



MINISTÉRIO DA JUSTIÇA  
E SEGURANÇA PÚBLICA  
Assessoria Especial Internacional

# TRADUÇÃO DE LEGISLAÇÃO BRASILEIRA RELACIONADA À ÁREA DE JUSTIÇA E SEGURANÇA PÚBLICA PARA O INGLÊS E O ESPANHOL

Lei nº 9.474, de 22 de julho de 1997.

Define mecanismos para a implementação do estatuto dos refugiados de 1951, e determina outras providências.

VERSÃO EM INGLÊS



## Projeto da Assessoria Especial Internacional

Como forma de divulgar o arcabouço legislativo brasileiro a autoridades estrangeiras e a Organismos Internacionais e, ainda, de aprimorar a cooperação internacional, em diversas áreas, a Assessoria Especial Internacional do Ministério da Justiça e Segurança Pública desenvolveu projeto para a compilação e tradução<sup>1</sup>, para os idiomas inglês e espanhol, de parte das legislações brasileiras relacionadas às áreas de Justiça e Segurança Pública. A seleção das leis traduzidas ficou a cargo das áreas técnicas do Ministério, levando em consideração, igualmente, trabalhos já realizados por outros órgãos brasileiros, os quais serão disponibilizados como link externo no site da Assessoria Especial Internacional.



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<sup>1</sup>Traduções não juramentadas ou oficiais.

**LAW Nº 9,474, OF JULY 22nd, 1997.**

Defines mechanisms for the implementation of the refugee status of 1951 and determines other measures.

**I, the president of Brazil,** hereby make known that the National Congress decrees and I sanction the following Law:

**TITLE I**

**Characterizing Aspects**

**CHAPTER I**

**Concept, Extension, and Exclusion**

**SECTION I**

**Concept**

Art. 1. A refugee is any individual who:

I - due to well-founded fears of persecution on the grounds of race, religion, nationality, social group, or political opinions, is outside his/her country of nationality and cannot or do not wish to receive the protection of that country;

II - having no nationality and being outside the country where he/she previously had a habitual residence, cannot or does not wish to return to it, depending on the circumstances described in the previous item;

III - due to severe and widespread violation of human rights, he/she is obliged to leave his/her country of nationality to seek refuge in another country.

**SECTION II**

**Extension**

Art. 2. The effects of the status of refugees shall be extended to the spouse, ascendants, descendants, and other members of the family group that economically depend on the refugee, provided that they are in the national territory.

**SECTION III**

**Exclusion**

Art. 3. Individuals who fit the following conditions shall not benefit from a refugee status:

I - those who already benefit from the protection or assistance from a United Nations body or institution other than the United Nations High Commissioner for Refugees - UNHCR;

II - those who reside in the national territory and have rights and obligations related to the status of Brazilian national;

III - those who have committed a crime against peace, a war crime, a crime against humanity, a heinous crime, or have participated in terrorist acts or drug trafficking;

IV - those who are found guilty of acts contrary to the purposes and principles of the United Nations.

## CHAPTER II

### Legal Status of Refugees

Art. 4. In accordance with the previous definitions, the acknowledgment of refugee status shall subject its beneficiary to the provisions of this Law, without prejudice to the provisions of international instruments to which the Brazilian government is a party, ratifies, or comes to endorse.

Art. 5. The refugee shall enjoy rights and be subject to the duties of foreigners in Brazil, the provisions of this law, of the Convention on the Status of Refugees of 1951, and of the Protocol on the Status of Refugees of 1967, being obliged to comply with laws, regulations, and provisions intended to maintain public order.

Art. 6. The refugee shall have rights to an identification document proving his legal status, work permit, and travel document, in accordance with the Convention on the Status of Refugees of 1951.

## TITLE II

### Entry into the National Territory and Asylum Claim

Art. 7. The foreigner who arrives in the national territory may express his/her desire to claim asylum to any migratory authority at the border, which shall provide him/her with the necessary information regarding the appropriate procedure.

Paragraph 1. Under no circumstances shall the foreigner be deported to the territory's border, where his/her life or freedom is threatened due to race, religion, nationality, social group, or political opinion.

Paragraph 2. The benefit provided for in this article may not be invoked by a refugee considered dangerous to the security of Brazil.

Art. 8. The irregular entry into the national territory does not constitute an impediment for foreigners to claim asylum from the competent authorities.

Art. 9. The authority to whom the request is presented must listen to the interested party and prepare a declaration form, which must contain the circumstances concerning the entry into Brazil and the reasons that made the foreigner leave the country of origin.

Art. 10. The request, submitted under the conditions provided for in the previous articles, shall suspend any administrative or criminal procedure for irregular entry instituted against the petitioner and persons of his/her family group that accompany him/her.

Paragraph 1. If the status of refugee is acknowledged, the procedure shall be filed, provided it has been demonstrated that the corresponding infringement was determined by the same facts that justified said acknowledgment.

Paragraph 2. For the purpose of the provisions of the previous paragraph, the asylum claim and its decision must be communicated to the Federal Police, which shall transmit them to the body where the administrative or criminal proceedings shall take place.

### TITLE III

#### CONARE

Art. 11. The National Committee for Refugees - CONARE, a collective deliberation body, is created within the Ministry of Justice.

### CHAPTER I

#### Jurisdiction

Art. 12. It is the responsibility of CONARE, in accordance with the Convention on the Status of Refugees of 1951, the Protocol on the Status of Refugees of 1967, and other sources of international refugee law:

I - to analyze the request and declare the acknowledgment of the refugee status in the first instance;

II - to decide to cease, *ex officio*, or at the request of the competent authorities, the Status of Refugee in the first instance;

III - to determine the loss of refugee status in the first instance;

IV - to guide and coordinate the actions necessary for the effectiveness of protection, assistance, and legal support to the refugees;

V - to approve normative instructions clarifying the execution of this Law.

Art. 13. The rules of procedure of CONARE shall be approved by the Minister of State for Justice.

Sole paragraph. The rules of procedure shall determine the periodicity of CONARE meetings.

### CHAPTER II

#### Structure and Operation

Art. 14. CONARE shall be composed of:

Projeto da Assessoria Especial Internacional do Ministério da Justiça e Segurança Pública.

I - a representative of the Ministry of Justice, who shall preside over it;

II - a representative of the Ministry of Foreign Affairs;

III - a representative of the Ministry of Labor;

IV - a representative of the Ministry of Health;

V - a representative of the Ministry of Education and Sport;

VI - a representative of the Federal Police Department;

VII - a representative of a non-governmental organization engaged in the assistance and protection of refugees in the country.

Paragraph 1. The United Nations High Commissioner for Refugees - UNHCR shall always be an invited member to CONARE meetings, with the right to a voice but without a vote.

Paragraph 2. The members of CONARE shall be appointed by the President of Brazil, upon indications from the bodies and the entity that compose it.

Paragraph 3. CONARE shall have a General Coordinator who shall prepare the asylum claim procedures and the meeting agenda.

Art. 15. Participation in the CONARE shall be considered a relevant service and shall not entail remuneration of any kind or nature.

Art. 16. The CONARE shall meet with a *quorum* of four members entitled to vote, acting by a simple majority.

Sole paragraph. In case of a tie, the president of CONARE shall have the decisive vote.

## TITLE IV

### Asylum Procedure

#### CHAPTER I

##### Procedure

Art. 17. The foreigner must report to the competent authority and express a desire to request a refugee status.

Art. 18. The competent authority shall notify the applicant to make a declaration, which shall mark the opening date of the proceedings.

Sole paragraph. The competent authority shall inform the United Nations High Commissioner for Refugees - UNHCR of the existence of the asylum claim procedure and provide that body with the opportunity to offer suggestions to facilitate its progress.

Art. 19. In addition to the statements, provided if necessary with the help of an interpreter, the foreigner must complete the request for refugee status, which must contain his/her complete identification, professional qualification, level of education, and members of his/her family group, as well as an account of the circumstances and facts that substantiate the asylum claim, indicating the relevant evidence.

Art. 20. The registration of the declaration and supervision of filling out the asylum claim must be conducted by qualified employees and under conditions that ensure information confidentiality.

## CHAPTER II

### Provisional Residence Permit

Art. 21. Upon receipt of the asylum claim, the Federal Police Department shall issue a protocol in favor of the applicant and his/her family group in the national territory, which shall authorize the stay until the procedure's final decision.

Paragraph 1. The protocol shall allow the Ministry of Labor to issue a provisional work permit to exercise paid activity in the country.

Paragraph 2. The applicant's protocol for asylum shall mention, by endorsement, those under fourteen years of age.

Art. 22. The legislation on foreigners shall apply to the petitioner, subject to the specific provisions in this Law, while the asylum claim procedure is pending.

## CHAPTER III

### Instruction and Report

Art. 23. The competent authority shall take any measures required by CONARE and shall ascertain all the facts of which knowledge is appropriate for a fair and fast decision, always respecting the principle of confidentiality.

Art. 24. After the instruction, the Competent Authority shall immediately prepare a report, which shall be sent to the Secretary of CONARE for inclusion in the agenda of the next meeting of the Collegiate.

Art. 25. The parties involved in the procedures concerning asylum claims shall maintain professional secrecy regarding the information to which they shall have access in the performance of their duties.



## CHAPTER IV

### Decision, Communication, and Registration

Art. 26. The decision to recognize refugee status shall be considered a Declaratory Act and shall be duly substantiated.

Art. 27. The decision issued, CONARE shall notify the applicant and the Federal Police Department for the appropriate administrative measures.

Art. 28. In the case of a positive decision, the refugee shall be registered with the Federal Police Department and must sign a term of responsibility and request an appropriate identification document.

## CHAPTER V

### Appeal

Art. 29. A negative decision must be justified on the notification to the applicant, with the right of appeal to the Minister of State for Justice within fifteen days of receipt of the notification.

Art. 30. During the evaluation of the appeal, the asylum seeker and his/her family members shall be allowed to remain in the national territory, in accordance with the provisions of paragraphs 1 and 2 of article 21 of this Law.

Art. 31. The decision of the Minister of State for Justice shall not be subject to appeal and shall be notified to CONARE, for the applicant's knowledge, and to the Federal Police Department, for the appropriate measures.

Art. 32. In the case of definitive refusal of asylum, the applicant shall be subject to the legislation of foreigners, and his/her transfer to his/her country of nationality or habitual residence should not occur, as long as the circumstances that endanger his/her life, physical integrity, and freedom remain, except in the situations determined in items III and IV of article 3 of this Law.

## TITLE V

### Effects of the Statute on Refugees on

### Extradition and Expulsion

## CHAPTER I

### Extradition

Art. 33. The acknowledgment of refugee status shall prevent the continuation of any request for extradition based on the facts underlying the granting of asylum.

Art. 34. The asylum claim shall suspend any pending extradition proceedings, in an administrative or judicial phase, based on the facts that substantiated the granting of asylum, pending a final decision.



Art. 35. For the purpose of compliance with the provisions of articles 33 and 34 of this Law, the asylum claim shall be communicated to the body where extradition procedure shall take place.

## CHAPTER II

### Expulsion

Art. 36. A refugee who is regularly registered shall not be expelled from the national territory, except for reasons of national security or public order.

Art. 37. The expulsion of refugees from the national territory shall not result in their withdrawal to a country where their life, freedom, or physical integrity may be at risk and shall only be effective when there is a certainty of their admission to a country where there is no risk of persecution.

## TITLE VI

### Cessation and Loss of Refugee Status

#### CHAPTER I

##### Cessation of Refugee Status

Art. 38. The refugee status shall cease if the foreigner:

I - returns to the protection of the country of which he/she is a national;

II - voluntarily recovers the once lost nationality;

III - acquires a new nationality and benefits from the protection of the country of which nationality he/she has acquired;

IV - voluntarily resettles in the country he/she left or outside of which he/she remained for fear of being persecuted;

V - can no longer refuse the protection of the country of which he/she is a national because the circumstances for which he/she has been recognized as a refugee have ceased to exist;

VI - as a stateless person, can return to the country in which he/she had a habitual residence once the circumstances for which he/she has been recognized as a refugee have ceased to exist.

#### CHAPTER II

##### Loss of Refugee Status

Art. 39. Loss of Refugee Status shall occur:

I - in the case of a waiver;

II - in the case of evidence of the falsity of the grounds invoked for the asylum claim or the existence of facts that, if known at the time of recognition, would have led to a negative decision;

III - in the case of the exercise of activities contrary to national security or public order;

IV - in the case of departure from the national territory without prior authorization from the Brazilian government.

Sole paragraph. Refugees who lose this condition on the basis of items I and IV of this article shall be included in the general regime for the stay of foreigners in the national territory, and those who lose it on the basis of items II and III shall be subject to the compulsory measures provided for in Law nº 6,815 of August 19th, 1980.

## CHAPTER III

### Competent Authority and Appeal

Art. 40. It is the responsibility of the CONARE to decide at first instance on the cessation or loss of refugee status. This decision shall be appealed to the Minister of State for Justice within fifteen days of receipt of the notification.

Paragraph 1. The notification shall contain a brief account of the facts and grounds that gave rise to the decision and shall inform the Refugee of the time limit for filing the appeal.

Paragraph 2. If the foreigner is not located for the notification provided for in this article, the decision shall be published in the Federal Gazette for the purpose of counting the time limit for filing an appeal.

Art. 41. The decision of the Minister of State for Justice is unappealable and must be notified to the CONARE, which shall inform the foreigner and the Federal Police Department for the appropriate measures.

## TITLE VII

### Durable Solutions

#### CHAPTER I

#### Repatriation

Art. 42. The repatriation of refugees to their countries of origin should be characterized by the voluntary nature of the return, except in cases where they cannot refuse the protection of the country of which they are nationals because the circumstances that determined the asylum no longer subsist.

## CHAPTER II

### Local Integration

Art. 43. In the exercise of their rights and duties, the atypical condition of refugees should be considered when the need arises for the presentation of documents issued by their countries of origin or by their diplomatic and consular representations.

Art. 44. The acknowledgment of certificates and diplomas and the requirements for obtaining resident status, and entry into academic institutions of all levels should be facilitated considering the unfavorable situation experienced by refugees.

## CHAPTER III

### Resettlement

Art. 45. The resettlement of refugees in other countries should have, where possible, a voluntary nature.

Art. 46. The resettlement of refugees in Brazil shall be conducted in a planned manner and with the coordinated participation of state bodies and, when possible, non-governmental organizations, identifying areas of cooperation and determination of responsibilities.

## TITLE VIII

### Final Provisions

Art. 47. The procedures for acknowledging refugee status shall be free of charge and shall have an urgent character.

Art. 48. The precepts of this Law shall be interpreted in harmony with the Universal Declaration of Human Rights of 1948, the Convention Relating to the Status of Refugees of 1951, the Protocol Relating to the Status of Refugees of 1967, and with any relevant provisions of an international instrument for the protection of human rights to which the Brazilian government is committed.

Art. 49. This Law comes into force on the date of its publication.

Brasília, July 22<sup>nd</sup>, 1997; 176<sup>th</sup> of the Independence and 109<sup>th</sup> of the Republic.

FERNANDO HENRIQUE CARDOSO

*Iris Rezende*

This text does not replace that published in the Federal Gazette of September 23rd, 1997.

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