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C H I L D R E N

C R O S S I N G

B O R D E R S

Latin American Migrant Childhoods

EDITED BY

ALEJANDRA J. JOSIOWICZ AND IRASEMA CORONADO

CHILDREN CROSSING BORDERS

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Alejandra's dedication:

To the memory of my grandfather Gunther Frey Engel.

To José Ceroli, for the bonds that we create, sometimes stronger than blood.

To my sons, Darío and Valentín, for their patience and love.

To all the children that have suffered losses and have been uprooted during the COVID-19 pandemic.

Irasema's dedication:

To migrant children all over the world and everyone who lives in a place other than where they were born.

To my mother, Lupita Coronado, and the memory of my father, Gonzalo Coronado.

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ACKNOWLEDGMENTS

As we conclude this book in the fall of 2021, the COVID-19 pandemic is still raging, people are fleeing Afghanistan, a hurricane is looming near Louisiana, and the Supreme Court has ruled that the Biden administration cannot stop the “Remain in Mexico” policy and must return, for now, to the previous administration’s policy of halting the arrival of asylum seekers and having them wait in Mexico. The Biden administration has kept Title 42 of the U.S. Code (a public health rule) in place, and over one million migrants at the border have been turned back. It is important to note that children arriving with one or two parents have also been sent back; however, unaccompanied minor children have been allowed to enter the United States. The effects of these public policy transformations on the lives of children have been enormous, pointing out the importance of disseminating knowledge and questioning still-prevalent prejudices and stereotypes surrounding migrant children.

We hope that this book draws attention to the plight of migrant children and their families and that it serves to help readers learn about the migratory challenges of our neighbors and friends in our communities and throughout the Americas. Contributors to this book shed light on the human and emotional toll that children experience as they crisscross the Americas. They look at the challenges these children face owing to border bureaucracies, educational establishments, and social institutions, as well as to the possibilities that they are capable of fulfilling in a more tolerant future world. Hopefully, this book will inspire policy makers to embrace humane immigration policies and avoid the unnecessary suffering of children in our world. It

will also aid educators and communicators in problematizing their previous ideas on migrations and childhood and in viewing children's plights with respect and care.

We want to thank our multilingual colleagues and friends that contributed chapters to this book; all are scholars that enhance the academy theoretically and methodologically as well as have an impact on applied research and public policy. We enjoyed working with colleagues who are native Spanish, English, Portuguese, and French speakers, and yes, our book has a variety of accents. This is crucial to us as a diverse, transnational community of female intellectuals, a majority of whom are women of color, inspired by a social justice approach to different academic fields.

It is important to acknowledge our colleagues who reviewed drafts of chapters and provided feedback to us to strengthen our work: Kathy Staudt, Brendan O'Connor, Kamala Platt, Tony Payan, Hector Padilla, Mark Lusk, and Rosanna Kohl Bines. Nora Martinez and Carlos Hernandez deserve our utmost recognition for helping with research, citations, and editing. Special thanks to Professor Donna Guy for introducing us to each other and for helping conceive of this book and bring it to fruition and, of course, to the University of Arizona Press staff, especially Kristen Buckles for her support of this project.

PART III

Best Interests of the Child Crossing Borders

The four articles in the third part of the book follow the unifying theme of the best interests of the child. Patrícia Nabuco Martuscelli addresses the specific needs and concerns around refugee children in Brazil while offering a review of relevant Brazilian legislation and policy on family reunification, as she interviews key informants in government and civil society. Martuscelli concludes that although the concept of “best interests of the child” is embodied in Brazilian law generally, it is not explicitly included in policy, which results in the violation of the rights of migrant and refugee children and youths.

Lina M. Caswell and Emily Ruehs-Navarro take a close-up view of the experiences of unaccompanied migrant children through the perspective of the child advocates who work with them. Caswell and Ruehs-Navarro discuss the role of the child advocate, offering a deep summary of how structural violence is at work in child detention and identifying ethical dilemmas and trauma that both children and their advocates face.

Irasema Coronado portrays the plight of U.S.-citizen children of deportees that reside in northern Mexico, arguing that the principle of the best interests of the child has been overlooked by both Mexico and the United States and concluding with public policy recommendations. Coronado incorporates qualitative interviews with families, including diverse situations and discussing the effects of family separation in legal status and citizenship for children who are at the margins of two nations.

María Inés Pacecca focuses on Bolivian teenagers’ migrations in search for work in Argentine sweatshops, vegetable farms, retail stores, and the

domestic sphere. Pacea offers insights into their independent migration—that is, outside the parental context—as linked to a discussion of the characterization of childhood among Bolivian migrants in Argentina.

The four chapters offer excellent summaries of legislation and policy on migrant and refugee children and incorporate interviews and ground-level views of the experiences of migrant children and those who work with them. The four offer compelling approaches to the structural violence and trauma children and their families suffer and include concrete policy recommendations to address the best interests of migrant and refugee children.

Family Reunification and Childhoods

Is Brazil Guaranteeing the Best Interests of “Refugee” Children?

PATRÍCIA NABUCO MARTUSCELLI

Introduction

Family, “as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection” (UNTC, n.d.). Many human rights treaties, including the 1948 Universal Declaration of Human Rights, the 1966 International Covenant for Civil and Political Rights, and the 1989 Convention on the Rights of the Child, among others, guarantee rights to family and family life. Children, or people under eighteen years old, have a right to family in the sense that they should not be separated from their family against their will and best interests (UNTC, n.d., Article 9). However, when people are forcibly displaced, families are separated. To deal with this situation, the Convention on the Rights of the Child guarantees children’s right to be reunited with their family members in “a positive, humane and expeditious manner” (UNTC, n.d., Article 10, paragraph 1).

Although the Committee on the Rights of the Child recommends that family should be defined in a broad way “provided these [definitions] are consistent with children’s rights and best interests” (UNCRC 2006), many countries employ narrow definitions of family to limit to children the right to family reunification. Tapaninen, Halme-Tuomisaari, and Kankaanpää (2019) argue that Finland has enacted a strict family reunification policy to deter families from sending children alone as a migration strategy to obtain regularization for the rest of the family. This policy was implemented under the guise of protecting children, but it is instead meant to preclude future family

migration. Most countries in Europe, North America, and Oceania adopt narrow definitions of a family (e.g., couples and minor children) to control family migration (Boehm 2017). This excludes other family configurations that are important for childcare, neglecting to take into account relationships with grandparents, uncles, and cousins as well as same-sex relationships, polygamous families, and extended families whose members are not relatives (King 2009). Different organizations, including the United Nations Committee on the Rights of the Child, recommend child-friendly family reunification procedures with the due assessment and determination of the best interests of the child.

Nevertheless, many countries put migration control before the best interests of the child (Kenny 2011). Reports show that children (especially unaccompanied children) have trouble navigating family reunification systems and bureaucracies (see, e.g., Connolly 2019; IJJO 2014; Haile 2015; Beswick 2015). Children also have a difficult time applying for and receiving visas in their countries of origin, especially in African and Asian countries, when they are alone.

In Latin America, the Inter-American Court of Human Rights recognized different provisions to protect and guarantee the rights of migrant children, including child-friendly procedures and consideration of children's best interests, in its Advisory Opinion 21/2014 on the Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection (IACHR 2014). In situations involving migrant children, the court held that the definition of family in the context of family reunification procedures should be extended to include even people who do not have blood ties. This perception is clear in paragraph 272 of the opinion:

The Court recalls that there is no single model for a family. Accordingly, the definition of family should not be restricted by the traditional notion of a couple and their children, because other relatives may also be entitled to the right to family life, such as uncles and aunts, cousins, and grandparents, to name but a few of the possible members of the extended family, provided they have close personal ties. In addition, in many families, the person or persons in charge of the legal or habitual maintenance, care, and development of a child are not the biological parents. **Furthermore, in the migratory context, “family ties” may have been established between individuals who are not necessarily family members in a legal sense, espe-**

cially when children have not been accompanied by their parents in these processes. This is why the State has the obligation to determine, in each case, the composition of the child's family unit. (IACHR 2014; emphasis added)

Even countries that guarantee children's right to family reunification and expanded definitions of family may not consider the special needs and best interests of different types of refugee children. Brazil is a compelling case, as the country that received the sixth-most asylum seekers in the world in 2019 (UNHCR 2020). The Brazilian migration law, Law 13,445/2017, explicitly guarantees the right to family reunification to all immigrants in Brazil, including refugees (Câmara dos Deputados 2017b). The family unit is also one of the principles of the Brazilian migration policy. Brazil's asylum law, Law 9,474/1997, is also recognized as a progressive law (Jatobá and Martuscelli 2018) since it has an expanded definition of asylum, covering people that fled a situation of persecution due to their race, nationality, political opinion, religion, or membership in a particular social group or a situation of severe and generalized violation of human rights (Câmara dos Deputados 1997, Article 1). Moreover, it created a tripartite committee called the National Committee for Refugees (CONARE), composed of representatives of the federal government, civil society organizations, and the United Nations High Commissioner for Refugees (a nonvoting member). CONARE is responsible for recognizing people as refugees according to the definition in Law 9,474/1997 and creating and managing public policies for the refugee population in Brazil, including those regarding family reunification (Câmara dos Deputados 1997).

Brazil has, compared to other countries, a progressive family reunification policy with a broad definition of family and facilitated procedures (Martuscelli 2020). Article 2 of Law 9,474/1997 states that "the effects of the refugee condition will be extended to the spouse, the ascendants, and the descendants, as well as to the other members of the family group that depend economically on the refugee, as long as they are in the national territory"¹ (Câmara dos Deputados 1997). However, it is not clear if and how different categories of children affected by asylum situations are considered in the Brazilian family reunification policy. This chapter analyzes how the best interests of different categories of "refugee" children (left-behind children, children of refugees in Brazil, and unaccompanied and separated children in Brazil) are considered in family reunification procedures.

The best interests of the child should be understood as a substantive right, a principle, and a rule of procedure (UNCRC 2013). It is a right: “the right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented” (UNCRC 2013, 4). It is a rule of procedure: “Whenever a decision is to be made that will affect [children], the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees” (4). And it is a principle “for interpreting and implementing all the rights of the child” (1).

Besides this introduction, this chapter has four sections. The first section briefly explains the methodology of this chapter. The second section describes the family reunification procedure for refugees in Brazil and how different categories of refugee children engage with that. The third section discusses how the family reunification procedure in Brazil guarantees the best interests of different “refugee” children as an interpretative principle, a rule of procedure, and a substantive right. The final section highlights the main points of this analysis.

Methodology

This chapter is based on the summative content analysis of Brazilian laws and application forms involved in the family reunification procedure to assess whether the best interests of each one of the different categories of children involved in asylum situations are rightly considered in the family reunification procedure in Brazil and how (Hsieh and Shannon 2005). Summative content analysis “involves counting and comparisons, usually of keywords or content, followed by the interpretation of the underlying context” (Hsieh and Shannon 2005, 1277). I examined the following Brazilian legislation: Law 9,474/1997; Law 13,445/2017; Decree 9,199/2017; CONARE Normative Resolutions 4/1998, 16/2013, and 27/2018; Joint Resolution 1/2017; and Interministerial *Portaria* 12/2018. I employed the approach of the best interests of the child (substantive right, rule or procedure, and interpretive principle) to guide this summative content analysis.

The summative content analysis allows us to understand the design of the legislation. I use information from expert interviews and phenomenolog-

ical interviews with refugees that applied for family reunification to complement the analysis and to understand whether the implementation of the Brazilian family reunification policy guarantees the best interests of the child. The names of refugees and experts were withheld for confidentiality. I conducted twenty-two semistructured expert interviews with representatives of CONARE, the Brazilian Ministry of Foreign Affairs (MRE), Defensoria Pública da União (DPU, or the Brazilian Federal Public Defenders), and representatives of civil society organizations that help refugees with their family reunification. “Experts may provide a unique source for ‘inside’ information about the policy-making process. In political science, experts ‘code’ information about policy processes and political actors” (Dorussen, Lenz, and Blavoukos 2005, 317). The selection of participants was through purposive sampling, in which the researcher chooses the participants based on their knowledge and involvement with the phenomenon (Tansey 2007). All the interviews were conducted in Portuguese between August and November 2018. The participants gave their oral consent to avoid risks of breaking confidentiality. I recorded, transcribed, and coded the interviews using ATLAS.ti 8. The results of expert interviews are employed in the third section to aid in understanding the implementation of the legislation previously analyzed and the problems faced by refugees applying for family reunification in Brazil.

I also conducted nineteen semistructured phenomenological interviews (Husserl 1962) with refugees from the Democratic Republic of the Congo, Syria, Mali, Cameroon, and Guyana who applied for family reunification in the city of São Paulo. All the interviews were conducted in São Paulo between August and November 2018 in person by the author with no need for interpreters. Most interviews were conducted in Portuguese, though one was conducted in English and two in French. They were recorded and transcribed with the oral consent of the interviewees, following the ethical considerations presented by Jacobsen and Landau (2003) to research forced displaced populations. I also coded the qualitative data using ATLAS.ti 8. I used snowball sampling to recruit participants because refugees living in Brazil are a hard-to-reach population (Tansey 2007). The interviews with refugees are employed in the second section to contribute to our understanding of how the different categories of children are involved in family reunification procedures for refugees. They also appear in the third section to explain the implementation of the examined legislations and the problems faced by refugees in family reunification procedures.

How Do Different Categories of “Refugee” Children in Brazil Engage in the Brazilian Family Reunification Procedure?

The family reunification procedure for refugees was created and changed by normative resolutions from CONARE. The first resolution was Normative Resolution 4, approved on December 1, 1998. However, this document had no clear steps on how to apply for family reunification. On September 20, 2013, CONARE revoked Resolution 4 with the approval of Normative Resolution 16. This normative resolution created a clear procedure in which refugees in Brazil were responsible for starting the process in Brazil, sending the forms and documents proving family ties and economic dependency (when it was necessary) to CONARE. CONARE was responsible for analyzing the documents and sending the request to MRE (Comitê Nacional para os Refugiados 2013). They, in turn, would ask the consulate abroad to grant the family members a visa. Although the system seems smooth, many refugees faced problems bringing their families to Brazil due to delays, lack of information, and loss of documents. On October 30, 2018, CONARE approved Normative Resolution 27, which transferred the entire family reunification procedure abroad. Now refugees in Brazil only send a form (the Form to Manifest the Will, or Formulário de manifestação da vontade) confirming that they authorize the family member’s arrival. The family abroad is responsible for applying for the family reunification visa (Comitê Nacional para os Refugiados 2018). This normative resolution gives much power to diplomats abroad. Resolution 27/2018 was approved by CONARE to harmonize the family reunification procedure stated in Law 13,445/2017 and Interministerial *Portaria* number 12/2018 on family reunification visas in general (Ministério da Justiça and Gabinete do Ministro 2018).

Different children may be affected by family reunification procedures.² The first group is children left behind. These are foreign children that are relatives (mostly sons and daughters) of refugees that live in Brazil. These children were not able to come with their families (most of the time, parents) due to many reasons, and now their family members are trying to bring them to Brazil through family reunification. When the family separation is extended, these children can feel betrayed and not loved by their caregivers that left them behind (Dench 2006). In cases where the refugees have many children and they do not have the money to pay for documents, visas, and

tickets for everybody to come together, refugees have to choose which children are coming first. That was the case of this Congolese refugee that was able to bring his small children and had to apply for family reunification a second time for the oldest daughter: “She says she has to come, you know. She misses us; she wants her mom. Then we tell her the problem is money. I was paying much debt that we had.”

Until October 2018 adult refugees in Brazil were responsible for starting family reunification procedures to apply for visas for children left behind. However, now these children are responsible for doing the entire procedure abroad with no support from Brazilian organizations that used to help refugees in Brazil fill out the forms and put the documents together. Studies in the United States and the United Kingdom have shown that children face a harder time applying for family reunification visas, including encountering risks due to the distance of embassies and consulates, lack of understanding of the bureaucratic procedures, and denial of access to embassies and consulates (Haile 2015; Beswick 2015).

The second category is children in Brazil. In this category there are two groups: children with refugee status and Brazilian children with refugee parents. Children that were recognized as refugees in Brazil came accompanied by one or more adults that were legally responsible for them. In these cases the adult was the principal applicant in the asylum procedure (refugee status determination). In this same category are Brazilian children that were born in Brazil and have at least one parent who has been recognized as a refugee. Although these children are Brazilian according to Brazilian citizenship legislation, the fact that they have at least one refugee parent can mean that some family members do not live in Brazil and will need family reunification. In many cultures the entire family (grandparents, aunts, cousins) is responsible for the care and development of the children. Hence, other family members (besides the parents) are essential for taking care of children, including for allowing the parents to engage in the formal labor market. In their study of fourteen immigrant families in Canada, Bragg and Wong (2016) found that ten families wanted to bring a family member to look after their children.

During the interviews Congolese refugees explained that in their country, raising children is the responsibility of the whole family, not just the parents, unlike what they perceived was the prevailing logic in Brazil. Refugee women were applying for family reunification visas for their sisters or mothers to come and take care of children that were already in Brazil: Brazilian chil-

dren and refugee children. A Congolese refugee woman reflected that her children do not live with her siblings and family members who stayed in the Democratic Republic of the Congo. According to her, living with uncles and cousins, just as she had while growing up, would be important for their development. On the other hand, another refugee reported that after bringing his mother and two brothers through family reunification, his Brazilian child was able to have contact with his grandmother and uncles, and this changed the family dynamics in Brazil. In regard to refugee children in Brazil, adults were responsible for applying for the family reunification procedure in Brazil until 2018. Currently, the family members abroad are responsible for starting the procedures in the Brazilian consulates. These children in Brazil can also be separated from their brothers and sisters, who can be left-behind children, as explained before.

The third group of refugee children consists of separated and unaccompanied children. These children arrive in Brazil mostly by land (as in the case of Venezuelans) and by sea (as in the case of Congolese children).³ Joint Resolution 1 of CONANDA (the National Council on the Rights of Children and Adolescents),⁴ CONARE,⁵ CNIg⁶ (the National Council of Immigration), and DPU,⁷ approved on August 9, 2017,⁸ defines *unaccompanied child* as a child that enters the national territory without an adult and *separated child* as a child that enters the national territory accompanied by an adult that is not her or his legal guardian (Ministério da Justiça e Segurança Pública, Secretaria Nacional de Justiça e Cidadania, and Departamento de Migrações Coordenação-Geral de Assuntos de Refugiados Comitê Nacional para os Refugiados 2017). This joint resolution created a procedure to guarantee the best interests and protection of unaccompanied and separated children that arrive in Brazil. Before it, there were no precise forms, procedures, or guidelines on how to grant these children access to asylum and other migration procedures, protection, and rights. One of the joint resolution's essential innovations is to grant DPU the power to represent separated and unaccompanied children in migration and asylum procedures and help them gain access to documents, rights, and protection. DPU is also responsible for conducting the initial protection assessment with children in a child-friendly manner and discussing their options with them (Ministério da Justiça e Segurança Pública, Secretaria Nacional de Justiça e Cidadania, and Departamento de Migrações Coordenação-Geral de Assuntos de Refugiados Comitê Nacional para os Refugiados 2017).

Unaccompanied and separated children have the same right to family reunification as other refugees. Before the joint resolution came into effect, these children were responsible for starting the family reunification procedure in Brazil by themselves. They received help from civil society organizations to do that. After this resolution and until 2018, DPU, as their representative, could start the process for them (Ministério da Justiça e Segurança Pública, Secretaria Nacional de Justiça e Cidadania, and Departamento de Migrações Coordenação-Geral de Assuntos de Refugiados Comitê Nacional para os Refugiados 2017).⁹ Since Resolution 27 came into effect, children's family members abroad that are willing to be reunited with them in Brazil are responsible for starting the procedure in a Brazilian consulate. DPU can help the children fill out the Form to Manifest the Will.

There are three categories of "refugee" children that are affected by family reunification in Brazil: children left behind in their countries of origin, children in Brazil (Brazilian children with refugee parents and refugee children in Brazil), and unaccompanied and separated children. The next section discusses how the best interests of each of these categories of children are considered in the Brazilian family reunification procedures (in legislation and in practice).

Does the Family Reunification Policy for Refugees Guarantee the Best Interests of Different "Refugee" Children?

The best interests of children is not a principle in the Brazilian family reunification policy for refugees.¹⁰ No CONARE normative resolution on family reunification considers children or their best interests as a principle. There is no mention of the best interests of the child in Law 9,494/1997 (Câmara dos Deputados 1997); CONARE Normative Resolutions 4/1998, 16/2013 (Comitê Nacional para os Refugiados 2013), and 27/2018 (Comitê Nacional para os Refugiados 2018); or Interministerial *Portaria* 12/2018 on family reunification visas in general (Ministério da Justiça / Gabinete do Ministro 2018a). However, the integral protection and attention of the best interests of the migrant child and refugee is a principle and guideline of the Brazilian migration policy, as stated in Article 3 XVII of the migration law (Law 13,445/2017) (Câmara dos Deputados 2017b). Although the best interests is a principle of Brazilian migration policy in general, it is not explicitly a

principle in the family reunification policy, and this is the first barrier to adequately considering the different categories of refugee children that are separated from their family members in Brazil.

Considering the best interests of the child as a rule of procedure, Brazil has prioritization rules in the family reunification application forms. The family reunification form (Annex 1 of Resolution 16/2013 [Comitê Nacional para os Refugiados 2013]) and the Form to Manifest the Will (Annex of Resolution 27/2018 [Comitê Nacional para os Refugiados 2018]) have a blank space where applicants can demand prioritization in the analysis of their family reunification applications. The prioritization categories are children (people under eighteen years old), the elderly (people over sixty years old), people with special needs, and people facing security risks. However, there is no implementation of this prioritization of cases involving different refugee children. Representatives of civil society organizations have said that CONARE, MRE, and consulates abroad do not read the forms accurately and do not grant any prioritization for children (or other groups). When asked about the prioritization possibilities during an expert interview, a representative from CONARE explained, “We do it when there are unaccompanied children in Brazil and prioritization of the first instance (refugee status determination procedure): unaccompanied children who have a court order or unaccompanied elderly. Then we prioritize. Now we do not have an express rule regarding [any prioritization in family reunification procedures]” (representative of CONARE, Brasilia, September 2018).

There is also no prioritization in Brazilian embassies and consulates abroad for cases involving children. That is, children compete for the same scheduling times as people applying for any other visa in the Brazilian consular authorities. Additionally, interviews conducted with representatives of MRE confirmed that diplomats receive no specific training on asylum, humanitarian issues, and children’s rights. That is, they treat family reunification visa applicants in cases involving asylum as they would treat any visa applicant, without considering specific protection needs connected with the forced displacement of one or more family members that are already in Brazil. Representatives of civil society organizations have said that diplomats are conducting lengthy interviews with family members (including children) applying for family reunification visas, asking questions about the asylum procedures (which are confidential, according to the asylum law): “They did interviews even with people under eighteen years old without the company

of an adult, without defense, without anything” (representative of a civil society organization that helps refugees in family reunification procedures, São Paulo, September 2018).

The family reunification procedure is not child friendly in Brazil or in Brazilian consulates. There is no prioritization in practice for cases involving children, no explicit guidelines, and no training for diplomats or people from CONARE to do the assessment and determination of the best interests of children and their protection needs. The closest thing that Brazil has to considering the best interests of the child as a rule of procedure is Joint Resolution 1 for separated and unaccompanied children. Article 3 states that “the administrative procedures involving unaccompanied and separated children will have absolute priority and agility, considering the best interests of the child in the decision-making”¹¹ (Ministério da Justiça e Segurança Pública, Secretaria Nacional de Justiça e Cidadania, and Departamento de Migrações Coordenação-Geral de Assuntos de Refugiados Comitê Nacional para os Refugiados 2017). Article 6 states that children should be consulted and informed about the procedures, decisions, and rights in a proper manner considering their development (Ministério da Justiça e Segurança Pública, Secretaria Nacional de Justiça e Cidadania, and Departamento de Migrações Coordenação-Geral de Assuntos de Refugiados Comitê Nacional para os Refugiados 2017). These two articles are pointless because the family reunification procedure in Brazil for unaccompanied children does not consider their best interests. And the procedure abroad in which their families receive the visa to enter Brazil does not consider their best interests either. MRE officials are violating Joint Resolution 1 when they do not consider the best interests of separated and unaccompanied children in their family reunification visa procedures. This is even more complicated now that the diplomats abroad have more power in the family reunification process for refugees since the approval of CONARE Normative Resolution 27/2018 (Comitê Nacional para os Refugiados 2018).

Joint Resolution 1 also guarantees the best interests of unaccompanied and separated children as a rule of procedure in other administrative procedures in Brazil, such as registration and the DPU interview to assess the child’s protection needs. The registration procedure of unaccompanied and refugee children in Brazil should be conducted in a safe manner considering age, gender identity, sexual orientation, special needs, and religious and cultural diversities. DPU should conduct interviews to determine the protec-

tion needs of unaccompanied and separated children adequate to their age, gender identity, language, and individual needs and considering measures of protection, including family reunification. “Unaccompanied and separated children should be consulted about their possibilities of residence and shelter assuring their protagonist role”¹² (Ministério da Justiça e Segurança Pública, Secretaria Nacional de Justiça e Cidadania, and Departamento de Migrações Coordenação-Geral de Assuntos de Refugiados Comitê Nacional para os Refugiados 2017, Article 13, single paragraph). The Annex of Joint Resolution 1 has the Protection Analysis form. This is used to determine and assess the best interests of unaccompanied and separated children who have just arrived in Brazil (Ministério da Justiça e Segurança Pública, Secretaria Nacional de Justiça e Cidadania, and Departamento de Migrações Coordenação-Geral de Assuntos de Refugiados Comitê Nacional para os Refugiados 2017). These child-friendly procedures could be expanded, allowing the family reunification policy to guarantee the best interests of different categories of refugee children (children left behind, children in Brazil, and unaccompanied and separated children). The assessment and determination of the best interests of the child should be considered in all administrative procedures involving children, including in family reunification.

Finally, the only explicit expression of best interests as a substantive right of children in Brazilian migration law is in Article 157 of Decree 9,199, which regulates Migration Law 13,445/2017. It says that “the residence permit may be granted to a child or adolescent who is a national of another country or a stateless person, unaccompanied or abandoned, who is in a point of migratory control on the Brazilian borders or in the national territory.” According to paragraph 1, “the evaluation of the request for a residence permit based on the provision in the caput and the possibility of returning to family life should consider the best interests of the child or adolescent in making the decision”¹³ (Câmara dos Deputados 2017a). Once more, the best interests as a substantive right is provided to only some categories of “refugee” children, not all of them.

Family reunification is a right for all documented migrants and refugees in Brazil. That is, Brazil also guarantees the right to family reunification to unaccompanied and separated children. However, refugees and experts interviewed in my research argued that refugees have a hard time accessing family reunification visas for their families, especially since 2018. One problem is that the Brazilian legislation has no explicit definition of what economic

dependency means; this lack of definition opens space to the discretionary assessment of bureaucrats and diplomats. The law has no clear deadlines and allows no possibility for appeals when visas are denied or cases dismissed. Refugees and experts said that refugees lack information about their family reunification procedures with CONARE, MRE, and consulates. Since 2017 refugees have not received information regarding the outcome of family reunification visas denied in Brazilian consulates. Moreover, refugees and experts reported that diplomats were conducting long interviews with family members about the asylum process and that diplomats demanded additional documents that could put the lives of refugees' relatives in danger. Therefore, families are being separated for more extended periods.

If visas are not issued, children left behind cannot come to Brazil to be reunited with their families, children in Brazil are separated from family members important to their development and care, and unaccompanied and separated children are away from their main protection structure, their families. Problems in the family reunification procedures that lead to extended family separation and denial of family reunification visas separate families against children's will, hence there is a violation of the best interests as a substantive right to all refugee children (children left behind, children in Brazil, and unaccompanied and separated children).

Conclusion

There are different categories of "refugee" children that can be involved in family reunification in Brazil. This chapter analyzed how three different groups of refugee children (children left behind in the countries of origin whose family is in Brazil; children in Brazil, including children with refugee status and Brazilian children with refugee parents; and unaccompanied and separated children in Brazil) engage with the Brazilian family reunification policy. This is an important contribution because refugee children tend to be analyzed as a single category that makes invisible their particularities. These particularities originate different needs and challenges in the family reunification procedure.

This chapter also contributes to the discussions of family reunification policies for refugees outside Global North countries. Analyzing the Brazilian family reunification policy considering different categories of "refugee" children and through the lens of child's rights demonstrates how Brazil could

improve its policy to end family separation and guarantee the rights of all refugee children in the country, as well as children that are not yet in the country whose family is already in Brazil. The Brazilian family reunification policy for refugees does not consider the best interests of different refugee children as a principle, as a substantive right, and as a rule of procedure. Problems in the family reunification process and denial of visas make extended or permanent refugee children's separation from family members that may be responsible for their care and development. The lack of consideration of the best interests of the child in the Brazilian family reunification policy (both normative and in its implementation) consists of a violation of the rights of the child set forth in the Convention on the Rights of the Child, which Brazil has accepted and internalized. There is a violation of children's right to family and family life, their right not to be separated from family against their will, their right to have their best interests considered, and their right to positive, humane, and expeditious family reunification.

In the case of unaccompanied and separated children, Brazil is also violating Joint Resolution 1, which guarantees the best interests of these children, child-friendly procedures, and absolute priority and agility in all administrative procedures involving them. Joint Resolution 1 creates a procedure for the assessment and determination of best interests through the interview with DPU to identify children's protection needs. These interviews considering their best interests should be replicated in the family reunification process. The different categories of "refugee" children, including children that are not in Brazil, must have their best interests considered in family reunification procedures. Although some categories of children, such as separated and unaccompanied children, have received more attention in the Brazilian migration policy, all categories of migrant and refugee children have rights that should be respected and guaranteed by the Brazilian government without any type of discrimination.

In that sense Brazil could learn from other countries that have adopted guidelines, procedures, and systems to assess and guarantee the best interests of refugee children considering the particular needs and situations of different children explained in this chapter. For example, a 2017 study by the European Migration Network showed that most countries in the European Union and Norway guaranteed in their laws and policies that the best interests of the child receive priority consideration from all institutions dealing with family reunification (EMN 2017). It is crucial to consider the best inter-

ests of different “refugee” children as a substantive right, a rule of procedure, and a principle of interpretation. Brazil is not doing this.

Notes

1. All quotes from Brazilian legislation in this chapter were translated from Brazilian Portuguese to English by the author. The original in Portuguese is “Art. 2º Os efeitos da condição dos refugiados serão extensivos ao cônjuge, aos ascendentes e descendentes, assim como aos demais membros do grupo familiar que do refugiado dependerem economicamente, desde que se encontrem em território nacional.”
2. There is a growing literature on refugee children in Brazil discussing different aspects of protection, integration, and access to rights. See, for example, Martuscelli (2014), Santos (2015), and Viana (2016). There are also important master’s theses and dissertations on the topics, such as those of Grajer (2018), Lazarin (2019), and Cruz (2020).
3. See, for example, UNICEF (2019).
4. See Presidência da República (n.d.).
5. See Ministério da Justiça e Segurança Pública (n.d.-a.).
6. See Ministério da Justiça e Segurança Pública (n.d.-b.).
7. DPU provides support for vulnerable people (including migrants and refugees) to access their rights in federal legislation (cases involving the Brazilian federal government, or União). See Defensoria Pública da União (n.d.).
8. For a comprehensive analysis of this resolution, see Cruz and Friedrich (2018).
9. For a deep discussion of DPU work with refugee children, see de Oliveira Silva (2019).
10. Another interesting reflection on the best interests of unaccompanied refugee children is Conte and Mendonça (2019).
11. Original in Portuguese: “Art. 3º Os processos administrativos envolvendo criança ou adolescente desacompanhado ou separado tramitarão com absoluta prioridade e agilidade, devendo ser considerado o interesse superior da criança ou do adolescente na tomada de decisão.”
12. Original in Portuguese: “Parágrafo único A criança e adolescente desacompanhados ou separados deverão ser consultados sobre as possibilidades de residência e acolhimento, assegurado o seu protagonismo.”
13. Original in Portuguese: “Art. 157. A autorização de residência poderá ser concedida à criança ou ao adolescente nacional de outro país ou apátrida, desacompanhado ou abandonado, que se encontre em ponto de controle migratório nas fronteiras brasileiras ou no território nacional.
“§ 1º A avaliação da solicitação de autorização de residência com fundamento no disposto no **caput** e da possibilidade de retorno à convivência familiar deverá considerar o interesse superior da criança ou do adolescente na tomada de decisão.”

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