Responses to Information Requests

Responses to Information Requests (RIR) are research reports on country conditions. They are requested by IRB decision makers.

The database contains a seven-year archive of English and French RIR. Earlier RIR may be found on the European Country of Origin Information Network website.

Please note that some RIR have attachments which are not electronically accessible here. To obtain a copy of an attachment, please e-mail us.

Related Links

- Advanced search help

---

ZZZ200494.E

Brazil and Haiti: Treatment of children with Brazilian citizenship, born of Haitian parents, who return alone to Brazil; services offered by the state for these minor children, such as foster homes, including conditions where they will be placed (2018–March 2021)
Research Directorate, Immigration and Refugee Board of Canada

1. Treatment of Unaccompanied Minors with Brazilian Citizenship

Information on the treatment of children with Brazilian citizenship, born of Haitian parents, who return alone to Brazil was scarce among the sources consulted by the Research Directorate within the time constraints of this Response.

In correspondence with the Research Directorate, a project coordinator at the Brazil office of the UN's International Organization for Migration (IOM) indicated that as with "any unaccompanied minors who travel alone [along] perilous migration routes, Haitian minors would certainly be vulnerable to abuse and exploitation from all sorts of agents along their journey" (UN 11 Feb. 2021).
According to Minority Rights Group International (MRG), "with little opportunity to improve their lives, young Afro-Brazilian men in particular have been drawn into drug gangs and violence," and Afro-descendant youth in Brazil "disproportionately" face these threats (MRG n.d.). An August 2020 blog post by Beatriz Rey and Estevan Muniz published by the Wilson Center's Brazil Institute [1] reports that, according to statistics from the Brazilian Ministry of Health (Ministério da Saúde), 10,821 children aged 0 to 14 were killed by firearms from 2001 to 2018, and of those children, 7,352 or 68 percent were Black; in the same period, 129,718 teenagers between 15 and 19 years old were killed by firearms, and 91,806 or 70 percent of these were Black teenagers (Rey and Muniz 20 Aug. 2020). The same source adds that, according to data from the Brazilian Institute of Geography and Statistics (Instituto Brasileiro de Geografia e Estatística, IBGE), Black people constituted 55.5 percent of the population in Brazil in 2018 (Rey and Muniz 20 Aug. 2020).

For information on the treatment of Haitians in Brazil, including access to education, health care and other services as well as state protection and support services, see Response to Information Request ZZZ200291 of August 2020.

2. State Protection
2.1 Legislation

The Constitution of the Federative Republic of Brazil, 1988 (Constituição da República Federativa do Brasil de 1988) provides the following:

Art. 227. It is the duty of the family, the society and the Government to assure children, adolescents, and youths, with absolute priority, the rights to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, liberty and family and community harmony, in addition to safeguarding them against all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.

…

§ 3°. The right to special protection shall encompass the following aspects:

…

VI - Government encouragement, through legal assistance, fiscal incentives and subsidies, as provided by law, for protection through guardianship of orphaned or abandoned children or adolescents;

… (Brazil 1988)
A report by the International Federation of Red Cross and Red Crescent Societies (IFRC) on Brazilian child protection legislation during disasters describes the Statute of the Child and Adolescent, Law No. 8.069 of 13 July 1990 (Estatuto da Criança e do Adolescente, Lei nº 8.069, de 13 de julho de 1990, ECA) as the "leading normative instrument" for child protection (IFRC 30 June 2020, 10). Similarly, the IOM Project Coordinator indicated that the ECA is the "basis for all public policies" on children and adolescents in Brazil, including both Brazilian nationals and foreigners (UN 11 Feb. 2021). Based on interviews conducted with "Brazilian experts" and a member of the Federal Public Defender's Office (Defensoria Pública da União, DPU), a March 2018 report on the treatment of migrant children in Brazil by Kids Empowerment, an NGO founded by "legal experts" working on the rights of migrant children (Kids Empowerment n.d.), notes that Brazilian courts have ruled that the ECA is applicable to migrant and refugee children (Kids Empowerment Mar. 2018, 16).

The ECA provides the following:

[translation]

Art. 28. Under the terms of this law, placement in a foster family will be done by means of custody, guardianship or adoption, regardless of the legal status of the child or adolescent.

Paragraph 1. Whenever possible, the child or adolescent will be previously heard by an interprofessional team, with respect for his/her stage of development and level of understanding of the implications of the measure, and his/her opinion will be duly considered. (As amended by Law No. 12,010 of 2009)

Paragraph 2. Consent obtained at a hearing is required for those over twelve (12) years of age. (As amended by Law No. 12,010 of 2009)

Paragraph 3. In assessing the request, the degree of kinship and relationship of affinity or affection will be taken into account, so as to avoid or minimize the consequences of the measure. (As added by Law No. 12,010 of 2009)

... 

Art. 29. Placement in a foster family will not be granted where a person demonstrates any form of incompatibility with the nature of the measure or where a suitable family environment is not available.

Art. 30. Placement in a foster family will not permit transfer of the child or adolescent to third parties or governmental or non-governmental entities without judicial authorization.

Art. 31. Placement in a foreign foster family constitutes an exceptional measure and is only permissible in the modality of adoption.
Art. 32. Upon assuming custody or guardianship, the responsible party commits to performing the charge well and faithfully, according to a statement included in the records.

Subsection II

Custody

Art. 33. Custody implies the obligation to provide material, moral, and educational assistance to the child or adolescent, and grants the party having custody the right to oppose third parties, including parents.

Paragraph 1. Custody is meant to regularize the de facto function, and may be granted in a preliminary or incidental manner in guardianship or adoption proceedings, except in the case of adoption by foreigners.

Paragraph 2. On an exceptional basis, custody will be granted in cases that do not involve guardianship and adoption to meet the needs of specific situations or to compensate for a possible absence of the parents or guardians, and the right of representation may be granted for carrying out specific acts.

Paragraph 3. For all legal purposes and effects, including social security, custody confers the condition of dependent upon the child or adolescent.

Paragraph 4. Barring an express and substantiated determination to the contrary by the competent judicial authority, or when the measure is applied in preparation for adoption, the granting of custody of children or adolescents to third parties does not impede the exercise of parental visiting rights, as well as the duty to provide support, which will be covered by specific regulation, at the request of the interested party or of the Public Prosecutor's Office. (As added by Law 12,010 of 2009).

...

Art. 36. Guardianship will be granted, pursuant to civil law, to a person up to eighteen (18) years of age. (Redrafted by Act 12,010 of 2009)

Single Paragraph. Granting guardianship presupposes the previous decree of loss or suspension of family authority, and necessarily implies the duty of guardianship.

...

Art. 98 Protection measures for children and adolescents are applicable whenever the rights recognized in this Law are threatened or violated:

   I. by act or omission of society or of the State;
   II. by fault, omission, or abuse on the part of parents or guardians;
   III. by reason of their conduct.
Art. 101. Whenever any of the cases specified in Art. 98 is verified, the competent authority may determine, among others, the following measures:

I. transfer to the parents or guardian, by means of a statement of responsibility;
II. temporary guidance, support, and monitoring;
III. compulsory enrollment and attendance at a public elementary school;
IV. inclusion in community or government services and programs for the protection, support, and promotion of the family, children and adolescents; (As amended by Law No. 13,257 of 2016)
V. request for medical, psychological or psychiatric treatment, in a hospital or outpatient setting;
VI. inclusion in a government or community program for assistance, guidance, and treatment for alcoholics and drug addicts;
VII. institutional foster care; (As amended by Law No. 12,010 of 2009)
VIII. inclusion in a family foster care program; (As amended by Law No. 12,010 of 2009)
IX. placement in a foster family. (As amended by Law No. 12,010 of 2009)

... (Brazil 2019, 28-29, 61, 63)

In correspondence with the Research Directorate, the Interim Head of the Consular Section at the Embassy of Brazil in Ottawa explained that Article 101 of the ECA "lists the sequence of measures to be determined by the competent authority" whenever a child's rights are "threatened or violated" (Brazil 9 Apr. 2021).

The March 2018 Kids Empowerment report notes that Articles 33 and 36 of the ECA provide two child protection systems that cover both Brazilian and foreign children: a "guardianship" [translated as "custody" in the excerpt of the ECA] for the "temporary/occasional" absence of parents and a "tutelage" [translated as "guardianship" in the excerpt of the ECA] system for the "permanent lack of parents" (Kids Empowerment Mar. 2018, 24). The same source adds that "very little practical difference exists between guardianship and tutelage" and that the "duties of the tutor towards the child are the same as the guardian's" (Kids Empowerment Mar. 2018, 24, 25).

2.2 State Services

According to the IOM Project Coordinator, Brazilian authorities will recognize the rights of a child with Brazilian nationality, provided the child can prove their status through a Brazilian ID, passport or birth certificate (UN 11 Feb. 2021). Without providing further details, the same source stated that there is also a legal procedure to verify the nationality of children who do not have their IDs (UN 11 Feb. 2021). The IOM Project Coordinator noted that an
unaccompanied child with Brazilian nationality will have access to Brazilian consular assistance before they reach Brazil and added that once the child reaches Brazilian territory, they will be placed under the protection of the Guardianship Council [Tutelary Council] (Conselho Tutelar) and the DPU as soon as the child contacts the authorities (UN 11 Feb. 2021). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The IFRC report explains that the Guardianship Council is "an autonomous, non-judicial body charged with enforcing the rights of children and adolescents" (IFRC 30 June 2020, 12). The ECA provides the following:

[translation]

Article 131. The Guardianship Council is a permanent, autonomous, non-jurisdictional body, charged by society with ensuring the observance of child and adolescent rights, as defined in this Law.

Art. 132. In each municipality and administrative region of the Federal District, there must be at least one (1) Guardianship Council as an integral organ of the local public administration. The council is composed of five (5) members selected by the local population for a term of office of four (4) years, which may be renewed once through a new selection process. (As amended by Law No. 12,696 of 2012) (Brazil 2019, 75)

A journal article on guardianship councils published in Cadernos EBAPE.BR [2] and written by Hemerson Luiz Pase, an associate professor at the Federal University of Rio Grande (Universidade Federal do Rio Grande) in Brazil, and three other co-authors [3], observes that the Guardianship Council "acts as a link between the organs that make up the network of protection of children and adolescents" (Pase, et al. Oct.–Dec. 2020, 9, 11).

The IFRC report explains that the DPU "provides specialized services to promote and defend the rights of children," including proposing measures to protect a child's individual interests (IFRC 30 June 2020, 13). A December 2019 Human Rights Watch (HRW) report on unaccompanied Venezuelan children in Brazil indicates that DPU officials interview unaccompanied or separated children at Brazilian ports of entry to determine their situation and "vulnerability" and provide the children with information about services (HRW 5 Dec. 2019).

The information in the following paragraph was provided by the Interim Head of the Consular Section at the Embassy of Brazil in Ottawa:

The "priority" will be to "reintegrate[e]" families or place the child with extended family. "Adoption is a measure to be taken only when the resources for keeping the child or adolescent in the immediate or extended family have been exhausted." There are also two types of foster care provided by the ECA: "institutional" and "family." If minors are eligible for
adoption, their information will be included in the National Adoption and Foster Care System (Sistema Nacional de Adoção e Acolhimento, SNA), which is a database created in 2019 containing "profile[s]" of children and adolescents in the protection system, as well as of the children "desired by the applicants for adoption" (Brazil 9 Apr. 2021).

2.2.1 Implementation

The Interim Head of the Consular Section at the Embassy of Brazil in Ottawa indicated that out of a total of 34,157 children and adolescents in the SNA, 96 percent or 32,791 are in institutional foster care and 4 percent or 1,366 are in family foster care (Brazil 9 Apr. 2021). The same source added that older children and those with siblings "tend to face a longer waiting period for adoption," since "[o]nly" 0.3 percent of applicants are interested in adopting adolescents and the ECA requires that siblings be placed in the same family (Brazil 9 Apr. 2021). According to the same source, this "results in many minors" not being adopted and staying in shelters until adulthood (Brazil 9 Apr. 2021).

The IOM Project Coordinator stated that the "actual capacities and implementation of the [ECA] policy may vary a lot [between] federal unit[s], depending on their socioeconomic context" (UN 11 Feb. 2021). The March 2018 Kids Empowerment report indicates that implementation of rights guaranteed by the Constitution and the ECA is challenged by "Brazilian territorial extension [and] different levels of regional development, as well as economic, social and political inequalities" (Kids Empowerment Mar. 2018, 5). Pase et al. observe that "the ineffective functioning of the service network [for child protection] often hinders the protection of rights, since many services are not made available by the municipality or [are] made available in an inadequate or insufficient manner" (Pase, et al. Oct.–Dec. 2020, 9). Information on government services capacity of individual Brazilian states or municipalities could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

A September 2019 report by Response for Venezuelans (R4V), an inter-agency coordination platform for refugees and migrants from Venezuela co-led by the IOM and the UNHCR (R4V n.d.), indicates that, the Youth Court of Roraima State [4] issued a decision on 13 September 2019 in relation to the increasing number of unaccompanied children arriving from Venezuela, declaring that unaccompanied children of "any nationality" can no longer be sent to state children's shelters, except by judicial decision, as the shelters are over capacity and are "deemed inappropriate to the development and care of children and adolescents" (R4V Sept. 2019, 2). The December 2019 HRW report notes that the 13 September 2019 court decision found that Roraima's state children's shelters "did not provide safe and clean facilities, nor the educational support required by law" (HRW 5 Dec. 2019). The same source adds that prior to the 13 September 2019 court ruling, Roraima State's guardianship councils
were able to place some unaccompanied children in state shelters where the shelter director can act as a child's guardian, enabling them to go to school and obtain identity documents to access the public health service (HRW 5 Dec. 2019).

3. Non-Governmental Support Services

The IOM Project Coordinator noted that civil society organizations who work on migration issues are "well trained and prepared" to assist unaccompanied migrant children and added that Brazil has civil society organizations founded by Haitian migrants that can provide assistance to Haitians in Brazil (UN 11 Feb. 2021). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] According to its website, the Wilson Center is a think tank charted by US Congress (Wilson Center n.d.a). The Brazil Institute is a part of the Wilson Center's Latin American Program and focuses on research and debate on US-Brazil bilateral matters (Wilson Center n.d.b). The August 2020 blog post was authored by Beatriz Rey, a research fellow at the Center for Latin American and Latino Studies at American University and a PhD candidate in political science at Syracuse University (Wilson Center n.d.c) and Estevan Muniz, a reporter at TV Globo (Wilson Center n.d.d).

[2] According to its website, Cadernos EBAPE.BR is a peer-reviewed online journal on administration, sponsored by the Brazilian School of Public and Business Administration (Escola brasileira de administração pública e de empresas) of the Getulio Vargas Foundation (Fundação Getulio Vargas) (Cadernos EBAPE.BR n.d.).

[4] The December 2019 Human Rights Watch (HRW) report indicates that the "vast majority of Venezuelans" enter Brazil through Roraima State, which is "poorly connected" to the rest of Brazil, and according to Roraima state officials, this has overwhelmed state and municipal health care services, schools and social services for vulnerable children (HRW 5 Dec. 2019).

References

Brazil. 9 April 2021. Embassy of Brazil in Ottawa. Correspondence from the Interim Head of the Consular Section to the Research Directorate.


International Federation of Red Cross and Red Crescent Societies (IFRC). 30 June 2020. We Need to Do Better: Enhancing Laws and Regulations to Protect Children in Disasters. Case Study from Brazil. [Accessed 9 Feb. 2021]


Additional Sources Consulted

**Oral sources:** Associate professor at a Rio de Janeiro-based university who has conducted research on migrants in Brazil; Brazil – Defensoria Pública da União, Ministério da Mulher, da Família e dos Direitos Humanos; Conectas Direitos Humanos; former federal public defender responsible for migration and refugees; Fundação Abrinq; Haiti Aqui; Instituto Fazendo História; International Committee of the Red Cross – Regional Delegation for Argentina, Brazil, Chile, Paraguay and Uruguay; International Federation of Red Cross and Red Crescent Societies – Cruz Vermelha Brasileira; Mawon; Organização dos Haitianos que Vivem no Brasil; researcher at a Rio de Janeiro-based university who has conducted research on the Brazilian foster care system; researcher at a Rio Grande do Sul-based university who has conducted research on Brazilian children’s rights; Save the Children – Latin America and the Caribbean Regional Office; Serviço Jesuíta a Migrantes e Refugiados Brasil; UN – UNICEF.

**Internet sites, including:** Agência Brasil; Amnesty International; Associated Press; Better Care Network; Brazil – Instituto Brasileiro de Geografia e Estatística, Permanent Mission of Brazil to the UN; *Early Child Development and Care*; ecoli.net; EU – Migration EU Expertise; Factiva; The Haitian Times; Igarapé Institute; Migration for Development & Equality; Migration Policy Institute; Organisation for Economic Co-Operation and Development; Organization of American States – Inter-American Commission on Human Rights; Oxfam – Oxfam Brasil; Reuters; *Saúde em Debate*; Serviço Jesuíta a Migrantes e Refugiados Brasil; UN – Refworld, UNHCR, UNICEF; US – Department of State, Law Library of Congress; World Bank.
Date modified:
2020-06-01