of policy reform, both in terms of continuity and in terms of changing paradigms in Brazil's immigration policies. A third concern relates to the extent to which such policies have – or have not - become more aligned with human rights ideals and respectful treatment towards immigrants. The periodization in this chapter is shown in Table 2 below.

**Table 2 – Chronologic Summary**

<b>Brief chronologic summary of Brazilian Policies</b>	
<b>Year</b>	<b>Description</b>
1907	Decree 6479 – More flexible than the previous immigration Law (1890): enabled the first flows of Japanese immigration to Brazil
1911	Decree 9081 - Subsidized immigration in order to solve the problems such as the high concentration of immigrants in São Paulo. Despite the necessity of work force and the colonization projects, the desired immigrant was the white European (especially with families)
1917	The question of the “undesirable” gains force. The media is constantly focusing on the “anarchists”. As consequence, the number of deportations increased considerably
1930	Decree 19482 – Immigration control in order to satisfy the “political, economic and ethnic” interests of the Nation.
1930	Amendment 1164 by Xavier de Oliveira – residence visa is forbidden for “black and yellow [sic] individuals”, no matter their country of

	origin.
1934	Quotas Law – Annual limits for each nationality in the proportion of two percent considering the members already established in Brazil. Political, social and scientific arguments helped to shape the prejudices and pressures over the immigrants.
1938	Decree 406 – Foreign citizens <sup>3</sup> could not work as teachers. Teach foreign languages to children under 14 years old is not allowed.
1941	Conflict between the Executive and Congress. Ministry of Justice becomes the responsible for immigration control. The “undesirable” are now the jews, orientals, natives from Africa and indigenous people.
1947	The context is the Cold War and Truman Doctrine: paradigm of national security and the battle against communism gain space and shape the immigration policy

After this, in Chapter 3, a major shift in Brazilian foreign policy is discussed. This took place when Brazil became a country of net emigration, marked by the 1980 Foreigners Statute passed under the dictatorship and still in place in 2014. This is one of the central problems that this study is dealing with; the central questions were about how the current proposals for reform compare, including in relation to both security and human rights norms and concerns. It is an important element to be highlighted in this chapter. The mentioned change advocates pro-reform of the actual policy scenario into a new legislation that treats the immigrants not as “the other” or 2<sup>nd</sup> rate citizen, but in a more egalitarian way.

## 2.1 From subsidies to the whitening discourse

It is important to understand the history in order to comprehend the present society and its dynamics and to implement the right trajectories in the future. This principle substantiates the study presented in this chapter. The following paragraph summarizes concepts from Gilberto Freyre and Darcy Ribeiro, two eminent Brazilian sociologists and anthropologists who dedicated their works to analyze how the past contributed to shape Brazilian society of present days.

Gilberto Freyre emphasizes that the main identity of Brazilian people is the ethnic syncretism. He states: every Brazilian, even the white and blond individuals, have, if not in the body then in their souls, the mark of the indigenous and the black people (Freyre, 2003, 191). However, and this chapter demonstrates through the exam of eugenic and racist immigration laws, the Brazilian people still refutes the idea of miscegenation and *prefers* the pure: in this sense, ethnic groups who are not mixed and therefore are *civilized* and *developed*. Ethnocentrism is still present in Brazilian

<sup>3</sup> Classified as “ethnic cyst” and “unassimilable” the Japanese community inspired the Decree 406.

society and many Brazilians cite North-American and European societies as *ideal models*. Darcy Ribeiro (1995) affirms Brazilians have to understand the many type of Brazilians inside Brazil and accept the country is a multifaceted and multi-ethnic society instead of searching for *ideal models* abroad. Given this, the following paragraphs of this section will discuss the immigrations discourses that evolved in Brazil.

The first era of Brazilian immigration policies date from 1808<sup>4</sup> and aimed to attract especially Europeans (more specifically from North Europe) to settle in colonies (less populated Brazilian lands). The new Royal Charter introduced in May, 1818, provided subsidies for European immigrants to colonize and promote agriculture in Rio de Janeiro (in this case, Swiss families): lands, seeds, medical and religious assistance, financial resources, transport were provided by the Brazilian government to immigrants.

From 1822 to 1889 the political debates are around assimilation and exclusion of immigrants: the desirable immigrant is family oriented and a good farmer (the “good immigrant”). Therefore, Northern Italians, Swiss, Germans and Spaniards were placed on the top of the hierarchy. Differently, Belgians and Irish were not well classified in this criteria for not having a good tradition in agriculture (Seyferth, 2001, 138). In this moment the ethnic component is not decisive yet.

At that moment, the major labour needs in Brazil were for more workers for São Paulo (coffee plantation farms) and farmers able to colonize the South Region<sup>5</sup>. The solution found by the government were “immigration contracts” between the Brazilian government and the cited nations above, which attracted about 100 000 immigrants [from 1874 to 1876] to work in the coffee plantation (replacing the african slaves) and to be settled in the South<sup>6</sup> (a low-populated territory which it was feared would become an easy target for Spanish America). Despite all the incentives, many problems<sup>7</sup> arose, and the dissatisfaction of the new settlers was echoed in Europe. As a consequence, many countries (Italy, Prussia and England) took measures in order to prevent their nationals to move to Brazil. Given this, around the 1890s, new packages aiming to keep the flows of Europeans going to Brazil, meant that immigration laws became even more flexible.

However, the “flexibility” was just in the sense of giving more rights to the future immigrants. The Law (Decree 528/1890) still reinforcing the “European superiority” and their “colonizing mission” and listing them as “good immigrant”, “work driven”, “good values” and “educated”. The Decree of 1890 forbade immigration of people from Africa and Asia. The Decree preventing Asian immigration was repealed in 1907, to allow in 1908 for the start of Japanese immigrants (the *Kasato Maru*<sup>8</sup> ship, first arrived in Brazil in 1908). Nevertheless, many politicians were

---

<sup>4</sup> Fearing the invasion of Lisbon by Napoleon’s troops, the Portuguese Crown left Portugal seeking refuge in Brazil.

<sup>5</sup> Currently formed by the States of Paraná, Santa Catarina e Rio Grande do Sul.

<sup>6</sup> It was specified that no foreigners would be sent to the North Region to colonize the area. This task was trusted by Brazilian citizens only

<sup>7</sup> The difficulties involving the big number of immigrants and non-organized structure to receive and allocate them. In the words of Maria A. Custódio, (Custódio, 2011, p.53-54), “Brazilian and local government were not financially prepared to meet the masses of immigrants”.

<sup>8</sup> The families then moved to São Paulo where they would work in the coffee farming. Source: Imigração Japonesa, at: [http://www.imigracaojaponesa.com.br/?page\\_id=261](http://www.imigracaojaponesa.com.br/?page_id=261)

against Japanese immigration at that time, and argued that large-scale immigration of Japanese would seriously compromise the integrity of the composition of Brazilian people.

In the following years, the project of “whitening” Brazilian people gains strength and, in 1911, the new immigration law cites as requirements: age<sup>9</sup>, family oriented, good moral values. Visas were to be denied to “rioters, criminals”, or individuals whose ethnic group were considered “inclined to crime and prostitution, and others”. The new law also promoted “selections” *a posteriori* through deportation for those considered “undesirable”. Lená Menezes in her work *Movimentos e Políticas Migratórias em Perspectiva*, (CND, Brasília, 2001) explains that deportations<sup>10</sup> were used as form of “racialized” expulsion, which became stronger in subsequent immigration legislation, from the 1920s onwards. From this time on, the whitening ideal gets even stronger and orients the immigration policy (Decreto 9081, 1911).

## 2.2 The Laws of the 1930s-1960s

In the first years of Getúlio Vargas<sup>11</sup> Era, the policy makers were influenced by the studies of Nina Rodrigues<sup>12</sup> and Silvio Romero. Thereby, in 1934, the Federal Constitution established, as guidelines for immigration policy, the quota system as well as limits for concentrations of groups of immigrants<sup>13</sup>. The congressmen tried to edit laws aimed to promote “desirable immigration”, in other words, “white” people.

The Amendment Act 1164 of 1934 (author, Xavier de Oliveira) forbade the entry and permanent residence of “individuals from black and yellow races [sic], no matter their origins”. Deputies organized lectures and congresses<sup>14</sup> in which they defended their positions, namely, the immigration of white Europeans only. The foundation of The Quotas System (1934), nazi and fascist ideals, found broad support in the Brazilian Congress. (Geraldo, 2009, 3-13)

The advent of World War II highlighted the very restrictive policies that Brazil had in place, and tightened these further. The Vargas Government (now in his dictatorial phase) is characterized, among others, by being anti-communist and xenophobic. Foreign citizens classified as “transgressors and accused of disturbing public order” would be arrested, tortured and

---

<sup>9</sup> Younger than 60 years old

<sup>10</sup> Foreigners living in Brazil for years were extradited. Many of them were accused of being members of anarchist and worker’s movements.

<sup>11</sup> Getúlio Vargas was president in Brazil during 15 years (1930 to 1945). From 1930 to 1934 as Provisional President (dictatorship); from 1934-37 as elected president and from 1937 to 1945 as dictator. The last phase, also known as Estado Novo, was characterized by a strong authoritarianism.

<sup>12</sup> Nina Rodrigues published many articles and studies about races and eugenics. The most famous are “Os Mestiços do Brasil” and “Estudos de craniometria: o crânio do salteador Lucas e o de um índio assassino”. The latter is dedicated to investigate the physic and ethnic characteristics of criminals.

<sup>13</sup> Agglomerations of immigrants in just few areas were not convenient. They should be distributed in a more proportional way.

<sup>14</sup> Deputy Miguel Couto organized, in 1929 the I Brazilian Congress of Eugenics (I Congresso Brasileiro de Eugenia), in Rio de Janeiro. In his discourse during the event, he criticized the Japanese immigration and mestizos. He affirmed the progress of societies was closely linked with eugenics.

deported<sup>15</sup>. In her work, Endrica Geraldo (2009) reports that the congressmen, to reach their eugenic goals, were radically against the interference from the Executive Power in the immigration policies. As the years passed by, the dissatisfaction with the immigration laws grew and many members of the government pointed flaws in the migrants control and difficulties selecting only “the ideal immigrant”. The immigrants control created big disputes within the government. The dispute ended with the Decree 3175, in 1941, in which the Ministry of Foreign Affairs is no longer the “guardian” of the immigration controls and the task passes to the Ministry of Justice.<sup>16</sup> The MJ is still, in the present day, the institution primarily responsible for immigration.

Minister Francisco Campos<sup>17</sup> redefined, in his “Explanation of Reasons” (in this case, the hardening of immigration policies) the requirements for immigrants and, this time, the government preferred individuals from Portugal, United States and South America (white). This clearly xenophobic was not interesting (considering the country’s international partners). So, the basis of the restrictive and selective immigration police came from scientific studies and reports of that time. As in the nineteenth century also, economic and cultural biases were used as justification to restrict certain ethnic groups.

There was as well a list of “undiscoverable” people: jews, orientals, natives from Africa and indigenous people - they were all classified as “non-white” and would not assimilate into the Brazilian culture<sup>18</sup> (Koifman, 2012).

Back to redefinition of roles, the Ministry of Justice became responsible for the list of names of foreign citizens whose visas were granted or denied (those with granted visas could suffer *control a posteriori*) which made the immigration even harder for foreigners. Consuls and diplomats accused of minimal deviation of the law for granting visas would be sued by the State and dismissed.

Important authors discussing Brazilian immigration discourses such as Fabio Koifman, Giralda Seyferth and Lená Menezes affirm the migration policies of those days were influenced by eugenics studies and many policy makers, diplomats, consuls<sup>19</sup> and members of the government were supporters of the “eugenics science”. They truly believe this could explain the thesis of “malformation of Brazilian people” and the big number of Brazilian mestizos<sup>20</sup> was the proof

An interesting point of view to understand the immigration questions in Brazil today (for example, immigration as police control) is highlighted by Koifman who cites part of Minister

---

<sup>15</sup> In this aspect, it is important to cite the famous case of Olga Benario (wife of the Brazilian activist Luis Carlos Prestes) and Elise Ewert. They were both German communist activists and were extradited during Getúlio Vargas government. Olga died in 1942, in the Nazi concentration camp of Bernburg.

<sup>16</sup> The Ministry of Justice was the responsible to issue and control visas for foreign citizens.

<sup>17</sup> In his discourse, Francisco Campos said “Brazil, which did not contribute in any aspect with the harsh life conditions and other persecutions, cannot turn into a shelter for these refugee masses. We are not interested in this white trash”.

<sup>18</sup> According to Koifman (2012, p. 35-39), some immigrants were constantly associated with stereotypes and their presence could even cause economic damages since they could steal jobs from Brazilians.

<sup>19</sup> The Brazilian Consul in New York, Gabriel de Andrade, listed the qualities and defects of the immigrants in United States. His book, *O Problema da Imigração nos Estados Unidos da América*, inspired Brazilian policy makers such as Minister Francisco Campos (Koifman, 2012)

<sup>20</sup> Koifman (2012) describes what was basically a consensus of politicians and other important figures in Brazil those days: Brazilian population and its big number of mestizos is the big proof miscegenation cannot produce an important civilization.

Francisco Campos' discourse during the Second World War <sup>21</sup>: "...free immigration is not interesting to our country. The entry of foreigners in Brazil is no longer an economic question but a police and security question". The text starts with "Restrictions on immigration as well as correlated issues" (translated by the author). Koifman (2012) affirms this is a clear sign the Brazilian borders are closed to wartime refugees and other "undesirable" people.

The mentioned Decree is concise and simple and has just 8 articles. It uses terms such as "false-temporary", "refugee" and "individuals who can potentially cause harms to our ethnic formation" (Koifman, 2012: 201). The Ministry of Justice becomes responsible for granting and denying visas and for "listing the groups or class of foreigners whose visas would be denied". Given this, the candidates had to personally visit the Ministry of Justice or the police departments so the authorities could verify the requirements<sup>22</sup> were met: white, good morals, religious choice and no involvement with extremist groups or ideals. The Decree 1941 is characterized by its harshness and arbitrariness.

In 1945, a new Decree, regulating immigration policies, was approved, and was considered a bit more flexible since its text mentioned: "all foreign citizens are allowed to enter the Brazilian territory as long as they fulfill the listed conditions of this law...". From 1947 on, the context was the Cold War and the Truman Doctrine. Given these factors, the paradigm of national security and the battle against communism gained space in Brazilian immigration policies. By 1960, national security was the prime concern, and the discourse of Golbery do Couto e Silva<sup>23</sup> shaped the Brazilian security paradigm so that from this perspective: "if the national security is threatened, the sacrifice of the social welfare, namely, the limitation of individual freedoms and human rights, is fully justified" (Coimbra, 2000, 1-20).

In this context, a new term arises: the concept of the internal "enemy". The concept was flexible and could include Brazilian armed leftist groups, sectors of the Catholic church (the "progressists"), human rights activists and any other groups opposed to the regime. One of the consequences was that immigrants from socialist countries or leftists activists were considered "undesirables". During this period, the national security model became a key driver of immigration policies.

As the military dictatorship became more violent and segregating, immigration laws evolved in the same direction. In 1969 a new immigration law was drafted aimed to deport any foreign citizen classified as *harmful to the public order and the national security*. More and more requirements were listed before a foreigner could receive a visa and the procedures for granting visas became even more discretionary than before.

Migration movements/flows are normally defined by political and socio-economic contexts and, at the beginning of 1970 Brazil lived the "economic miracle".<sup>24</sup> But even with a booming

---

<sup>21</sup> Translated by the author

<sup>22</sup> Individuals considered too old also had their visas denied since they could not contribute with the national project, considering they could not form a family.

<sup>23</sup> He is one of the theorists responsible for the Doctrine of National Security in Brazil.

<sup>24</sup> Referred to as "economic miracle", Brazil's significant growth in economy in the late 1960's and early 1970's was conspicuous. However, the country did not manage to distribute evenly the wealth it had created. For those living on the minimum wage, the period was no more than a step backwards. Source: Agência Brasil, accessed on:

economy, less and less migrants chose Brazil as a destination because of the authoritarian approach towards migrants. In that period, the main group of immigrants into the country was formed by Bolivians, Argentinians, Peruvians and Uruguayans.

Finally, in 1980, the Law 6815/1980, also known as the Foreigner's Statute, was drafted. The Statute embodies the national security paradigm, and by the 1970s (especially in 1978) the military regime was losing support and approval, and the Foreigner's Statute came to be widely criticized. However, it was alleged that the new law was transitory and that in the near future another, more "modern" and flexible law, would be drafted and introduced. This never happened, however and until today Law 6815/1980 is still in place and forms the basis for Brazilian Immigration policies. As already mentioned, this will be discussed further in Chapter 3.

## Chapter 3

### The Foreigner Statute (Law 6815/1980) and the Brazilian Diaspora

“For Golbery do Couto, if the national security is threatened, it is justified to sacrifice part of the social welfare, in by imposing limits on liberty, constitutional guarantees and human rights”. Coimbra (2000, 10)

During the years 1964<sup>25</sup> to 1969, Brazil had hundreds of human rights infraction cases: political prisoners, torture, cassation of politicians who disagree with the military and so on. Despite governmental impositions, left wing ideals were very present in the society: artists, musicians, students, actors kept spreading ideals in opposition with the regime. Given this, one of the solutions to solve this situation was the exile and, in combination, the harshening of immigration laws in order avoid the admission inside the country of potential threats (in this case, communists especially). This chapter will discuss two important aspects of the 1980: the Foreigner Statute and the Brazilian diaspora.

#### 3.1. The Foreigner Statute

In order to understand the context of the Foreigner Statute it is important to expose (briefly) the situation preceding 1980. As mentioned in the previous chapters of this Research paper, in 1969 a new immigration law was drafted aimed to deport any foreign citizen classified as “harmful to the public order and the national security”. From 1974 on starts, with the Marshal Ernesto Geisel (the president at time), the “slow, safe and gradual transition” (Dutra, 2012) to democracy. By 1978 on, the military regime was losing its support and power. Given this context, in 1980 it was drafted the Law 6815/1980, also known as Foreigner’s Statute.

The Statute was completely shaped based on the national security paradigm. Even for those days, the Statute faced harsh criticism due its character (treating foreigners as dangerous individuals). The president stated as reaction to the criticism the law was transitory and, in the future government (we infer he was referring to the next government after the dictatorship), a modern and flexible law would be drafted. This never happened and, after 34 years, Brazil still has an outdated immigration law which is not even aligned with the Federal Constitution (drafted in 1988, therefore, almost a decade after the period studied in this chapter). The following paragraphs will briefly discuss the Foreigners’ Statute to demonstrate why an urgent reform is necessary.

---

<sup>25</sup> The first year of the military dictatorship. The first dictator of this period was the Army Marshal Castelo Branco. The dictatorship decades were marked by nationalism, authoritarianism and retrenchment of civil and human rights. It had as moto: Brazil: Love it or leave it. (Agência Brasil, 2014)



While previous laws examined in Chapter 2 treated basic immigration subjects such types of visas, permanence and procedures to naturalization, the Foreigners' Statute innovates by talking explicitly about the immigrants' rights and duties. The text is long (has 141 articles) and its annex lists taxes the immigrants must pay for certain services (in this case, naturalization, emission of documents, permissions and so on). The first article says "in peacetime, any foreign citizen may, when meeting the conditions described by this Law, enter and remain in Brazil or leave its territory, considering as well the national interests". Right after, the guidelines of the Law are explained: this Statute aims to protect the national security, the institutional organization, the political, cultural and socioeconomic interests of Brazil.

Further in the exam, the article 7<sup>26</sup> defines the foreign citizen as an individual who has to his prove innocence or, in other words, prove to the Brazilian authorities (in this case, the Federal Police), he or she is a *good citizen*<sup>27</sup>. There is no further description of what is meant by a "dangerous individual" or an individual who could possibly cause any harm to "public order and national interests". In other words, the foreign citizen has to be approved by a Federal Police (PF) agent, a discretionary and very subjective criterion to grant a visa.

The fact the foreign citizen has to pass the scrutiny of a PF agent is, per se, a prove that the immigrant is seen as a possible threat. The Federal Police is in charge of the security, the criminal investigation, so, a reform which the immigration policies are no longer a PF attribution would be a modernization towards a more humanized treatment of immigrants. In the same article it says the visas will not be granted to individuals under 18 years old (as long as they are not accompanied by their parents or someone else responsible), people previously expelled from the country, unless the expulsion has been revoked, individuals convicted or prosecuted in another country (if the penalty for the crime in question is extradition, according to Brazilian law) and individuals who do not meet the health conditions set by the Ministry of Health.

Article 7 is connected to art. 26<sup>28</sup> and, as product, even if the immigrant has a granted visa the rights attached to it are not unquestioningly assured and the permanence in Brazil can be interrupted. Summing up, even those with regular status are under exam *a posteriori* of the Ministry of Justice and, if the immigrant is considered *inconvenient*<sup>29</sup> he can be deported.

A foreign citizen who wants to establish permanently in Brazil can apply for a proper visa, as described in the article 16. But the same article (paragraph 1) declares that the purposes of

---

<sup>26</sup> Art. 7, Item II: The authorities will not grant any kind of visas to individuals considered harmful to public order and national interests;

<sup>27</sup> Instead of the most appropriated treatment, the presumption of innocence

<sup>28</sup> The visas granted by the consular authority do not constitute absolute right. Therefore, the entrance and permanence of the foreign citizen can be respectively denied and interrupted in case of occurrence of any condition described in Art. 7 is transgressed, his presence in Brazil is considered inconvenient, according to criteria settled by the Ministry of Justice (translated by the author).

<sup>29</sup> The New York Times journalist Larry Rohter had his visa revoked after publishing the article "Brazilian Leader's Tippling Becomes National Concern" (May, 2004). The article was considered partial and offensive. It was based only on the testimonials of Leonel Brizola, a sworn political enemy of Mr. Lula. Therefore, Larry Rohter was considered as an inconvenient person and his visa was cancelled. It is a clear example of using Art. 26 combined with art. 7, item II of Estatuto do Estrangeiro: when an individual is considered "inconvenient" the Ministry of Justice can revoke the visa and the person has to leave the country. In the end, the lawyers of Larry Rohter won the question and Minister Peçanha Martins from the Superior Court of Justice (STJ) restored his visa based on the rights described on art. 5 of the Brazilian Constitution.

immigration are, primarily, to provide the national economic sectors with high skilled workers, in accordance with the National Policy of Development, to increase productivity in the economic sectors, to contribute with assimilation of new technologies, and to raise funds through investments.

The paragraph above shows an immigration policy not much different from those studied in the second chapter of this Research paper: a policy with a selective character but now based on the high skilled labour criteria and those with considerable amounts of money invested in Brazil. Combined with article 18<sup>30</sup>, it can be inferred that, for the average worker, it is almost impossible to migrate to Brazil in regular conditions. Camila Baraldi (2011), highlights the Law 6815/1980 does not facilitate in any aspect, the immigration to Brazil. She continues with the analyses with the following statement: “the high skilled immigrant is the only one with real possibilities to migrate to Brazil (regularly) but even with those immigrants have to face an immense bureaucratic process in order to receive a visa” (Baraldi, 2011).

From article 18, can also be concluded there is a clear restriction of movement<sup>31</sup> for immigrants within the Brazilian territory (to pursue a permanent visa, the candidate has to have a permanent address). This imposition, according to the Brazilian Constitution (Constituição Federal, CF), is not legal. The CF, in the article 5 (item XV) declares the freedom to move within the national territory and any person, under the terms of this Law, can enter, remain or leave Brazilian territory (Constituição Federal, 1988). The item LXVIII (art. 5) instructs the *habeas corpus* shall be granted whenever someone suffers or is threatened with violence or coercion against his freedom of movement for illegality or abuse of power (Constituição Federal, 1988). One can conclude there is an evident conflict with the Estatuto and the Brazilian Constitution.

An important kind of temporary visas<sup>32</sup> is the worker visa. This kind of visa is granted taking in consideration the nature of the job and it is granted for a given time. If the individual loses the job (no matter the reason) there are only two alternatives left: leave the country or search for another job and then apply for a new worker visa. Meanwhile, this immigrant is considered illegal since the Estatuto does not take into account any kind of visa for those searching for a new job. (Andena, 2013, 102).

The consequence for illegal immigrants (illegally entering the country staying in beyond the period established or disrespecting the limitations imposed by the kind of visa) is deportation<sup>33</sup>. In cases when it is not possible to immediately proceed with the deportation, the immigrant is arrested for until 60 days (Estatuto do Estrangeiro, article 61). Again, when compared to the Federal Constitution, (which limits, strictly, the motives which can lead an individual to

---

<sup>30</sup> The granting of permanent visa may be conditioned, for a period not exceeding 5 years, to paid work and permanent address in the national territory.

<sup>31</sup> The article 13 of the Universal Declaration of Human Rights says: 1. Everyone has the right to freedom of movement and residence within the borders of each state; 2. Everyone has the right to leave any country, including his own, and to return to his country. The 16<sup>th</sup> article declares: The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Combining both articles, an immigration law more aligned with human rights values could grant visas for family members of the immigrants (Patarra, 2012)

<sup>32</sup> Article 13 (Estatuto do Estrangeiro): Temporary visas can be granted to foreigners intending to come to Brazil, for the following purposes: I. Tourism or cultural visits; II. Business trips; III. Artists or athletes; IV. Students; V. Scientists, professors, or any other professional hired by companies of the Federal Government.

<sup>33</sup> Estatuto do Estrangeiro, art. 57.

imprisonment<sup>34</sup>) this measure in the Estatuto do Estrangeiro is considered illegal<sup>35</sup>. It is possible for the deported immigrant to enter Brazil again. However, he has to reimburse the expenses<sup>36</sup> of the previous deportation and pay a fine.

The Foreigners' Statute also lists many items in order to restrict the labor rights of the immigrants and it declares the "defending of the national workers comes in first place" (art. 2). This means foreign citizens with visas for the purposes of tourism and study or even their dependents are not allowed to work (art. 98). When art. 98 is violated, the penalty for the immigrant is deportation. This does not match the regulation in *Opini3n Consultiva*, OC-18/03, Inter-American Court of Human Rights. The OC-18/03 declares that immigrants, legal or illegal, must have their labor rights respected and these rights must be assured by the State. The Inter-American Court also declares the principle of equality and non-discrimination form the spine of international rights and the human rights. In other words, the rights of the immigrant workers (no matter if they are legal or illegal) have to be respected and their rights must be assured. The States cannot impose any obstacles in this sense.

According to Law 6815/1980 the foreign citizen does not have political rights<sup>37</sup> or can even take part in political discussions (directly or indirectly)<sup>38</sup> and is not allowed to vote or be voted. This measure promotes a division between citizens (in this case, the immigrant becomes a 2<sup>nd</sup> rate citizen). It makes Brazil the only country in South America where immigrants are not allowed to vote and be voted. Concerning this issue, many deputies and senators tried, along the years, to correct the disposed on the Foreigners' Statute by proposing amendments. Until now, none of them succeeded<sup>39</sup>.

The next section of this chapter will discuss another aspect of the migration scenario in Brazil in the 1980: the Brazilian diaspora and how it is related with the future attempts to reform Brazilian immigration policies.

---

<sup>34</sup> Even if the measure is qualified as administrative detention still does not any support by the Brazilian Constitution or the Brazilian Code of Criminal Procedure (Andena, 2013)

<sup>35</sup> Constitui3n Federal, artigo 5, par3grafo LXI: no one will be arrested unless in cases when the individual is caught in flagrant delict or when justified by written and reasoned judicial decision.

<sup>36</sup> Estatuto do Estrangeiro, art. 64: The deportee may only rejoin the national territory after reimbursing the National Treasury with the expenses of the deportation and, if applicable, the payment of fines.

<sup>37</sup> Art. 107, Estatuto do Estrangeiro.

<sup>38</sup> In 2007 the Italian government demanded the extradition of Cesare Battisti, a former member of the group Proletari Armati per il Comunismo (PAC). Cesare and other members of the group were accused of murder. The crime occurred in 1976 and all the members of PAC involved in the case, including Cesare, declared themselves innocent and said they were tortured by the Italian police during the interrogatory procedures. In 2009, the Brazilian government denied the extradition of Cesare Battisti and considered him a political refugee. The case of Mr. Battisti is interesting in many aspects. However Mr. Battisti cannot give any declarations about his case, about the political moment in Italy or even any comments concerning his battle against extradition here in Brazil since Art. 107 of Estatuto do Estrangeiro forbids immigrants to participate in political activities including declarations and opinions. In April of this year Battisti was interviewed on the TV show 'Di3logos com Mario Sergio Conti' and during the 30 minutes he was interviewed he could not say anything related to his case and instead, the themes discussed during the show were cooking, arts and literature. All the subjects that were not very relevant for the public (who probably wants to hear his version of the case) and for the person interviewed.

<sup>39</sup> Deputies Jose Serra (PSDB, Sao Paulo) and Alvaro Valle (PPB, Rio Grande do Sul) both proposed amendments (in 1991 and 1995, respectively) where was allowed to the immigrants (with at least five years living in Brazil) the right to vote for mayor. Both proposals did not assure to the immigrants the right to candidate to political activities. In 2005, the deputy Orlando Fantazzini (PT, S3o Paulo), proposed an amendment where the political rights were assured, without restrictions, to all immigrants living in Brazil for more than 5 years.

### 3.2 The Priority of the Brazilian Diaspora (1980-2005)

From the 1980s Brazil becomes an immigrant exporter (with the economic crises<sup>40</sup>, political instability and high unemployment rates as main causes) and the number grows continuously as the years pass. The dynamics is (especially): those already established abroad attract family members and friends to join them. For the first time now we have a Brazilian diaspora<sup>41</sup>. Due to this new reality the Brazilian foreign affairs agenda has to change.

It is important to highlight the characteristics of the four main group of Brazilian immigrants in order to understand how the governmental agenda changed. The first group is composed by those in direction to the United States. These are Brazilians coming from the middle class who enter US clandestinely. They do not care about the lowering of their social status (they occupy unskilled labor positions) since the main goal is financial return.

The second group corresponds to migration flows in direction to Europe followed the same patterns of the case above. Nevertheless, the group is composed, in many cases, by European descendents, with the main destinations being Portugal, Spain and Italy. The third main group has Japan as final destination and the decisive component here are the cultural and ethnic characteristics, the *dekassegui*<sup>42</sup>. The dynamic is formed by the economic motives and kinship: better financial returns from working and family relationships with Japanese or Japanese descendants.

The fourth group is the *Brasiguaios*<sup>43</sup>, a name that refers to Brazilian farmers living at the border with Brazil and Paraguay. Conflicts marked by agrarian questions are the main problem: they own big farms and are constantly demanding more protection from the Brazilian Government. (CPI da Emigração, 2006).

Summing up, the national media turns its attention to cases such as farmers in Paraguay, youngsters risking their lives crossing the border into United States, the case of Brazilian dentists<sup>44</sup> in Portugal and the case of Brazilian *dekassegui*<sup>45</sup> in Japan

---

<sup>40</sup> During the first half of the 80's, the Brazilian economy entered a period of stagflation and, in 1981, the first recession occurred after four decades of uninterrupted growth. Only ten years after, in the second quarter of 1994, an agreement was signed between the Brazilian government and the international banks, by which the debt was securitized and transformed into several different bonds and the adjustment of the Brazilian economy started (Barbosa, 1999:3-13)

<sup>41</sup> Differently from the Brazilians exiled during the Dictatorship years (members of the middle class, artists and activists), the mentioned diaspora refers to "economic refugees".

<sup>42</sup> Today, in Japan, this term is applied to temporary foreign workers who are in the country in order to make money (excluding employees of foreign companies). In Brazil, the appropriation of the term gained more specific contours, and it refers to Brazilians of Japanese origin and their families who migrate to Japan searching for work – and were called the "phenomenon *Dekassegui*". This movement began in the late 1980s.

<sup>43</sup> There are many attacks in the farms owned by Brazilians (fires, robbery and others). Despite accusations of xenophobia, the root of this question is the agrarian problem and the *campesinos* versus farmers (Reis, 2011).

<sup>44</sup> The case of Brazilian dentists in Portugal required diplomatic interventions. Fearing the competition with Brazilians, the Portuguese Dental Association (APMD) downgraded Brazilian dentists and, therefore, they would be considered just *technicians* (*APMD decision, 180-A, 1992*). The decision is completely in shock with the bilateral agreement *Acordo Cultural Brasil-Portugal, 1966*, which assures the equivalence of diplomas (art. XIV). After several diplomatic meetings both countries solved the question in July, 2000. In 2004 a similar question takes place but this time it is Brazilian lawyers versus Portuguese lawyers. The problem was solved in the same year.

This means a turning point in the Brazilian foreign policy, precisely, in the immigration theme: the focus goes to consulates, assistance and social protection for Brazilians abroad (especially in the cited countries above). Itinerant consulates, public servants trained to promoted a less bureaucratized service are among the measures to collect and solve the demands of Brazilians abroad. The Brazilian government has basically two big themes in its Foreign Relations policy: build an image of credibility and maturity of its institutions and leaders and the way Brazilians are seen, accepted and received abroad.

Human rights violations of Brazilians abroad culminated with political measures such as creating a Comission of Foreign Affairs (in the National Congress and aiming to investigate human traffic and other crimes against Brazilian immigrants) and diplomatic comissions to discuss the problems related to rights violation<sup>46</sup>.

**Table 3 – Main Governmental Initiatives**

<b>Governmental Initiatives</b>		
1994	Constitutional Amendment 3	Allows the dual nationality to emigrants (originally not allowed by the Constitution of 1988)
1996	Human Rights Comission (Congress)	Hearings - Women Trafficking cases
1996	Human Rights Comission (Congress)	Brasiguaios Question
1996	Human Righs Comission (Congress)	Reports define the profiles of Brazilians abroad. They are, mainly, economic refugees. The main complaints are discrimination, restriction on rights and working under inhumane conditions
<b>Other Inicitiaves</b>		
I Symposion on Brazilian Immigration, in Lisbon, 1997		
Program for Supporting Brazilians Abroad		
Department of Brazilian Communities Abroad (2004)		
Brazilian Diaspora Councils (2004)		
Under-Secretariat for Brazilian Communities Abroad (2006)		

Brazilians abroad are also focused on by the government because of its economic effects: from 1990 until 2000 the remittances only grew and, in 2003, they were around 5.8 billion dollars<sup>47</sup>. In 2011, the Ministry of Foreign Affairs (MRE) reported that the number of Brazilians living abroad

<sup>45</sup> According to Elisa Sasaki (2000) there were several cases of exploitation of dekassegui: from recruitment agencies charging them with inexistent fees (1990s), dekassegui women exploited by semiconductor fabrication plants owners (excessive number of extra-hours, wage disparities when compared with men occupying the same positions and others). Recently (2009) the Japanese government offered three thousand dollars per immigrant (and two thousand dollar extra per relative) for dekassegui to leave Japan. The immigrants who accepted this offer cannot return to Japan for an indefinite term (BBC, 2009).

<sup>46</sup> The presence of Brazilian Congressmen in the I Symposion on Brazilian Immigration, in Lisbon, 1997, to discuss the problems of Brazilian immigrants in Portugal.

<sup>47</sup> This is equivalent of 7% of Brazilian exports in 2003. The remittances, however, declined by 2007-2008. This is a reflection of the Financial Crisis. Source: Perfil Migratório, Ministério do Trabalho e Emprego: [http://www.mte.gov.br/trab\\_estrang/perfil\\_migratorio\\_2009.pdf](http://www.mte.gov.br/trab_estrang/perfil_migratorio_2009.pdf)

was 3,1 million<sup>48</sup>. Immigration to Brazil, in the same period as above (1990-2000), came mainly from Latin America, precisely, the Mercosur area: Argentina, Paraguay, Uruguay, Chile, Bolivia and Peru (40%). Immigrants coming from Europe correspond to 20% of the total amount, North America (Canada and United States) 9,1% and Asia 12.5%. Those from Mercosur are mostly poor and undocumented people while those coming from the three latter areas are mostly high skilled immigrants and investors (Patarra, 2005, 29).

**Table 4 – Destination of Brazilians abroad**

<b>Brazilians abroad<sup>49</sup></b>	
<b>Destination</b>	<b>Percentage (%)</b>
England	6,2
Italy	7
Japan	7,4
Portugal	13.4
Spain	9,4
United States	23,8

Source: Instituto Brasileiro de Geografia e Estatística: <http://censo2010.ibge.gov.br/resultados>

### 3.3. Conclusion Remarks

The first section of this chapter brought a brief exam of the Law 6815/1980 and how the immigrant is perceived according to this Law. Seen as a potential threat, the immigrant has to face a huge bureaucratic process and, in comparison with the national citizen, the foreigners have less rights and, in other words, can be considered a 2<sup>nd</sup> rate citizen.

On the other hand , the sections above also demonstrated the following shift: how Brazil had to handle the situation of its nationals abroad concerning all the cases of discrimination, racism, human traffic and others. How can the country ask for a more humanitarian treatment for its nationals abroad if its own current policy sees foreign citizens as a threat? In order to ask for reciprocity Brazil has to promote changes in its immigration policy. In fact, there are new projects to substitute the old Foreigners Statute. But are they really in accordance with democratic and human rights values? This will be discussed in the following chapters of this Research paper.

<sup>48</sup> Extracted from *Brasileiros no Mundo*, Itamaraty, Brazilian Government. Accessed on 08/10/2014, at: <http://www.brasileirosnomundo.itamaraty.gov.br/a-comunidade/estimativas-populacionais-das-comunidades/Brasileiros%20no%20Mundo%202011%20-%20Estimativas%20-%20Terceira%20Edicao%20-%20v2.pdf>

<sup>49</sup> The table is considering only the countries with big percentages of Brazilian immigrants

## Chapter 4

### Analysing Discourses for Reform since 2009

#### Introduction

The Foreigners Statute (the actual Brazilian Migration's Law) is based on the national security paradigm. It treats foreign citizens as “the other” or a potential threat and it does not take Brazil's new realities and challenges<sup>50</sup> into account. The Statute is also broadly criticized by Brazilian NGOs and politicians.

To give immigrants a better treatment, new projects were proposed<sup>51</sup> from 1990 on but they did not succeed. Since then, the concrete governmental measures to alleviate the hard treatment given to immigrants because of the statute are the Amnesties<sup>52</sup> or bilateral agreements (in this case, within Mercosur).

The three main recent attempts to replace the current Brazilian Migration Law, are the Proposed Law 5.655/2009 (drafted by the Ministry of Justice), The National Immigration Policy (proposed by the Brazilian National Immigration Council, in 2010) and The Project 288/2013<sup>53</sup> (proposed by congressman Aloysio Nunes). How these institutions (represented here by their proposed projects) talk about immigration, perceive the immigrant and if the projects (or at least one of them) are more human rights oriented will be discussed in the next sections of this chapter. By the end of the chapter some notes about COMIGRAR will be discussed. Comigrar is the more recent initiative in order to change Estatuto do Estrangeiro.

#### 4.1. The Proposed Law 5.655/2009 – Ministry of Justice

According to prof. Rossana Reis (2011), the new treatment given to Brazilian migration's question is not only related to pressures from NGOs or other entities working with immigrants (such as Pastoral do Migrante) but it also has to do with president Luís Inácio Lula<sup>54</sup> an his governmental agenda. These efforts combined resulted in the first concrete Proposed law to reform the Estatuto do Estrangeiro.

The Proposal 5655<sup>55</sup> (PL 5.655/2009) was drafted in 2009 and it aims to change the old model of national security, by giving the immigrants more protection and treating them in a more egalitarian way (in comparison with the nationals). The following paragraphs will analyze the main articles and if the scripts are really in accordance with a human rights oriented legislation.

---

<sup>50</sup> Considering the European borders are now “closed”, Brazil became an option for asylum seekers.

<sup>51</sup> The first proposals, according to Maria Anita Sprandel, came from the former president, Fernando Henrique Cardoso (from 1994 to 2002). The proposal was not approved by the Congress.

<sup>52</sup> The last Amnesty is from 2009. Source: [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2007-2010/2009/Lei/L11961.htm](http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Lei/L11961.htm)

<sup>53</sup> Proposed by Senator Aloysio Nunes

<sup>54</sup> Luís Inácio Lula da Silva (Partido dos Trabalhadores, PT) was president of Brazil from 2003 to 2009.

<sup>55</sup> Presented in July, 2009, by the former Minister of Justice (from 2007 to 2010), Mr. Tarso Genro.

However, this section does not aim to examine thoroughly the Proposal but to highlight questions considered important for the purpose of this research paper. To do so, some articles of the law will be criticized in the following paragraphs.

In its second article, the Project innovates by describing that “the law will be applied following the principles of human rights”. The reader may have the impression of a law that respects the immigrant but even in the same article, the term “protect the national interests” is mentioned. National interest has a broad meaning and can be translated into discretionary actions by the authorities applying the law (The Federal Police). It is not much different from the Estatuto or even immigration laws from 1930s or 1940s.

The third article mentions the *adoption of measures in order to protect immigrants*, especially regarding those in situation of exploitation and other abuses arising from an *irregular migration status*. In combination with the 4<sup>th</sup> article<sup>56</sup>, the reader may find a new dichotomy: again a restrictive and selective policy but this time guided by “brain gain” but still more aligned with old Brazilian policy practices (mentioned in previous chapters) than with humanitarian bias. The mentioned article also disagrees with established conventions in the International Labour Organization conventions<sup>57</sup> (118/62 and 111/65, ILO), both ratified by Brazil. A migration policy aiming especially to attract high skilled immigrants only endorses the exploitation of illegal immigrants, working inhuman conditions.

The fifth article of PL 5655/2009 marks two important advances for immigrants in comparison with the Foreigners’ Statute: the immigrants’ freedom of movement for immigrants within the Brazilian territory (article 5) and the right to associate and create unions. Nevertheless, the Proposal leaves important questions regarding rights, such as education and healthcare, unanswered. There is a list of such rights assured to the immigrants but they are, effectively, provided<sup>58</sup> by states and municipalities and the text leaves it open according to “further regulations of the responsible entities” (Illes and Ventura, 2012). We can conclude the social rights are present but in practice they are not completely accessible.

The essential social rights cited above are not completely clear (and the responsibilities of States and municipalities is not delimited) but on the other hand, the articles concerning the duties and prohibitions for immigrants are long and detailed<sup>59</sup>. Foreign citizens (still) cannot get involved into political activities (Art. 8) as well as “create, organize or maintain any association or organization of political nature<sup>60</sup>”. They cannot own journalistic and broadcasting<sup>61</sup> companies

---

<sup>56</sup> The immigration policy aims, primarily, to attract high skilled workers which meets the demands of the Brazilian economic sectors, employment through foreign investments and income generation. It does not differ much in comparison with Foreigners’ Statute (art. 16) which says “this immigration law aims to provide Brazilian economic sectors with proper high skilled labour as well as assimilation of new technologies and investments by foreign entrepreneurs” (translated by the author).

<sup>57</sup> ILO Convention 111 Concerning Discrimination in Respect of Employment and Occupation and ILO Convention 118/62 Concerning Equality of Treatment (Social Security)

<sup>58</sup> To understand the education and healthcare policies in Brazil, it is important to know the context: Brazil is organized as a federative state and because of this the federative state coordinates the policies (including the social policies). According to Marta Arretche, this form of organization tends to make it more difficult to coordinate governmental policies, because it generates competition between different levels of government (Arretche, 2006, 91). The competition is fuelled by the negative relationship between dispersion of political authority and internal consistency of collective decisions. Arretche also states that states vary in their ability to coordinate national policies well, depending on how structured each State is (for example the South-East compared to the North of Brazil is more developed and has more resources).

<sup>59</sup> For example, PL 5.655/09 prohibits foreign citizens owning lands near borders of Brazil. This can create future conflicts since these areas normally have a relatively high inflow of immigrants.

<sup>60</sup> Due to a bilateral agreement between Brazil and Portugal, Portuguese citizens are allowed into political activities (Decreto 3927/2001)



and, according to article 7, item III, it is clear they cannot even occupy positions such as news editors or publishers. Article 8 not only ignores demands from immigrants (for example, the right to vote) but the practice also conflicts with a democratic regime<sup>62</sup>. Apparently the same rationale from the Cold War times is still present: the foreign is seen as a threat and as someone spreading “dangerous” ideas. Modern democracies should demonstrate tolerance to diversities and respect the differences. Given this, the art. 8 violates important principles such as freedom of speech.

Concerning the visas, PL 5655/09 abolished the transit visa and turned the tourism visa and business visa into the same category. The visa can be valid for the maximum of 5 years (according to the Foreigners’ Statute, transit, tourism and business visa are valid for maximum 90 days). The reader can infer, by this measure, the legislation is aiming to attract investors and other high skilled immigrants. Instead of building a more embracing immigration law, apparently the Proposal is copying restrictive laws such as the European immigration law.

Another change in visa regulation, an innovation brought by the PL is the temporary visa for healthcare reasons (art. 21). The visa lasts for a year and can be extended if necessary (according to the health treatment). It can be granted with the same conditions to a person accompanying the immigrant in question. However, the health treatment cannot be given by the Brazilian public healthcare system<sup>63</sup>, only by private clinics. Another new incoherence in terms of egalitarian treatment is that the visa is restricted to healthcare reasons (which means for example the person accompanying is not allowed to work). It can be inferred that only rich foreign citizens have this right while to low-income<sup>64</sup> immigrants the same right is denied.

There are two positive reforms brought by the PL that deserves to be highlighted: the treatment related to human trafficking and changes concerning extradition. The first (art. 42<sup>65</sup>) grants special treatment to individuals qualified as victims of human trafficking: the Ministry of Justice allows a stay for a year. If the victim collaborates intensively with the human traffic investigations, this special visa can be extended for one more year or even become a permanent permit. Regarding extradition, The Proposal adds more cases in which Brazil will not extradite foreign citizens<sup>66</sup>: if an investigation provides evidences or suspicions the individual is being punished based on discriminatory laws<sup>67</sup> (for example, in cases such as ethnic conflicts, gender, religion, political opinion or sexual orientation).

The repatriation, how it is described in the Foreigners’ Statute, is defined as the return to Brazil (in this case, a Brazilian citizen, and considering the exceptional situations which underlies the repatriation), funded by the State. Considering the way the Proposal defines it, what we have is a

---

<sup>61</sup> Assuming the prohibitions aimed to reach the undesirable interference in the government from international media, the text still needs reforms because, the way it is, community radios (an important tool for immigrants) are not allowed as well (Ventura, 2010)

<sup>62</sup> In South America, Brazil is the only country where foreign citizens cannot vote and be voted.

<sup>63</sup> Sistem Único de Saúde (SUS)

<sup>64</sup> The same question concerning access to healthcare is asked concerning undocumented immigrants. The way the law is written, a new conflict can emerge: is the federal government, the State or the municipal government responsible to provide basic rights? This should be an easy question to answer but competence conflicts are, unfortunately, common in Federative Systems such as the Brazilian Governmental System.

<sup>65</sup> The mentioned article follows the established in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime. Brazil ratified the Protocol in 2004 (Decree n. 5015, 2004).

<sup>66</sup> Art. 126, PL 5655/2009

<sup>67</sup> The text in Art. 126 (item 13) again mentions the “national interest” as a reason to extradite or not the foreign citizen. The vagueness or broad meaning of this term can imply discretionary actions or wrong decisions concerning extradition

legislation much more aligned with the European Return Directive than a practice similar to the International Refugee Rights, for instance. The text (Art. 102<sup>68</sup> to art. 110) is again broad and even abstract. PL 5655/09 defines repatriation in a way it can be determined according to how the authority interprets the law (in this case, a federal police agent). According to Ventura (2010), the art. 102 is not permissible because, “depending how it is applied by a police agent, soon Brazil will have peculiar zones (those not considered as national territory) which can make more difficult to immigrants apply to asylum visa. This kind of measure is commonly seen in other countries and they violate the refugees’ rights<sup>69</sup> (Gil, 2012)

## 4.2. The National Immigration Policy<sup>70</sup> - CNIg

The Brazilian National Council of Immigration, CNIg, is responsible to coordinate the immigration policy, coordinate the public institutions involved in immigration and elaborate the Brazilian immigration plan. The Council gained important role in the current days while a definitive reform in the Immigration Law does not take place: CNIg is the responsible to provide the *remedies* to correct outdated articles of the Estatuto (especially the articles concerning the rights of migrant worker) and this is done by the resolutions published by the Council<sup>71</sup>.

In the year of 2010, the National Council (CNIg) presented an Immigration Policy officially known as *Política Nacional de Imigração e Proteção ao Trabalhador Migrante*<sup>72</sup>. The document is more concised and objective than the PL 5655/09 and has just 25 rules. In the next paragraphs, the items will be analysed and compared with the previous initiative to substitute the Foreigners’ Statute.

CNIg’s Policy is more progressive, more human rights oriented and puts the immigrants in a more equal position in comparison with the national citizens. It also aims to provide guidelines to Brazilian institutions acting in the field of immigration. In the part Concepts<sup>73</sup>, for example, there are definitions of the several situations related to the immigration dynamics (such as regular, irregular, student, asylee and so on) and, for the first time (in comparison with other proposals relative to the topic), the illegal immigrants their work conditions are mentioned.

The first paragraphs<sup>74</sup> of the document present a policy that aims to increase the relations regarding immigration and development and, especially, to protect the human rights<sup>75</sup> of the immigrants. The National Immigration Policy (CNIg) aims to ensure that immigration and social-economic development are inalienable rights of all people and the Brazilian process of admission

---

<sup>68</sup> The repatriation aims to prevent foreign citizen without visa or any other permission entering Brazilian territory even if the citizen is in the airport area, at a territorial border or in a harbour (translated by the author)

<sup>69</sup> According to the Law 9474/1997, art. 7, foreign citizens express their wish to request recognition as a refugee to any immigration authority at the border. The officer will provide the asylum seeker the necessary information about the appropriate procedures. This Law is based on The UN Refugee Convention (1951).

<sup>70</sup> The Immigration National Council was created in 1980 (by the Estatuto do Estrangeiro) and it is part of the Ministry of Labour and Employment (MTE)

<sup>71</sup> The last resolution was published in 2008 (Resolução 80/2008) and aims to facilitate the immigration process for the individuals coming from Mercosur area.

<sup>72</sup> The full name is National Immigration Policy and Protection of Migrant Workers

<sup>73</sup> The session is composed by 11 topics and they were all based on definitions of the Inter-American Court of Human Rights (Opini3n Consultiva, OC – 18/03, 2003)

<sup>74</sup> “[...] policy that aims to establish principles, guidelines, strategies and actions concerning the international migration, provide orientations to Brazilian entities involved in migration, and contribute to protecting the human rights of the immigrants as well as to increase the bonds regarding immigration and development (Política Nacional de Imigração, CNIg, 2010)

<sup>75</sup> The document highlights the concepts of Human Rights observe the established in the Pact of San Jose

of migrants must be non-discriminatory. It also aims to ensure "the rights and guarantees established by the Brazilian Constitution <sup>76</sup>and international treaties and agreements".

According to CNIg's Migration Policy, regardless of the immigrants status all immigrants and their families have the right to education (considering particularly the situation of their children and adolescents and their educational needs) and healthcare as well as the protections and benefits belonging to their employment relationship. The policy also ensures that illegal immigration is an administrative violation and the immigrant, therefore, may not suffer any criminal sanctions (Item 6).

The item 3 says legal immigrants deserve equal treatment and opportunities and have all their rights assured, including the access to free legal aid, as well as having the same obligations in comparison with a Brazilian citizen. It also manifests the need to promote measures in order to integrate the immigrant into Brazilian society, aiming to contribute with the development as a whole. Regarding these items, it can be considered an advance in comparison with the other reform projects and it certainly is progressive when the comparison is made with the Foreigners' Statute. But assuring basic rights to legal immigrants does not seem properly a progressive measure, generally speaking, especially considering the real vulnerable individuals are those in illegal situation in Brazil and, therefore, deserve more attention from authorities.

The following guidelines can be found in the CNIg's text: this project aims to end the excessive bureaucratic procedures <sup>77</sup>; standardization of procedures, more transparency and agility when granting visas, proper training for public servants acting in this area. Especially when it comes to training there is a big list of complaints about the agents and it goes from providing incomplete informations or asking for excessive (and unnecessary) number of documents to indifferent or aggressive treatment of immigrants.

The item *Actions* proposes to conduct studies continuously (statistics and other qualitative researches) to provide the public entities involved in the policy with the necessary data. This helps to identify the real circumstances for immigrants and its dimensions and also to identify possible issues regarding gender, nationality or other factors of vulnerability. Part of the Actions is described below

1. Promote seminars to identify clarify all the interesting parts in the immigration process of Mercosur Agreements. Amnesties and other agreements related to important themes in this examined area such as labor and pension regulations;
2. Promote access for immigrants and their families to public policies related to employment and income generation (especially in regions such as the country borders)

---

<sup>76</sup> The fifth article of the Brazilian Constitution declares "All the citizens are, by law, equal, without any distinctions, guaranteeing to Brazilians and foreign citizens residing in the country, the inviolable right to life, liberty, equality, security and property [...]" Constituição Federal, 1988

<sup>77</sup> Such as the great number of documents necessary for immigrants, visa procedures, changes on the visa status and so on.

3. Accelerate the process of ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;<sup>78</sup>
4. Informative Campaigns, in different languages, to promote the immigrants awareness regarding their rights and duties and the National Migration Policy;
5. Set up a data base filled with statistics, qualitative researches, official documents, legislations and other norms and make it accessible to immigrants and organizations dealing with immigration dynamics;
6. Measures to protect the rights of immigrants at work especially in regions where immigrants are more vulnerable such as the border cities;
7. Specific measures, either from governmental entities or in partnership with NGOs, will be promoted in order to enable immigrants or returned emigrants to access social care, healthcare and social-economic and cultural integration policies/measures (?);
8. Direct and permanent dialogue about human trafficking, with governmental entities, immigrants organizations, specialists, NGOs and others, working directly with the issue to promote awareness campaigns;
9. Promote more transparency in the governmental entities dealing with immigration, improvement social participation in the immigration processes, conduction of more conferences and strengthen the role of CNIg in supporting the immigrants and the returned Brazilian emigrants;
10. Stimulate the dialogue about migration in the State and Municipal governments as well as about the social services provided by these two governmental spheres to immigrants.
11. Companies hiring illegal immigrants will suffer sanctions.

Although the item 11 can possibly cause negative reactions and comparison with more strict legislations such as the Portuguese Immigration Law (approved in 2012) or even the Immigration Measures adopted by the State of Arizona<sup>79</sup> the main goal of the item is to prevent possible exploitation of their<sup>80</sup> work force or even human traffic. However, the referred item is very vague and does not explain what kind of sanction (administrative or penal) will be applied to those caught in the situation described (Illes and Ventura, 2010)

To conclude, the reader can infer CNIg's Policy is more objective and human rights driven in comparison with the Proposed law proposed by the Ministry of Justice. According to *Le Monde Diplomatique* (2010) the policy proposed by CNIg faced strong resistance by the Congress (several congressmen considered the policy very permissive). Sprandel<sup>81</sup> (2012) highlights the Brazilian Congress still has a conservative character and this represents an obstacle to approve

---

<sup>78</sup> Adopted by General Assembly resolution 45/158 of 18 December 1990

<sup>79</sup> Approved in 2010, the SB 1070 was intensively criticized for its xenophobic and racist character. Illegal immigrants will be criminalized as well as those who hire them or even transport them.

<sup>80</sup> Recently Brazilian media reported many cases of Bolivian workers being exploited by sector of the textile industry

<sup>81</sup> The Project 5655 spent a long time under examination of deputy Cadoca. To Sprandel (2012) this is clearly to delay the reform considering the deputy is responsible for the Commission of Sports and Tourism and this has nothing to do with immigration

CNIg's Policy. The next section of this chapter will discuss the most recent Proposed law, proposed in 2013.

### 4.3 The Proposed law 288/2013 – Chamber of Senators

The Proposed law 288 (PL 288/2013<sup>82</sup>) is another proposal aiming to reform the Foreigners' Statute. The author is senator Aloysio Nunes (PSDB<sup>83</sup>/SP) and, according to him, the initiative came from his own experience as refugee<sup>84</sup> in France. He declares the Immigration Law in Brazil needs to be reformed urgently because the statute does not comply with democratic values and humanitarian principles. In his discourse, senator Nunes says 'The Foreigners' Statute, conceived in the early 1980s, is merely focused on national security and treats the immigrants with too much authoritarianism, putting them in a very inferior status compared with the Brazilian citizens. According to him, a new law must be implemented soon which is more focused on values such as international cooperation, human rights and respecting the labor relations and its rights (Notícias Senado, 16/08/2013)

The PL 288/2013 considers as immigrants the foreign citizens who settle in Brazil permanently or temporarily, including refugees, asylum seekers and stateless people. (Projeto de Lei 288/2013, item Justificação). The Proposal has 65 articles and its sections describe the immigrants' rights and duties, the concept of immigrant, types of visas, deportation, and so on. In the paragraphs below, the main articles will be detailed and criticized.

The first article presents the law and what it aims: "The present law regulates the rights and duties of the immigrants as well as the conditions to enter and to stay in Brazil. The article also defines an immigrant as "every foreign citizen who works, resides in Brazil or stays in the country temporarily, permanently or is in transit" (Paragraph 1, article 1). No different of the initiatives analyzed before, once again one can notice the law is copying other restrictive immigration laws (for example, the European).

The text in the item VII<sup>85</sup> (art. 1) calls the attention of the reader: The law aims to "encourage the admission of high skilled workers, who are necessary to foster Brazils economic, social, cultural, scientific and technological development and, also to increase fundraising and generation of employment and income". Again, one can notice the brain gain. Financial investments are the one of the real goals of the policy. A reader looking closely at the text of this item will also notice the vagueness of parts of the text like "*fostering social and cultural development*".

The following item (in the same article 1) describes one of the goals of PL 288/2013: to facilitate "the temporary stay of foreign citizens in order to boost trade, tourism, international relations and also cultural activities, sports events, scientific and technological activities". Highlighting the gains of tourism and world events (such as the World Cup, Olympic Games and other future

---

<sup>82</sup> The Project was presented in 16/08/2013.

<sup>83</sup> Party of Brazilian Social Democracy. Despite the name, PSDB is nowadays aligned with neoliberals and other conservative political parties.

<sup>84</sup> He was sent to exile during the military dictatorship and lived in France for 11 years. In his own words, he experienced xenophobia in France and this motivated him to promote a new and inclusive Immigration Law. (Agência Senado, 16/08/2013)

<sup>85</sup> VII - incentivo à admissão de mão de obra especializada necessária ao desenvolvimento econômico, social, cultural, científico e tecnológico do Brasil, à captação de recursos e à geração de emprego e renda

opportunities in the same field), one more time the monetary profits, including stimulating the touristic sector appear to be the priority over a reform to promote the social rights to immigrants.

PL 288/2013 contains the following items<sup>86</sup> about the rights of the foreign citizens and the access social rights:

- equality of treatment and equal opportunities for immigrants, notwithstanding more beneficial treaties than the provisions of this law;
- free and equal access to social services, public property, health, education, justice, labor, housing, banking, employment and social security;
- promotion and dissemination of the rights, freedoms, guarantees and duties of the immigrants;
- having social dialogues defining migration policies and promoting the participation of immigrants in the public decisions;
- strengthening of economic integration and the political, social and cultural development of the immigrants peoples of Latin America by setting up spaces of citizenship and assuring the free movement of these immigrants;
- international cooperation with the countries of origin, transit and destination of immigrants to ensure a greater protection of human rights of immigrants;

Just like seen in the other initiatives examined in this research paper, the PL is either repetitive (and does not bring any innovation when compared with the two other Proposals) or vague. The whole process to substitute the Statute seems arduous and slow. Compared to CNIg's Policy, PL 288/2013 does not look like a significant improvement, one could even question if it is an improvement at all. In any case, the rights of immigrants are assured in PL 288/2013 by a combination of items describing a very broad list of rights and vagueness.

PL 288/2013 does describe some advances in terms of free movements inside the Brazilian territory (in comparison with the Statute). The immigrant is guaranteed, on an equal basis with national citizens, the inviolable right to life, liberty, equality, safety and property, and assured:

I - civil rights, social, cultural and economic freedoms<sup>87</sup>

II - right to freedom of movement within the national territory;

III - right to family reunification of immigrants with their spouses and partners, children and their dependents;

More advances in terms of assuring basic rights are described as efforts to promote measures to protect victims of human traffic as well as immigrants who witnessed of human traffic. Differently of the old laws, the immigrants are assured of the right to assemble and create their own associations (as long as, according to items VI and VII, art. 3, these associations and groups have licit and peaceful purposes).

---

<sup>86</sup> These are items X to XVI from the first 2 articles of the PL 288/2013 (Art. 1)

<sup>87</sup> The rights and guarantees described in this law shall obey rights and duties described in the Brazilian Constitution, regardless the status of the immigrants. The rights and guarantees also take into account the international treaties or conventions in which Brazil signed.

Exactly like PL 5655/2009, the Proposal drafted by senator Nunes proposes concession of visas for healthcare reasons<sup>88</sup>. Like in the Project from 2009, PL 288/2013 insists on the condition that the health treatment cannot be realized in the Brazilian public system. This is incoherent with egalitarian treatment compared to nationals since, as cited in a previous section of this research paper, only wealthy foreign citizens has this right while to low-income immigrants the same right is denied. The conditions to grant permanent visas in the Project 288/2013 are also similar to PL 5655/2009. One can see advances and setbacks. An advance are the lighter conditions for granting permanent visas for family reunions with no discrimination of same sex couples<sup>89</sup>.

As a setback, is that permanent visas will be granted to foreign citizens detaining “outstanding knowledge in their professional areas and can provide relevant services to Brazil” and investors who are able to “undertake productive investment which includes generation of jobs in satisfactory number, taking in consideration where in Brazil this enterprise is located” (Art. 11, item VIII). According to Camila Asano (2014) assuring the same rights to immigrants regardless the incomes is a major step for migration laws looking at it from a human rights perspectives.

Giving privileges when it comes to granting permanent visas to immigrants based on the amount of money invested in Brazil is a questionable decision. To conclude the section about permanent visas, PL 288/2013 makes explicit that “only the foreign citizens in regular migration status are able to apply for permanent visas”. The exceptions to this are cases of family reunion or if the citizen in question is classified as victim of human traffic, or in cases of amnesties and international treaties.

The art. 26<sup>90</sup> (repatriation) copies what is established in the PL of 2009 and the criticism is the same: it is a legislation aligned with the European Return Directive and it is not consistent with, for instance, human rights practices such as the International Refugee Rights. A vague text which does not explain correctly how the agent will apply the law and opens space to creation of zones not considered as national territory which can make it more difficult for immigrants to apply to asylum visa.

PL 288/2013 ensures that illegal immigration is an administrative violation and the immigrant, therefore, may not suffer any criminal sanctions. But, on the other hand, it lists penalties and fines for those immigrants disobeying the rules in article 61<sup>91</sup> (the offences are, for example, the lack of necessary documents or working without a proper visa). The penalties can be considered severe and not proportional with the violations. Another aspect to be investigated, according to Camila Asano (2014) is the list and amount of fines in the case of violation. The cited fines

---

<sup>88</sup> The visa lasts for a year and can be extended if necessary (according to the health treatment). It can be granted, with the same conditions, to a person accompanying the immigrant in question

<sup>89</sup> The celebration of civil gay marriage was established in Brazil in 2013 by the National Council of Justice (CNJ)

<sup>90</sup> Art. 26: The foreign citizens without proper documentation which allows them to enter or stay in Brazil will be repatriated, no matter in areas such as airports, ports of borders posts. The competent authority responsible for the respective surveillance area will proceed with the repatriation.

<sup>91</sup> As an example, here we have some fragments of the article 61: “the entry Brazilian territory or staying in Brazil without proper documents, considering even areas such as airports, ports or borders posts: Penalties - fines and repatriation; if required presence of the foreign citizen to any governmental agency or institution responsible for immigration and he/she does not show according to the stipulated deadline to do so: fine or prison in order to proceed expulsion; VI – if those granted with refugee visa leave Brazil without permission of the competent authority: Penalty - loss of refugee status

represent now a major financial source for the Brazilian Federal Police<sup>92</sup> (PF). It is clear it is in the interest of PF to keep the power over the immigration process in Brazil as main actor.

To conclude which are the main differences between the projects and initiatives, it is important to list important advances and measures to protect the rights of Brazilians abroad or of Brazilians who returned. In the first case, visas can be granted for humanitarian reasons, with a maximum of two years, regardless the immigration status of the candidate. Deportations and expulsions will not be applied if the alleged reasons are not in consonance with the Brazilian Constitution and other correlated law<sup>93</sup>. Certainly the big progress brought by the initiative of senator Nunes is translated in the art. 64. This article says it will be possible for foreign citizens own broadcast companies, magazines.

Concerning the Brazilians abroad, the PL examined puts efforts in the protection of the dignity<sup>94</sup> and rights of the emigrants and gives more attentions to the cases of international kidnapping and gives full assistance to the Brazilian parents (Art. 56). The following articles also declare isentions of possible taxes for Brazilian emigrants moving back to the country (Art. 58 declaring isention of importation and customs taxes of their belongings and or properties), assuring rights in the National Institute of Social Security (INSS) taking in consideration the time the Brazilian emigrant was abroad as well as exemption of any possible fines related to INSS.

To complete this section, the reader can infer PL 288/2013<sup>95</sup> proposes advances in the treatment of immigrants and aims to promote a more egalitarian status in the relation immigrant – national. However, the reader also finds many inconsistencies and the same dynamic setback-advance found in the PL 5655/2009. The final section of this chapter will briefly discuss the COMIGRAR which is the most recent initiative (2014) to promote a more inclusive Brazilian immigration.

#### **4.4 - COMIGRAR**

COMIGRAR<sup>96</sup>(National Conference about Migrations and Refuge) is the most recent attempt to promote a new immigration law which is more inclusive, egalitarian and in accordance with human rights principles. COMIGRAR is described as “an innovative governmental initiative to answer the migration question in Brazil. The initiative was coordinated by the Ministry of Justice. Participants were the Ministry of Labor, Ministry of Foreign Affairs, the International Organization for Migration and UN Agencies (UNCAC, UNHCR, UNDP). The Conference aimed to discuss core concepts regarding migration” (United Nations Office on Drugs and Crimes, 04/06/2014).

---

<sup>92</sup> The fines are also target of immigrants’ complaints. They are high and there is no exemption granted for the immigrants proven without financial resources to pay them.

<sup>93</sup> It represents a hope for those immigrants who suffer persecution in their countries of origin for religious reasons, political opinion or gender issues.

<sup>94</sup> Art. 55 Protect the dignity of the Brazilian emigrant is one of the principles to guide Brazilian Foreign Policy.

<sup>95</sup> PL 288/2013 is under examination of senator Ricardo Ferraço (Comission of Foreign Affairs and National Defense), since 05/06/2014.

<sup>96</sup> COMIGRAR took place in São Paulo from 30/May to 1<sup>st</sup> of June, 2014.



An innovation in COMIGRAR<sup>97</sup> is that immigrants can, for the first in Brazil, actively participate in the conference with proposals for a new immigration law. The Conference included meetings, courses and mobilization of local actors that are involved in the many immigration processes. As a result, a list of claims and suggestions which was compiled as one official document<sup>98</sup>, in other words, a formal proposal aiming to provide the government with the necessary information to build a new immigration policy.

According to the Secretary of Justice, Mr. Paulo Abrão (Ministry of Justice, 02/06/2014), such a Conference, an open and participative forum, without discriminations or impositions, already represents a change of paradigms in terms of how the immigration question was discussed in Brazil. The debates composing COMIGRAR were free conferences organized by members of the civil society, the federal universities and the expat communities in Brazil as well as representatives of Brazilians abroad. Members of municipal and state governments were also present.

#### **4.4.1. COMIGRAR and its collected proposals**

The items listed by COMIGRAR suggest improvements (or even ample access) in the following areas: jobs (and rights related with work relations), labor market, broad access to education, healthcare, social services as well as a more prepared governmental staff to deal with questions such as validation of documents. Regarding the last item, the immigrants were unanimous: the public servants<sup>99</sup> are not well prepared to deal with the bureaucratic process (either visas or validation of documents, such as diplomas or even simple documents and declarations).

COMIGRAR had simultaneous conferences in all 5 regions in Brazil. The regions, North, Center-West and South of Brazil, counted with a high number of (Ministry of Justice, 21/05/2014) of Haitians, Senegalese, Syrians and Brazilian emigrants. In this case, the main complaint was lack of access to public healthcare<sup>100</sup>. In terms of social assistance, the claims were for more shelters (especially in big cities such as São Paulo), access to portuguese courses and less bureaucratic procedures for visas.

Referring to the immigrant groups analyzed during COMIGRAR, very specific realities, such as prisoners<sup>101</sup>, refugee women, students, communities of foreigners already established in Brazil (such as the Syrians and Haitians<sup>102</sup>), children and LGBT immigrants, were heard and could contribute with proposals concerning their particular situations.

COMIGRAR also directed its efforts to brazilians living abroad (considering the Brazilian diaspora and their questions, as related in the chapter 3 for this Research paper) and especially those aiming to return to Brazil. Many conferences were held in cities with Brazilian

---

<sup>97</sup> The Secretary of Justice, Paulo Abrão, declared COMIGRAR formed an important space where the participants worked to solve the many bottlenecks in the actual immigration scenario in Brazil. COMIGRAR also represents the strengthening of partnerships Government-NGOs but also the inclusion of the immigrants and their representatives in a participatory process.

<sup>98</sup> The document was forwarded to the Federal Government.

<sup>99</sup> Especially the immigrants in vulnerable conditions (victims of human traffic and refugees, for instance) complained about as xenophobia, bullying, racism coming from the public agents.

<sup>100</sup> The majority of Syrians, Haitians and Senegalese have refugee status. Therefore, their proposals asked for a proper registration in the healthcare system for refugees as well as a more humanized treatment. Another claim was for trained staff (including trainment in other languages) in the main healthcare units.

<sup>101</sup> The main complaints were lack of contact with their families, difficult access to public defenders and translators, therefore, they have few or none information about their criminal lawsuits. Several prisoners affirmed they were forced to sign documents written in Portuguese even when they made clear they did not understand the language.

<sup>102</sup> Haitians complain especially about racism, difficult access to healthcare and education and the pay gap when compared with Brazilian in the same work position.

communities, as Asunción, Atlanta, Boston, Buenos Aires, Brussels, Ciudad del Este, Frankfurt, Geneva, Georgetown, Hamamatsu, London, Los Angeles, Paramaribo, Madrid, Milan, Nagoya, São Francisco Tokyo, Toronto, Wellington, Washington, Vancouver and Zurich.

Recently (September/2014) the project of an immigration law based on COMIGRAR was sent to the Ministry of Justice. The Project (still without number or official name) still has to face journey until finally reach the Congress and be submitted to approval. Considering one of the first measures of the Project is the transfer the power from the Federal Police to a National Immigration Authority (a governmental entity specialized in migration and its dynamics) there are big chances of lobbies aiming to block the approval of the document in these terms.

## Chapter 5: Conclusion

Studying the immigration policies in Brazil has brought to light some of the concepts and mentalities behind the policy making process towards immigration and the role of the institutions involved in these dynamics. The introduction of this Research paper and fragments of chapter 4 cite several cases of racism towards Africans and Haitians. It can be concluded that after decades of racist and eugenic immigration policies (described in Chapter 2) the same mentality is still alive in the present days.

The present Research paper sought to answer the following question:

*Main Question: Is there presently a change of paradigm underway in the immigration policy of Brazil, away from security towards more emphasis on respect of immigrants and the human rights?*

If immigration is seen as a right and not merely a strategy to boost the economy of the countries or a question of national security, the proposed laws analyzed in chapter 4 (PL 288/2013 and PL 5655/2009) are failing to achieve this goal. When these two initiatives are compared with the Estatuto do Estrangeiro (1980) it is true they represent change and give a better treatment to immigrants. However, they also have many setbacks and several articles do not meet the human rights agenda or do not match the values of modern democracies. According to PL 5655/2009 the immigrants do not have political rights and cannot own broadcast companies. Political rights have another tricky question: since the immigrants cannot vote most deputies and congressmen do not care about their claims (immigrants do not represent to them more votes in future electoral campaigns)

Both proposed laws have articles assuring immigrants rights such as education and healthcare but are also vague how these rights are exactly met. The laws are broad and do not specify the responsibilities of the entities involved in these areas (the states and municipalities).

From a humanitarian perspective, both proposed laws (288/2013 and 5655/2009) have serious shortcomings: the temporary visa for healthcare reasons has as condition that the health treatment cannot be given by the Brazilian public healthcare system, only by private clinics. Therefore, only rich foreign citizens actually have this right while to low-income immigrants (and also the undocumented immigrants) have the same right worth in name only since they cannot afford private healthcare. This condition certainly does not mean egalitarian treatment in comparison with Brazilian citizens.

In the two proposed laws, the Federal Police stays the responsible institution to deal with immigrants. If Brazil wants to leave behind the paradigm of securitization the Federal Police (PF) should no longer be the main responsible institution to deal with immigrants. Only there is a clear incentive for the PF to keep their role since the fines and taxes paid by immigrants represent a major financial source for the Brazilian Federal Police. It is not hard to conclude PF will try to block new immigration policies aiming to take this power from them.

The immigration policy presented by the Brazilian National Council of Immigration, CNIg is, from the three analysed, the most progressive one in terms of protection of the immigrants' rights. According to CNIg's policy, regardless of the immigrants' status all immigrants and their families have the right to education (considering particularly the situation of their children and adolescents and their educational needs) and healthcare as well as the protection and benefits

which comes with their employment relationship. The policy also says that illegal immigration is an administrative violation and the immigrant, therefore, may not suffer any criminal sanctions. CNIg proposes the immigration and immigrants will be the task for a new institution, the National Immigration Authority (and no longer the Federal Police).

However, with a Congress considered very conservative<sup>103</sup> it is hard to believe CNIg's proposal will be approved. The same can be expected for COMIGRAR.

The most recent initiative to change the immigration policy in Brazil is COMIGRAR. This research paper could not analyze COMIGRAR in much detail since the Conference is very recent and still passing by evaluations and exams. But with the basic information brought by the chapter, the reader can conclude the Conference can result in a more modern, inclusive and human rights based immigration policy. Just like mentioned in the paragraph above, it is unlikely that the project arising from COMIGRAR will be approved in the Congress and become the new immigration policy of Brazil (at least not in the next 4 years).

Along this research paper the reader could notice how messy the policy changing process can be in Brazil: three different areas presented immigration policy proposals and two of the (PL 288 and PL 5655) were very repetitive and vague. It is logical that a project about the same theme and presented four years after the first attempt to reform come with innovations, corrections and more aligned with the new reality of the country. In this sense, PL 288 has only one positive item in comparison with PL 5655: immigrants are allowed to vote.

But PL 288 does not explain any condition (how many years of permanence in Brazil it takes to have the right to vote assured, if the immigrant will vote for all the elections or just for mayor like previous propositions cited along the research paper, etc). Summing up, the reader cannot understand what is the real purpose of the PL 288 considering it basically does not advance when compared to PL 5655/2009.

The reader has also to consider the new political moment in Brazil. Many journalists and scholars are highlighting the rise of a new extreme right wing in Brazil. The end of 2013 and first months of 2014 were marked by events with ultraconservative bias such as March of the Family with God for Freedom (The same march occurred in 1964 and was used by the military to justify the need for intervention in Brazil). The history proved and keeps proving ultraconservatives are not very friendly with immigrants, to say the least.

To conclude, with all the exposed in the paragraphs above and the chapters of this research paper, the answer to the question *Is there presently a change of paradigm underway in the immigration policy of Brazil, away from security towards more emphasis on respect of immigrants and the human rights?* is: no. Brazil has many policy makers (such as Paulo Abr o and Paulo Illes) and politicians (such as Fernando Haddad, mayor of S o Paulo) dedicated to the cause of immigrants and aiming to change the Brazilian immigration policy. However, they do not represent a majority. The excess of bureaucracy is also a setback to promote reforms towards a more egalitarian immigration policy. Apparently organs such as CNIg still have to correct the outdated Estatuto do Estrangeiro, the current law, with amnesties and resolutions. A concrete change in the actual scenario is not glimpsed by this writer.

---

<sup>103</sup> Recently the news in Brazil highlighted the country has now the most conservative Congress since 1964, the first year of the military dictatorship.

## References

Acordo Cultural Brasil-Portugal, 1966. Accessed on 30/10/2014, at: [http://dai-mre.serpro.gov.br/atos-internacionais/bilaterais/1966/b\\_27/](http://dai-mre.serpro.gov.br/atos-internacionais/bilaterais/1966/b_27/)

Agência Brasil – “Brazil’s economic miracle, social exclusion and state violence”. Accessed on 02/10/2014, at: <http://agenciabrasil.ebc.com.br/en/politica/noticia/2014-03/brazilian-economic-miracle-social-exclusion-and-state-violence>

Agência Senado – “Aloysio Nunes comunica apresentação de projeto em benefício de imigrantes”. Accessed on: 09/10/2014, at: <http://www12.senado.gov.br/noticias/materias/2013/08/16/alloysio-nunes-comunica-apresentacao-de-projeto-em-beneficio-de-imigrantes>

Âmbito Jurídico: Breve análise sobre o caso Cesare Battisti. Accessed on 05/11/2014, at: [http://www.ambito-juridico.com.br/site/index.php?n\\_link=revista\\_artigos\\_leitura&artigo\\_id=10375](http://www.ambito-juridico.com.br/site/index.php?n_link=revista_artigos_leitura&artigo_id=10375)

Andena, Emerson Alves. *Transformações da legislação imigratória brasileira: dos (des)caminhos rumo aos direitos humanos*. 2013. Dissertação de mestrado – Faculdade de Direito, Universidade de São Paulo, São Paulo, 2013.

Aradau, Claudia. *Beyond Good and Evil: Ethics and Securitization/Desecuritization Techniques*. Rubikon e-journal, 2001

Arretche, Marta. *Políticas públicas – coletânea. Federalismo e políticas sociais no Brasil: problemas de coordenação e autonomia*. Escola Nacional de Administração Pública (ENAP), Brasília, 2006.

BBC Brasil: Japão oferece três mil dólares para cada dekassegui que voltar ao Brasil. Accessed on 30/10/2014, at: [http://www.bbc.co.uk/portuguese/noticias/2009/04/090401\\_dinheirodekasseguiet.shtml](http://www.bbc.co.uk/portuguese/noticias/2009/04/090401_dinheirodekasseguiet.shtml)

Betts, Alexander (2010). Global Migration Governance – the Emergence of a New Debate. Accessed on 11/06/2014, at: <http://www.globaleconomicgovernance.org/policy-brief-global-migration-governance-%E2%80%93-emergence-new-debate-2010>

Brasileiros No Mundo Report. Ministério das Relações Exteriores. Accessed on 02/10/2014, at: <http://www.brasileirosnomundo.itamaraty.gov.br/a-comunidade/estimativas-populacionais-das-comunidades/Brasileiros%20no%20Mundo%202011%20-%20Estimativas%20-%20Terceira%20Edicao%20-%20v2.pdf>

Câmara dos Deputados do Brasil – “Relações Exteriores debate reforma do Estatuto do Estrangeiro neste semestre”. Accessed on 18/05/2014, at: <http://www2.camara.leg.br/camaranoticias/noticias/RELACOES-EXTERIORES/434769-RELACOES-EXTERIORES-DEBATE-REFORMA-DO-ESTATUTO-DO-ESTRANGEIRO-NESTE-SEMESTRE.html>

Conectas Direitos Humanos – “Jus Econômico: Estatuto do Estrangeiro. Entrevistada: Camila Asano”. Accessed on 24/10/2014, at: <http://www.conectas.org/pt/acoes/midia/noticia/25388-jus-economico-estatuto-do-estrangeiro>

Consciência Net: Lula e o NYT. Accessed on 05/11/2014, at: <http://www.consciencia.net/2004/mes/05/lula-nyt.html>

Coimbra, Cecília M. B. *Doutrinas de segurança nacional: banalizando a violência*. Psicologia em estudo. DPI/CCH/UEM v. 5 n. 2. Rio de Janeiro, 2000

Constituição Federal do Brasil (1988). Accessed on 26/09/2014, at: [http://www.planalto.gov.br/ccivil\\_03/constituicao/Constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/Constituicao.htm)

Custódio, Maria C. *Artes de fazer uma congregação católica: uma leitura ceiteausiana da formação e trajetória das filhas da Imaculada Conceição (1880-1909)*. Doctorate thesis, Faculdade de Educação da Universidade de São Paulo, 2011.

Declaração dos Direitos Humanos. Accessed on 10/10/2014, at: [http://www.ohchr.org/en/udhr/documents/udhr\\_translations/por.pdf](http://www.ohchr.org/en/udhr/documents/udhr_translations/por.pdf)

Decreto 5.015, 12 de março de 2004, Presidência da República. Accessed on: 01/10/2014, at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2004-2006/2004/decreto/d5015.htm](http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/decreto/d5015.htm)

Departamento da Polícia Federal do Brasil. Accessed on 28/10/2014, at: <http://www.dpf.gov.br/institucional/historia/historia-cont>

Dutra, K. *Ernesto e o processo de abertura política do Brasil*. Accessed on 28/10/2014, at: <http://pnld.moderna.com.br/2012/09/12/ernesto-geisel-e-o-processo-de-abertura-politica-no-brasil/>

Educar para o Mundo – “Panorama Geral da Lei de Migrações Brasileiras (1980-2014)”. Accessed on 09/10/2014, at: <http://educarparaomundo.wordpress.com/category/lei-de-migracoes/>

Estatuto do Estrangeiro (Lei 6815/1980). Accessed on 24/10/2014, at: [http://www.planalto.gov.br/ccivil\\_03/leis/l6815.htm](http://www.planalto.gov.br/ccivil_03/leis/l6815.htm)

Freyre, G. *Casa-grande & Senzala: formação da família brasileira sob o regime da economia patriarcal*. 48ª Ed. São Paulo: Global, 2003.

Estadão: Congresso Eleito é o mais conservador desde 1964. Accessed on 29/10/2014, at: <http://politica.estadao.com.br/noticias/eleicoes,congresso-eleito-e-o-mais-conservador-desde-1964-afirma-diap,1572528>

Geraldo, Endrica. *A Lei de Cotas de 1934: Controle de Estrangeiros no Brasil*. Cadernos AEL, v. 15, n. 27. IFHC/UNICAMP, São Paulo, 2009.

Gil, Ana Rita, A Nova Lei de Estrangeiros: as inevitabilidades e as desnecessidades. Faculdade de Direito Universidade Nova Lisboa, Portugal. Accessed on 09/10/2014, at: <http://www.fd.unl.pt/anexos/6773.pdf>,

Globo News: Diálogos com Mario Sergio Conti – Cesare Battisti. Accessed on 30/10/2014, at: <http://g1.globo.com/globo-news/noticia/2014/04/nunca-matei-ninguem-afirma-o-italiano-cesare-battisti.html>

Imigração Japonesa – “Kasato Maru, o Navio da Esperança”. Accessed on 02/10/2014, at: [http://www.imigracaojaponesa.com.br/?page\\_id=261](http://www.imigracaojaponesa.com.br/?page_id=261)

Instituto Brasileiro de Geografia e Estatística, IBGE. Censo 2010: Resultados. Accessed on 01/10/2014, at: <http://censo2010.ibge.gov.br/resultados>

International Labour Organization: C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Accessed on 02/10/2014, at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_COD E:C111](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_COD E:C111)

Jus Brasil: O caso “Larry Rohter” e a PLS 141/2004. Accessed on 05/11/2014, at: <http://ruicastro.jusbrasil.com.br/artigos/134898869/o-caso-larry-rohter-e-a-pls-n-141-2004>

Koifman, Fábio. *O imigrante ideal. O Ministério da Justiça e a entrada de estrangeiros no Brasil (1941-1945)*. Civilização Brasileira. Rio de Janeiro: 2012

Maltman, S. *Securitization Theory and the Limits of Security Studies*, University of Aberdeen, *Draft paper for presentation at BISA Conference 2013, Birmingham Panel: The Ethics of Security and the Ethics of Securitization*, 2006.

Menezes, Lena. *Movimentos Políticas Migratórias em Perspectiva: Um balanço do sec. XX in Migrações Internacionais Contribuições para Políticas*. CNPD. Brasília 2001.

Ministério da Justiça do Brasil - “Ministério da Justiça inicia reformulação na legislação sobre migração”. Accessed on 18/05/2014, at: <http://www.justica.gov.br/noticias/ministerio-da-justica-inicia-reformulacao-na-legislacao-sobre-migracao>

Lei 11.961, 2/07/2009, Dispõe sobre a residência provisória para o estrangeiro em situação irregular no território nacional e dá outras providências. Accessed on 01/10/2014, at: [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2007-2010/2009/Lei/L11961.htm](http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Lei/L11961.htm)

Ordem dos Advogados do Brasil: OAP ratifica acordo com OAB para atuação profissional. Accessed on 30/10/2014, at: <http://www.oab.org.br/noticia/2974/oap-ratifica-acordo-com-oab-para-atuacao-profissional>

O Estrangeiro. Continua baixa a entrada de “superqualificados”. Accessed on 05/11/2014, at: <http://oestrangeiro.org/2013/01/13/entrada-de-superqualificados-continua-baixa/>

Patarra N. L. Migrações internacionais de e para o Brasil contemporaneo – volumes, fluxos, significados e políticas. In São Paulo em Perspectiva, v. 19, n. 13, p. 23-33, july/2005

Patarra N. L. O Brasil: país de imigração? (2012). O Estrangeiro. Accessed on: 24/10/2014, at: <https://oestrangeirodotorg.files.wordpress.com/2012/08/brasi-pais-de-imigrac3a7c3a3o-patarra.pdf>

Perfil Migratório do Brasil, 2009. Organização Internacional para as Migrações (OIM). Accessed on 02/10/2014, at: [http://www.mte.gov.br/trab\\_estrang/perfil\\_migratorio\\_2009.pdf](http://www.mte.gov.br/trab_estrang/perfil_migratorio_2009.pdf)

PF trata imigrantes como criminosos, sugere estudo. Carta Capital, 14/03/2012. Accessed on 18/05/2014 at: <http://www.cartacapital.com.br/sociedade/pf-trata-imigrantes-como-criminosos-sugere-estudo>

Política Nacional de Imigração e Proteção ao(a) Trabalhador(a) Migrante – Conselho Nacional de Imigração (CNIg). Accessed on 17/10/2014, at: <http://www.corteidh.or.cr/sitios/Observaciones/1/anexoII.pdf>

Projeto de Lei 5655/2009, Ministério da Justiça. Accessed on 24/10/2014, at: [http://www.camara.gov.br/proposicoesWeb/prop\\_mostrarintegra;jsessionid=0635B8AD615AA8458A8EE6FB327D463C.proposicoesWeb2?codteor=674695&filename=PL+5655/2009](http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra;jsessionid=0635B8AD615AA8458A8EE6FB327D463C.proposicoesWeb2?codteor=674695&filename=PL+5655/2009)

Projeto de Lei 288/2013, Senado Federal. Accessed on: 24/10/2014, at: [http://www.senado.gov.br/atividade/materia/detalhes.asp?p\\_cod\\_mate=113700](http://www.senado.gov.br/atividade/materia/detalhes.asp?p_cod_mate=113700)

Reis, Rossana. A política do Brasil para as migrações internacionais. Contexto Internacional, vol. 33, n.1. Rio de Janeiro, 2011. Accessed on 08/10/2014, at: [http://www.scielo.br/scielo.php?pid=S0102-85292011000100003&script=sci\\_arttext](http://www.scielo.br/scielo.php?pid=S0102-85292011000100003&script=sci_arttext)

Ribeiro, D. *O Povo Brasileiro: A formação e o sentido de Brasil*. 2ª ed. São Paulo: Companhia das Letras, 1995.

Sasaki, Elisa. *Dekasseguis: Trabalhadores migrantes nipo-brasileiros no Japão*. Campinas: UNICAMP, Núcleo de Estudos de População. São Paulo, 2000



Seyferth, Giralda – Colonização, Imigração e a Questão Racial no Brasil, REVISTA USP, São Paulo, n.53, p. 117-149, março/maio 2002

Serviço Pastoral do Migrante (2011) – Accessed on 16/05/2014, at: <http://spmigrantes.wordpress.com/quem-somos/>

Taureck, R. Securitization theory and securitization studies, University of Warwick, 2006. Accessed at 09/06/2014, at : <http://dx.doi.org/10.1057/palgrave.jird.1800072>

The New York Times: Brazilian Leader's Tippling Becomes National Concern. Accessed on 05/11/2014, at: <http://www.nytimes.com/2004/05/09/international/americas/09lula.html>

Ventura, Deisy (2010). Estatuto do Estrangeiro ou Lei de Imigração? - Accessed on 16/05/2014 at: <https://www.diplomatique.org.br/artigo.php?id=744>

Ventura, Deisy and ILLES, Paulo (2012). Qual a Política Migratória do Brasil? – Accessed on 16/05/2014, at: <http://www.diplomatique.org.br/artigo.php?id=1121>

United Nations Office on Drugs and Crime – “Comigrar reúne 788 pessoas para discutir Política Nacional de Migrações e Refúgio”. Accessed on 08/10/2014, at: Comigrar reúne 788 pessoas para discutir Política Nacional de Migrações e Refúgio

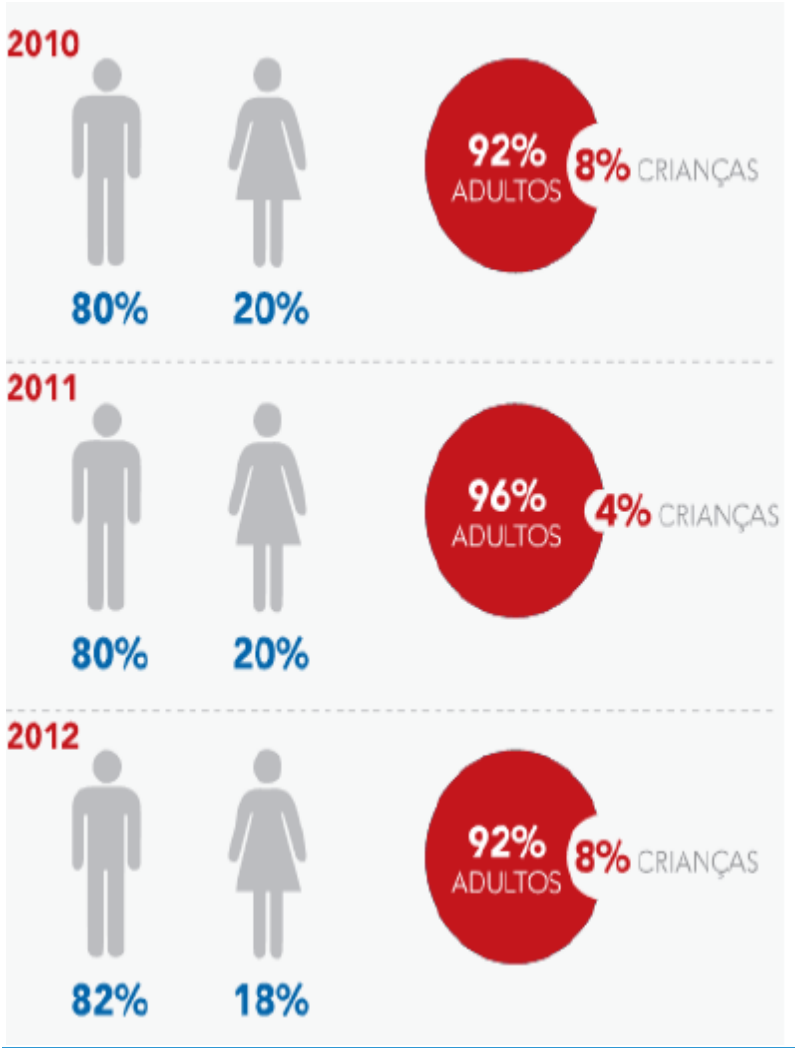
## Appendices

### Appendix 1 – Refuge requests (Percentage) from 2010-2012



Source: this image was extracted from the report Novo Perfil do Refúgio no Brasil, 2013. Ministério da Justiça e ACNUR, UN. Authors: Paulo Abrão and Andrés Ramirez

Appendix 2 – Age and gender of the refuge seekers<sup>104</sup>



Source: this image was extracted from the report Novo Perfil do Refúgio no Brasil, 2013. Ministério da Justiça e ACNUR, UN. Authors: Paulo Abrão and Andrés Ramirez

<sup>104</sup> Translations: crianças: children; adultos: adults.