

THE RELATIVIZATION OF THE HUMAN RIGHTS OF REFUGEES IN THE BRAZILIAN SCENARIO

LA RELATIVIZACIÓN DE LOS DERECHOS HUMANOS DE LOS REFUGIADOS EN EL
ESCENARIO BRASILEÑO

A RELATIVIZAÇÃO DOS DIREITOS HUMANOS DOS REFUGIADOS NO CENÁRIO
BRASILEIRO

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Abstract

This article aimed to analyze how Brazil conducts the process of welcoming refugees within the national territory and how the rights of refugees are treated by the Brazilian State, by non-governmental organizations and by society in general. The objective was also to identify and list public policies aimed at the promotion, protection and defense of refugees as individuals with rights. Methodologically, the article had a qualitative analysis following a theoretical essay model. The international instruments for the defense of refugees were also observed, how they were received by our internal legislation and what legal provisions were created by the legislator to include the rights of refugees in our legal framework, mainly after the enactment of Law 9.474 of 1997, known as the Statute of Refugee. Then, the actions implemented by state bodies for the defense of refugees were analyzed, such as the National Committee for Refugees (CONARE), its work with the United Nations High Commissioner for Refugees (UNHCR) and partnerships with other institutions to expand the support network for refugees. Finally, it was noticed that despite a very dignified legislation with regard to refugees, Brazil still fails in matters of law enforcement.

Keywords: Refugees; Human Rights; Protection.

Resumen

Este artículo tuvo como objetivo analizar cómo Brasil lleva a cabo el proceso de acogida de refugiados en el territorio nacional y cómo los derechos de los refugiados son tratados por el Estado brasileño, por las organizaciones no gubernamentales y por la sociedad en general. También tuvo como objetivo identificar y enumerar las políticas públicas dirigidas a la promoción, protección y defensa de las personas refugiadas como sujetos de derechos.

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Metodológicamente, el artículo tuvo un análisis cualitativo siguiendo un modelo de ensayo teórico. También se observaron los instrumentos internacionales para la defensa de los refugiados, cómo fueron recibidos por nuestra legislación interna y qué disposiciones legales fueron creadas por el legislador para incluir los derechos de los refugiados en nuestro marco legal, principalmente a partir de la promulgación de la Ley 9.474 de 1997, conocida como el Estatuto del Refugiado. Luego, se analizaron las acciones implementadas por organismos estatales para la defensa de los refugiados, como el Comité Nacional para los Refugiados (CONARE), su trabajo con el Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR) y alianzas con otras instituciones para ampliar la red de apoyo para refugiados. Finalmente, se notó que a pesar de una legislación muy digna con respecto a los refugiados, Brasil todavía falla en materia de aplicación de la ley.

Palabras clave: Refugiados; Derechos humanos; Protección.

Resumo

Este artigo visou analisar como o Brasil conduz o processo de acolhimento dos refugiados dentro do território nacional e como os direitos dos refugiados são tratados pelo Estado brasileiro, pelas organizações não governamentais e pela sociedade de modo geral. Objetivou-se também identificar e listar as políticas públicas voltadas para a promoção, a proteção e a defesa dos refugiados como indivíduos detentores de direitos. Metodologicamente, o artigo teve uma análise qualitativa seguindo um modelo de ensaio teórico. Foram observados ainda os instrumentos internacionais de defesa dos refugiados, como estes foram recebidos pela nossa legislação interna e quais os dispositivos legais criados pelo legislador para incluir os direitos dos refugiados em nosso arcabouço legal principalmente após a promulgação da Lei 9.474 de 1997, conhecido como Estatuto do Refugiado. Depois, foram analisadas as ações implementadas pelos órgãos estatais de defesa dos refugiados, como o Comitê Nacional para os Refugiados (CONARE), sua atuação junto ao Alto Comissariado das Nações Unidas para os Refugiados (ACNUR) e as parcerias com outras instituições para ampliar a rede de apoio aos refugiados. Por fim, percebeu-se que apesar de uma legislação bastante digna no que diz respeito aos refugiados, o Brasil ainda peca em questões de atuação da lei.

Palavras-chave: Refugiados; Direitos Humanos; Proteção.

Introduction

Ever since humanity organized itself into groups, human migrations have been an essential component in the formation of societies for various reasons. These migrations, prompted by economic, cultural, religious, political, and environmental issues, have led men and women throughout history to migrate from their origin countries, either willingly or in compulsory migrations, as in the case of the enslaved. Besides these, there are those forced to leave their homes because of wars, political or religious persecution.

This last group is recognized as refugees, and they leave in search of a welcome in a country other than their own, leaving everything of a material nature behind. This situation has been going on around the world for a long time, and has intensified during the 20th and 21st centuries. Only from 2010 to 2020, the number of refugees in the world, according to the United Nations High Commissioner for Refugees (UNHCR), jumped from 40 million to approximately 89 million people forced to move from their countries.

In Brazil, we have a significant history of receiving migrants. It began with enslaved Africans, followed by European and Japanese migration in the late 19th century and early 20th century, triggering a high flow of migrants fleeing adverse economic situations, either in Latin America (OLIVEIRA, 2014) and other countries in the world, or people fleeing armed conflicts in Eastern Europe, the Middle East (SILVA; FERNÁNDEZ, 2020) and some countries in Africa (CHICO, 2020).

Brazil ratified the United Nations (UN) Convention on Refugees in 1951, but the refugee reception and public policies implementation for refugees only began to be effectively applied after the 1988 Constitution. In 1997, Law 9474 was approved, which serves as the legal basis for the creation and implementation of public policies aimed at assisting and integrating refugees.

In the early decades of the 21st century, the flow of migrants seeking refuge in Brazil was composed mainly of people from Haiti and Venezuela (LIMA; GARCIA; FECHINE, 2020). Besides these, Brazil is also a place sought by refugees from some African countries like Congo and Angola (CHICO, 2020).

According to the Brazilian Committee for Refugees (CONARE), Brazil is the prime destination for refugees in South America. Between 2019 and 2020 alone, Brazil welcomed more than 46 thousand refugees from several countries. According to UNHCR, the biggest concerns of these refugees living in Brazil are their income generation and insecurity against violence. These aspects are magnified by the lack of agility in regularizing the refugees and the consequent document issuance, which greatly delays their placement in the labor market. In addition, many people associate the presence of refugees with increased violence, even without official data to prove this belief, which generates more insecurity among those who already live daily with uncertainty about the future.

Therefore, this article intends to analyze how Brazil conducts the process of refugee reception and how the rights of these people are treated by the Brazilian State, non-governmental organizations, and society in general. In addition, the article also seeks to identify and list public policies aimed at the promotion, protection and defense of refugees as individuals with rights. In addition, the article also seeks to identify and list public policies addressing the promotion, protection, and defense of refugees as rights-bearing individuals.

Material and methods

Methodologically, this article presents a qualitative approach (MUSSI et al, 2019) consisting of a theoretical essay (SOARES; PICOLLI; CASAGRANDE, 2018). Thus, after defining the theme, we researched bibliographic references and articles published in academic journals to develop the discussion.

Results and Discussions

When the term "human rights" is mentioned, it is fundamental to understand it as rights that are essential to human beings, that must be guaranteed by an international order, and that are applicable even when not covered by the legal system of a given nation. These rights "however fundamental are historical rights and therefore arise from specific conditions characterized by the embattled defence of new freedoms against old powers. They are established gradually, not all at the same time, and not for ever" (BOBBIO, 1992, p. XXX).

The definition of the concept of Human Rights goes through the understanding that each human being has value in themselves and has individual needs that differentiate them from others and make them unique. This definition relies on understanding the term Dignity of the Human Person, where the individual must receive recognition from other citizens, society, and the State as worthy of equal rights (FRIAS; LOPES, 2015).

This recognition, which generates reciprocal respect among the members of a given society, allows us to understand the mutual dependence between each individual

and how this dependence builds the bonds necessary for social life. From the moment that the Dignity of the Human Person becomes the beacon of social relations and a right inherent to the individual, it becomes necessary to protect such rights and condition of individuals within this human society since the link between human dignity and human rights is unbreakable (FRIAS; LOPES, 2015). This understanding of the need to protect this condition becomes the starting point for the historical movements that seek the actual implementation of what would come to be known only as Human Rights.

The development of societies and the evolution of philosophical thought have brought the terms Fundamental Rights into social discussions. Considering the more distant past, we can notice in some ancient civilizations the concern in establishing written principles for living together in society and defining the rights of citizens of these societies (COMPARATO, 2015).

According to Nina-e-Silva & Alvarenga (2017), the Code of Hammurabi and the laws of the Hebrew people are examples of attempts to assign parameters for coexistence between people and the consequent definition of individual rights. Afterward, the search for a more just society finds support in the thought of the Sophists in ancient Greece, who were responsible for the transition from pre-Socratic to modern thought, abandoning the study of nature and turning to the study of the human being, putting man at the center of attention.

Later, in the 18th century, the United States Declaration of Independence and the Declaration of the Rights of Man and of the Citizen brought modernity to Human Rights. But while in the United States, human rights increasingly entered into state constitutions, with Virginia and Philadelphia declarations, Europe still lived in times of great inequality, where the bourgeois, artisans, and peasants endured expropriation of rights, as the nobility and clergy enjoyed untouchable rights. Not until 1789 was the French declaration promulgated, highlighting the commitment to a political system that guaranteed liberty and equality to all people, as well as religious freedom and freedom of speech, security of the person, due process of law, and the assumption of innocence in criminal proceedings (DEPINTOR; MAUTONE JR, 2020).

The search for an affirmation of the rights of individuals gains a more visible outline, mainly after the atrocities of World War II. The horror brought by World War II, even greater than the horror of World War I, evidenced the human being's self-destruction capacity and the need to find a way to guarantee not only survival but also the dignity of every human being.

The end of the war sparked the creation of the United Nations Organization. Its purpose was not only to arbitrate armed conflicts between member countries so that what happened in World War II would never happen again but also to ensure that the citizens of each country had their rights protected. The United Nations "was born with the vocation of becoming the organization of world political society, to which should belong, therefore, necessarily, all nations of the globe committed to the defense of human dignity" (COMPARATO, 2015, p. 226, own translation).

On December 10, 1948, the United Nations promulgated the Universal Declaration of Human Rights, representing "the historical manifestation that it was formed, at last, in universal scope, the recognition of the supreme values of equality, freedom, and brotherhood among mankind" (COMPARATO, 2015, p. 238, own translation).

According to Flávia Piovesan (2016), from these movements on, the concept of Human Rights became more tangible and real for human society. For the first time in history, the basic rights of the individual would be recognized, taking into account only the innate human condition and no longer archaic codes of honor or traditional local practices. Human beings would now be respected for their fundamental rights, regardless of origin, social class, skin color, or religious beliefs. But the reality was different from the expected.

The conflicts that followed throughout the 20th and early 21st centuries brought, along with them, more and more episodes of violation of Human Rights in several regions of the globe. These violations have gradually increased the migration of persecuted people within their origin countries, whether due to political, war, or religious situations. The invasion of countries (Iraq, Afghanistan), civil wars (Syria, Libya), conflicts between countries (Arab-Israeli conflicts), and the rise of authoritarian

groups (Taliban, Islamic State) have driven the increase in forced migrations, leading thousands of people to abandon their origin countries, their homes, and their families and to seek refuge or asylum in a foreign country.

Unlike asylum, which has its roots in classical antiquity, especially in Ancient Greece, where a State provided shelter and immunity to an individual who suffered persecution by another State, especially in the religious sphere, and was modified in Ancient Rome and included in Article 14 of the Universal Declaration of Human Rights, the institute of refuge has a more modern origin, appearing only in the early 20th century. While Asylum is a discretionary act of the granting state, Refuge stems from international obligations that must be met by all UN member states (PIOVESAN, 2016).

To request Asylum, it is necessary to prove the political persecution by the State against the citizen requesting protection. On the other hand, to request refugee status, it is necessary to substantiate the fear of persecution, i.e., persecution does not need to have been materialized for the individual to request refugee status, and the individual must be outside their origin State.

Thus, we can understand that the two institutes, despite having differences that make them distinct from each other, share the same objective: to provide freedom to the individual in the face of persecution imposed by their origin State, allowing them to enjoy their fundamental rights and dignity as human beings.

- UNHCR's Role in Refugee Protection

The end of World War II brought considerable changes in the relations between countries. The creation of the UN on October 24, 1945, brought the creation of several international organizations seeking greater cooperation among nations in the search for a more prosperous and peaceful time for the world. The UNHCR was one of these bodies created in 1950 by the UN, intending to assist refugees who could not return to their countries even after the end of the war.

The UNHCR makes a distinction between Refugees and Migrants. A Refugee is a person who crosses the border from their origin country to escape armed conflict, persecution, or human rights violations. In most cases, the individual's situation is so dangerous and intolerable within their country that just crossing international borders can mean the difference between life and death. At that point, the individual becomes a refugee, internationally recognized, with access to assistance from States, the UNHCR, and other humanitarian assistance organizations. They are recognized as such precisely because it is too dangerous for them to return to their country, and they need asylum somewhere else.

According to the UNHCR, migrants are those who have chosen to move primarily to improve their lives in search of work or education, for family reunification, or other reasons, and not because of a direct threat of persecution or death. It is important to remember that unlike refugees, who cannot return to their country, migrants continue to receive the protection of their government.

Although initially created for a three-year mandate to assist World War II refugees, as agreed in the 1951 UN Refugee Convention, the 1967 Protocol reformed the 1951 Convention expanding the UNHCR's mandate beyond European borders and those affected by World War II. In the face of the worsening refugee situation over the years, the UN General Assembly designated the UNHCR as the body responsible for protecting and assisting refugees worldwide.

The UNHCR is considered a political, humanitarian, and social institution, which, as defined in its Statute, assumes the function of providing international protection to refugees and seeking solutions to this problem.

- The Number of Refugees Increase in Brazil and in the World

Although migratory movements of people between countries are an integral part of human history, being even the origin point for the growth of several nations throughout history, the increase of refugees in the world in recent decades has turned on the warning light in international organizations, which began to treat the issue as a priority.

In Brazil, it is notable the various cycles of migrants who came after better living conditions. There were several waves of Germans, Italians, Japanese, and Arabs who came to Brazil between the mid-19th century and the 1930s. Migrations were responsible for redefining cultures and transforming the societies where they occurred.

However, with the end of World War II, the increase in the number of people who have migrated to other countries, not willingly, but because of the need for protection for themselves and their families, has reached levels never seen in history. From this time to the first decade of the 21st century, more than 40 million refugees have been forced to leave their homes and seek safety in other countries (JOLIE, 2010).

During this process of forced migration massive growth, Brazil has become the focus of these refugees, reaching the status of a welcoming country. Brazil has always been considered by other nations as a country with a neutral position in conflicts, always striving to condemn armed conflicts and offering dialogue as a solution to mediate disputes.

This historical atmosphere of relative peace on the world stage has placed Brazil as one of the main destinations for immigrants. Since the economic crises that Europe went through by the end of the 19th century, millions of Italians, Spanish, Germans, Japanese, Syrians, Lebanese, and Slavs migrated to Brazil, leaving their own countries, and seeking a place where they could settle, prosper, be respected and welcomed.

After these migration waves, Brazil has once again experienced large flows of refugees, coming from Latin American neighbors, fleeing dictatorships in countries like Chile, Peru, and Argentina at the end of the last century, and more recently, coming from countries facing political and economic crises, such as Venezuela and Haiti. Besides the Latin American neighbors, Brazil has also become the destination of more than 3,500 Syrian refugees who came here running from the civil war in their country. More recently, Brazil received more than 400 Ukrainian refugees fleeing the conflict with Russia.

The Brazilian Federal Constitution promulgated in 1988 provides in article 4 that the Republic of Brazil is governed by international principles, among them, item II, on the prevalence of Human Rights, and item X, on granting political asylum. In addition,

article 5 in the Federal Constitution determines the equality of rights among all persons residing in the country, whether Brazilians or foreigners: "All are equal before the law, without distinction of any kind, guaranteeing to Brazilians and foreigners residing in the country the inviolability of the right to life, freedom, equality, safety and property [...]" (own translation).

However, it was necessary to enact a complementary law to guide the requirements and reasons to consider in granting refuge, within a constitutional and humanitarian perspective, as well as its definition.

Law 9474, the so-called Refugee Statute, was enacted only in 1997. Article 1 of the Refugee Statute states that every individual will be recognized as a refugee when:

I - Due to a well-founded fear of persecution for reasons of race, religion, nationality, social group, or political opinions, the person is outside their country of nationality and is unable or unwilling to accept the protection of that country; II - Having no nationality and being outside the former habitual country of residence, the person is unable or unwilling to return to it due to the circumstances described in the previous clause; III - Due to serious and widespread human rights violations, the person is forced to leave their country of nationality to seek refuge in another country. (own translation)

The issuance of Law 9474 in 1997, which regulates the status of refugees in Brazil, together with the Federal Constitution, established parameters and guidelines for implementing public policies by the State for welcoming and caring for refugees who seek Brazil as a destination to settle and flee the difficulties and persecutions they have suffered, as well as for those who already live in Brazil.

The issuance of Law 9474 allowed the principles brought by the Federal Constitution to materialize in actions, either by the State, through public policies, or by private groups and individuals, such as Non-Governmental Organizations (NGOs). Over the years, the difficulties in implementing public policies have led to the emergence of more and more civil society organizations willing to face the task of providing refugees with their rights. This network of organizations has been of essential importance in promoting the rights of refugees, providing not only access to food and medicine, but also referrals to employment, facilitation of document issuance, and medical services.

Among these networks of institutions, the Instituto de Migração e Direitos Humanos - IMDH (Migration and Human Rights Institute) stands out. IMDH is a non-profit organization founded in 1999 in Brasília, which receives support from the UNHCR and provides humanitarian aid and attention in resettling refugees, defending rights, and promoting the integration of migrants living in Brazil or border regions. Other institutions that play the role of assisting the support to refugees are the Archdiocesan Caritas, the pastoral work of the Catholic Church, some evangelical churches, the S system (SESC-SENAC, SESI-SENAI), Federal, State, and private Universities, among others.

From the second half of the 19th century until today, Brazil has received refugees from Angola, Sierra Leone, and Afghanistan, among others, and in the last five years, Brazil has become the leading destination for Syrian refugees in Latin America. Law 9474/1997 also created the Brazilian Committee for Refugees (CONARE), the body responsible for recognizing the refugee status of those who request refuge in Brazil.

CONARE then has become the main official body for refugee protection in Brazil. It is in charge of guiding and coordinating the necessary actions for this protection to be effective, as well as organizing assistance and support to refugees. It is the representative for policies of protection and state support to those who are considered refugees.

According to CONARE data from 2021, 60,800 refugees of several different nationalities currently live in Brazil. The main refugee groups are composed of Syrians, Angolans, Colombians, Congolese, and Palestinians. In recent years, the number of Venezuelan refugees requesting shelter in Brazil has also grown.

Between 2019 and 2020 Brazil welcomed 46,800 refugees. This increase is represented exactly by Venezuelans who came to Brazil seeking refuge. Of every 100 refugees who came to Brazil from 2016 to date, 91 came from Venezuela. The increase in the exodus of refugees to Brazil has brought concern mainly to cities that are in the border region with that country, both because of the public emergency that is created in those cities, as well as the increase of people on the streets and the fear of increased violence (LIMA; GARCIA; FECHINE, 2020).

Due to its proximity, Brazil tends to host a greater number of refugees from Africa and the Americas. In contrast to the growth of Venezuelan migrants, the number of refugee requests from African countries tends to decrease, mainly due to improved economic conditions and the political situation in African countries such as Angola and Sierra Leone.

On the other hand, according to information from the Ministry of Justice and Public Safety (2021), along with Venezuelans, there has been a considerable and worrying increase in the number of Colombian refugees, mainly due to conflicts between guerrillas, paramilitaries, and government forces.

It is relevant to mention that Law No. 13445 came into force on May 24, 2017, and began to regulate migration in Brazil, establishing principles and guidelines for public policies for immigrants. This new law defined the rights and duties of the migrant and the visitor, as well as began to regulate their entry and stay in Brazil, and established principles and guidelines for public policies, including even the emigrant.

As analyzed by Mendes and Brasil (2020), Law n. 13445/17 sought to harmonize with human rights, as guaranteed by treaties to which Brazil is a signatory, and fundamental rights prescribed in the Federal Constitution of 1988, such as the right to freedom, security, and inviolability of the home. In consonance with these rights, the law establishes that Brazilian migration policy will be governed, among other principles and guidelines, by the universality; the interdependence of human rights; the repudiation and prevention of xenophobia, racism, and any form of discrimination; the non-criminalization of migration; and by non-discrimination regarding the criteria and procedures by which the person entered Brazilian territory.

For all the above, we can see that, although there are comprehensive legal provisions to ensure the rights of refugees, we see that these end up running into the difficulty of the practical application of these provisions, either by the resistance of acceptance by the populations of the countries that receive refugees or by the discourse of combating terror and violence. The right that the law deals with does not correspond to the actual right.

The universality of the law creates this difficulty since it cannot reflect the concrete cases of human rights violations, highlighting the problems of the theme and the challenges of its application the daily life in countries that, like Brazil, are willing to receive those people who arrive here in search of shelter.

Final considerations

Migration is inherent to human life and is part of human history. Migrations occur for various factors, such as: when looking for better living conditions; to escape wars and environmental disasters; or simply by wishing to settle in another region due to climate, society, or family (MENDES; BRASIL, 2020).

However, when migrations occur in a forced and not voluntary way, mainly due to political, religious, or political and religious persecution, these migrants are called refugees.

After the end of World War II, the flow of migrants in the world reached alarming numbers, and Brazil, mainly due to its pacifist history and as a welcoming country to foreigners, became the focus of a contingent of people from various countries, seeking better living conditions for themselves and their families.

Given this increased influx of refugees, Brazilian legislation has been modernized, especially after the issuance of law 9474/97, which established the parameters for the reception and integration of refugees into Brazilian society. In addition, Brazil has also adopted several international provisions for refugee protection, instituted the CONARE (National Committee for Refugees), and allowed the UNHCR (United Nations High Commissioner for Refugees) to operate in Brazilian territory.

According to that demonstrated in this article, the Brazilian legislation on refugees, even being in several cases an example to follow at the international level, is still not able to remedy practical deficiencies in its application. The unpreparedness of the agents who maintain the first contact with foreigners intending to seek refuge and the misinformation of the population have generated a situation in which Brazil continues to be a welcoming country that opens its arms to refugees but is still unable

to transform this feeling into practices that can expedite their regularization, their insertion in the labor market and the consequent granting of the so-long expected dignity.

Therefore, an "education that must be built having as its main objective the formation of all individuals, without giving up the most varied techniques and methodologies that enable the discussion, practice, promotion, and guarantee of human rights" (LOPES; MIRANDA, 2021, P.7). Acting in this way, perhaps we can break with these constant rights violations.

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