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FORCED DISPLACEMENTS IN THE INCREASE IN ENVIRONMENTAL DISASTERS: VIOLATION OF HUMAN RIGHTS AS A PREREQUISITE FOR THE RECOGNITION OF THE ENVIRONMENTAL REFUGE IN BRAZIL

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ABSTRACT

Sudden climate change and environmental, natural and man-made disasters have forced thousands of people around the world to leave their countries in search of refuge and a minimally dignified life in another territory. This article seeks to address the problem of human displacement caused by these catastrophes by investigating the legal protection required for these displaced persons in the light of an analysis of Status of Refugees from the perspective of the pro homine principle. To this end, in addition to an explanation of the refugee, as a legal institute of protection at world level, environmental disasters will be analyzed to later discuss one of the problems that arise precisely because of these disasters, which is none other than the massive displacement of people, forced by the lack of conditions to remain in the affected area with dignity. Methodological aspect adopted: juridical-dogmatic; type of reasoning: deductive; methodological types of research: historical-legal, juridical-interpretative, juridical-prospective and juridical-positive.

Keywords: Environmental Disasters; Violation of Human Rights; Environmental Refuge.

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DESLOCAMENTO FORÇADO NO CRESCIMENTO DE DESASTRES AMBIENTAIS: A VIOLAÇÃO DOS DIREITOS HUMANOS COMO PRÉ-REQUISITO PARA O RECONHECIMENTO DO REFÚGIO AMBIENTAL NO BRASIL

RESUMO

Mudanças climáticas repentinas e desastres ambientais, naturais ou provocados pelo homem, forçaram milhares de pessoas ao redor do mundo a deixar seus países em busca de refúgio e de uma vida minimamente digna em outro território. Este artigo procura abordar o problema do deslocamento forçado causada por essas catástrofes, investigando a proteção legal necessária para essas pessoas refugiadas à luz de uma análise do Estatuto dos Refugiados sob a perspectiva do princípio pro homine. Para isso, além de uma explicação sobre o refugiado, como um instituto jurídico de proteção global, serão analisados desastres ambientais para, posteriormente, discutir um dos problemas que surgem justamente por causa desses desastres, que não é outro senão a emigração massiva de pessoas, forçado pela falta de condições para permanecer com dignidade na área afetada. O aspecto metodológico adotado: jurídico-dogmático; tipo de raciocínio: dedutivo; Tipos metodológicos de pesquisa: histórico--jurídico, jurídico-interpretativo, jurídico-prospectivo e jurídico-positivo.

Palavras-chave: *desastres ambientais; violação de direitos humanos; refúgio ambiental.*

INTRODUCTION

Climate change, population growth, irregular land use, unrestrained use of natural resources, environmental degradation and pollution in its various forms, among other factors, have led to the intensification and expansion of risks of environmental, natural or human-caused disaster.

It is in this scenario that we have experienced in recent years the occurrence of major disasters worldwide, such as the tsunami in the Indian Ocean, which mainly affected Indonesia (2004); Hurricane Katrina in the United States (2005); Cashmere earthquake in Pakistan (2005); cyclone Nargis in Myanmar (2008); earthquake in Haiti (2010), and rains in the mountainous region of Rio de Janeiro (2011). These events caused death and destruction of infrastructure in the affected regions, which led a large number of people to leave their "homes" and seek refuge and protection in a safe place.

Due to the occurrence of these events and, consequently, when the infrastructure of a given location remains affected, whether in a city, region or part of a country, the way of life of people in that environment is impaired, especially in the most severe cases, in which existence itself is compromised. It is practically impossible to live in an affected location with minimal dignity and, for this reason, in the most vulnerable countries, where immediate reconstruction is difficult, these people are forced to move internally within their country or, in more serious cases, where the country's infrastructure is affected as a whole, they are forced to cross the borders in search of refuge in another territory.

Although these people have left their countries and crossed the borders in search of refuge in another territory, they are not legally recognized as refugees. This is because the legal institute of refuge establishes two indispensable requirements for its recognition. Therefore, in addition to the person crossing the border, he/she he must necessarily be running away from persecution or be afraid of suffering it.

The global instruments that regulate refuge, in particular the 1951 Refugee Convention and its 1967 Protocol, recognize as refugees people who have been forced to leave their country, crossing their borders in search of protection in a safe country because they suffer persecution in their country of origin.

These instruments are limited, as there are numerous other reasons why thousands of people around the world leave their country and cross

borders in search of refuge in another region. Among these reasons, we highlight in this article the forced displacement due to the occurrence of environmental or natural disasters, which, depending on their magnitude, cause an overwhelming destruction of the region's infrastructure, regardless of what is inhabited.

The problem with this investigation lies in the fact that people who leave a country affected by an environmental catastrophe and cross the border in search of refuge in another State are not recognized as refugees by the protection instruments that regulate the legal institute of refuge. This is due to the fact that these people do not present well-founded persecution or fear, and, for this reason, they start occupying the legal limbo, without receiving the necessary protection.

It is in this context that a new class of refugees is born, called "environmental refugees," who, despite having been forcibly removed for reasons beyond their control, receive reduced protection from the State, just because they do not have legal requirements to be recognized as refugees.

This is a current extreme relevance issue, especially due to the significant increase in the risk of natural disasters caused by global warming, which intensifies weather events such as hurricanes, extreme temperatures, extreme rains, melting glaciers, snow, and sea level rising (CARVALHO, 2015). Moreover, the relevance of the investigation also lies in the fact that victims of environmental disasters are subject to serious and widespread human rights violations.

Thus, this article will address environmental disasters, discussing one of the main problems that arise from them, that is, the massive immigration of people forced by the lack of conditions to remain in the affected area with dignity.

In this sense, an explanation about the refugees will be made, taking as its starting point their recognition as a global legal institute, through the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, as well as the regional instruments of protection to this institute, in particular the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration on Refugees, which embrace an expanded concept of refugee.

Finally, the panorama of refuge in Brazil will be presented, through Law 9,474/97, to analyze the concept of refuge in Brazilian domestic law and investigate whether people that immigrate to Brazil for environmental reasons should be recognized as refugees, taking into account a possible violation of human rights in the event of environmental disasters.

The methodology used for development of the study will be bibliographic research, through consultation on doctrines, texts and scientific articles, in addition to documentary research based on the reading of laws and judgments involving the subject, through theoretical, interpretative and historical analysis, besides use of deductive method.

1 ENVIRONMENTAL DISASTERS

Environmental issues that have occurred worldwide are abundant, especially those of great magnitude and that have aroused the concern of the entire international community. This is because the current times have been characterized by the formation of a complex post-industrial society that produces global risks, and, among them, environmental risk is presented as one of the most relevant types (CARVALHO, 2013). Juárez Freitas observes that, according to all indications, the planet will not be extinguished in the next millions of years, but humanity is in real danger due to the gravity of current issues (FREITAS, 2016).

Meanwhile, Ulrich Beck sees environmental catastrophes as the worst kind of metamorphosis that has been occurring in the world, mentioning that climate change represents the metamorphosis of politics and society and should be discovered and analyzed with caution for the social science of methodological cosmopolitanism:

> This does not mean that there is an easy solution to climate change. Nor does it mean that positive side effects from negative side effects automatically result in a better world. And it doesn't even mean that active, sub-political and political metamorphosis is fast enough to fight the rampant process of climate catastrophes that can drag the whole world into droughts, floods, chaos, famine, and bloody conflicts. However, catastrophe would also be a metamorphosis, the worst type of metamorphosis (BECK, 2015, p. 65).

In a brief history, Délton Winter de Carvalho describes the phases of disasters:

> First, the disaster was seen as a divine phenomenon, a manifestation of gods' fury. In a second moment, especially natural catastrophes came to be perceived as a demonstration of the greatness and devastating power of nature, against which man could do very little. Finally, in the contemporary era, disasters, even the so-called natural ones, are described as events that, although somehow triggered by natural phenomena, only reach the condition of disasters when they are fed by socially (re) produced vulnerabilities (CARVALHO, 2015, p. 21).

Thus, to regulate the complications resulting from an environmental disaster, Disaster Law emerges as an extreme right, created in the face of the prominent need for regulation sensitive to risk and uncertainty regarding the severity of these natural events, drawing humanity's attention to the crisis experienced, especially as a result of widespread consumption increasingly exacerbated, associated with the effects of a nature influenced by climate change (CARVALHO, 2015).

Bearing in mind that, faced with a problem, a new law is born to regulate the case in question, Délton Winter de Carvalho teaches in conferences:

> Today, Law is one of the systems whose ambition is to provide decision-making capacity in extreme scenarios, giving stability and legal security to the chaos instituted by disasters. On the other hand, the legal profession should perform this task dynamically, given the speed and urgency imposed by these events (CARVALHO, 2015, p. 22).

In addition, the intervention of Law in the face of environmental disasters is legitimate, as it seems to be beyond random misfortunes, such as true and serious consequences of socio-environmental injustices accumulated by omission and negligence (CARVALHO, 2015), and even though they are called natural events, they are born as a result of physical and social vulnerabilities, reason why Law is responsible for regulating social relationships that exist before, during and after disasters.

However, the increasingly common and intense disasters that have occurred in the world generally have a regulatory deficit in environmental standards. As a result, disasters become a springboard for the evolution of environmental legislation, at the same time that they are able to raise the awareness of authorities and public opinion about the need for greater regulation and environment protection (CARVALHO, 2015).

In this context, Disaster Law has become increasingly important worldwide, as a means of providing normative guidance on preventing the occurrence of environmental disasters and responding to such events, such as legal regulations in the United States and Europe, which already have rules that regulate this matter. In Brazil, disaster regulation is still incipient and appears discreetly in Law 12,340/2010, Decree 7,257/2010, Law 12,608/2012 and 1988 Federal Constitution

Despite its autonomy, Disaster Law uses the various branches of law and their instruments for its specific purpose, which is to regulate relations of anticipation and response to disasters. It is here that, under the aegis of

constant risk management, Disaster Law structuring functions are presented: prevention and mitigation, emergency response, compensation, and reconstruction (CARVALHO, 2015).

In addition to the typically environmental issues that involve disasters, the social issues that arise from them are also relevant:

> Therefore, climate sensitivity tends to put more pressure on the so-called "natural" disasters. However, they can also lead to a further destabilization of social relations, also intensifying the possibilities of increasing anthropogenic disasters. Thus, the occurrence of disasters and their recent increase are related to a cumulative pattern of exposure, vulnerability, and occurrence of climatic events. In other words, disasters are the result of a combination of physical and social factors, which give rise to events of sufficiently serious dimensions that affect human lives, goods, services and environmental resources (CARVALHO, 2015, p. 35).

Although we recognize the relevance of the environmental bias of disasters, this research will make an outline that seeks to highlight the social context that derives from them, mainly the forced displacement of people, as it will be presented in the topics below.

1.1 Environmental refugees

Environmental disasters and climate change have resulted in a significant flow of people, who immigrate in search of a safe and healthy environment for their survival. This scenario has become increasingly frequent, reason why the international community is especially concerned with these people.

Some immigration events of environmental characteristics occur temporarily while the circumstances that originated them are provisional. However, there are people who are forced to leave their country permanently, because the causes that led them to do so are irreversible, as in cases where there is a significant destruction of the country's infrastructure, which will hardly be rebuilt, or when there is sea level rise, which makes it impossible for people to remain in the affected country.

Those who immigrate due to environmental disasters are not recognized as refugees. This occurs for two reasons. Firstly, because the normative instruments that regulate refuge require that the individual is a persecution victim and, secondly, by the absence of a norm that expressly regulates this type of displacement. For this reason, the issue still needs, nowadays, a broader, objective and effective tutelage.

The United Nations Environment Programme (UNEP) defines environmental refugees as:

> A group of people who have been forced to leave their traditional habitat, temporarily or permanently, because a marked environmental disruption (natural and/or triggered by people) that jeopardize their existence and/or seriously affected the quality of their life, as would be exposed to serious violations of rights humans.

As extracted from the concept transcribed above, the definition is clear in stating that these individuals are exposed to serious violations of human rights, which, in fact, occurs in this scenario. Therefore, we understand that the configuration of immigrants' human rights violation is necessary in order for them to receive the status of refugees.

However, although the violation of human rights remains clear, the regulatory instruments that deal with refuge, whether at the regional or global level and in Brazilian national legislation, do not recognize that these environmentally displaced people are refugees, since, according to the understanding of the majority, the main element that characterizes refuge lacks, in particular, persecution.

For this reason, these people remain legally unprotected, even after crossing the border of their country, which has been completely destroyed by an environmental disaster, making it impossible for them to stay, since there are no decent survival conditions. The vulnerability of these people is clear, and they need effective protection from the State (DEL MASSO; MIRANDA GONÇALVES; FERREIRA, 2015) that receives them; even so, they are legally unprotected.

The fact that people displaced for environmental reasons are not recognized as typically refugees is due to the absence of an essential particularity, that is, persecution. Thus, individuals and groups that cross borders, seeking hospitality in another state of international society due to environmental issues, are within a legal limbo, a legal vacuum, since they are not covered by the 1951 Convention Relating to the Status of Refugees or any other regulatory instrument that standardizes the issue (PEREIRA, 2017).

For a better understanding of the subject, we will present, in the following topics, a detailed outline of the legal institute of refuge, in order to address its nuances and, mainly, the rules that regulate it at the global, regional and domestic levels, especially to demonstrate the initial concept, as well as its expansion.

2 FORCED DISPLACEMENTS OF PEOPLE WORLDWIDE AND THE LEGAL INSTITUTE OF REFUGE

There are several factors that lead people to immigrate to another country. Sometimes this movement occurs at their own will. At other times, this change is presented as necessary for their survival. Some leave in search of work, better living conditions, others in search of protection for various reasons, mainly due to widespread violence, armed conflicts, collapse of governance in their countries, forced marriages, ethnic and sectarian tensions, forced recruitment of soldiers, occurrence of environmental disasters, persecution in their country (MAHLKE, 2017), and so on.

For those who leave their country and cross the border to escape persecution, legal status of refugee is guaranteed by the 1951 Convention Relating to the Status of Refugees.

However, even before refuge was recognized as an appropriate legal institute, it has existed since biblical times, when there were already stories of people who were forced to leave their country as a result of persecution and then sought refuge in a safe place. In this sense, José Henrique Fischel de Andrade emphasizes that:

> Since the most remote times man has lived with the fact of having to leave his native land for not believing in his rulers or in the society in which he lives. The offense committed leads, as punishment by those who hold power, to the suspension of the reception of the criminal who, consequently, must seek elsewhere the protection lost (ANDRADE, 1996, p. 8).

Similarly, Andrea María Calazans Pacheco Pacific adds that "the Bible recalls the story of the Holy Family (Joseph, Mary and the Child Jesus) that was forced to leave its lands and takes refuge in Egypt to escape Herod" (PACIFIC, 2010, p. 39).

From there, it can be noticed that refuge has accompanied humanity from the beginning, even if discreetly. However, over the years, it has grown and taken on a new format as the community broadly evolves.

From the 1920s, this question arises significantly, assuming a new paradigm due to the end of the World War I, intensifying with the emergence of the World War II and the consequent forced mass displacement of people in Europe.

This intense movement aroused the international community's concern about these people and, since then, there has been need to grant legal protection to this minority group of individuals, called refugees.

It is important to note that refuge already existed before its normative recognition. In this sense:

> It can be said that refugee protection, in a coordinated manner, began through the activities of the League of Nations. This was mainly due to the events that occurred shortly before, during and especially immediately after the first Great War (ANDRADE, 1996, p. 20).

The League of Nations is an international organization created by the Treaty of Versailles in 1919, with the main premise of guaranteeing world peace. It is also responsible for supervising the committees established to address relevant international issues.

Although the Covenant of the League of Nations of 1920 did not explicitly mention the refugee protection, the reality in which European countries lived at that time, especially with regard to the mass displacement resulting from the persecutions caused until the end of the World War I, expressed concern in the international community, which, through the League of Nations, created the Commissioner for Refugees, which would address specific issues of these people, in particular through the Refugee Committee, headed by Mr. Fridtjof Nansen, first High Commissioner for Refugees of the League of Nations.

The protection given to refugees during this period was of a legal and non-humanitarian nature, and refuge was seen as temporary, which arose naturally at the end of the World War I. However, over time, it became more and more common, while "[…] the groups of people seeking protection increased and the concern about their destinies began to be discussed in the League of Nations" (ANDRADE, 1996, p. 23).

In this context, the importance of the League of Nations in the historical context of the legal refugee protection stands out, because it was from the concerns and actions of this international organization that the concern and urgent need to protect these minorities arose in international law.

However, due to the emergence of new conflicts, especially with the outbreak of World War II, the League of Nations was dissolved and, to assume its functions, the United Nations (UN) was created in 1945. In its first session, concern and need to create a new body dedicated exclusively to the issue of refugees was presented to the General Assembly.

Before the Universal Declaration of Human Rights was approved on December 15, 1946, the UN General Assembly approved the creation of the International Refugee Organization (IRO), on a provisional basis. IRO main tasks were:

> […] To identify refugees, issue their documentation, help them with their needs, respond to requests for repatriation, help them with local integration and, when necessary, intervene to obtain their resettlement in a third country (SANTIAGO, 2003, p 86).

It is worth mentioning, however, that even before the end of the IRO mandate, the United Nations General Assembly was already discussing which body would assume its succession, since it was necessary to adopt universally accepted criteria to deal effectively with the difficulties arising from the growing number of refugees.

It was for this concern that the Universal Declaration of Human Rights, of December 10, 1948, proclaimed in Article 14, that "[…] Everyone has the right to seek and to enjoy in other countries asylum from persecution". One year later, on December 3, 1949, the UN General Assembly created the United Nations High Commissioner for Refugees (UNHCR), giving it the exclusive function of protecting these people.

At the beginning of its activities, UNHCR had an innovative concept of refuge, which gave it a humanitarian and apolitical character. In that spirit, and in an attempt to fully understand this institute, even for more effective actions, it asked a professor at the Center d'Études de Politique Etrangère in Paris, Professor Jacques Vernant, to perform a study on refugees. This study highlighted that:

> […] The problems of refugees in general, not limited to those under UNHCR protection, are profound, which conclude that the greatest evil of the refugee crisis is its repetitive and permanent nature (SANTIAGO, 2003, p. 88).

In view of this in-depth study, the emphasis was on paying more attention to the institute of refuge, mainly due to the reality experienced at the time. Then, the UN General Assembly, on July 26, 1951, approved the Convention Relating to the Status of Refugees, considered by the UN as the Magna Carta of this legal institute.

2.1 1951 Status of Refugees and its 1967 Protocol

The 1951 Convention, also known as the Convention Relating to the Status of Refugees and 1951 Geneva Convention, was discussed and developed during a plenipotentiary conference in Geneva, in July 1951.

As this conference took place outside the UN structure, other countries that were not part of this organization but were interested in this topic, were able to participate in the writing of its text, which used UNHCR's

statute as an initial reference. Although the Convention was finalized in July 1951, it did not enter into force until 1954 (ANDRADE, 2010).

While discussing issues that should involve the Convention, differences were noted between participating countries. First, with regard to the *ratione temporis* competence of the 51st Convention, since some countries have argued that the definition of refugee should be broad, with no time limit. Others, in turn, wanted to set a deadline for recognizing a refugee. In the end, the normative text adopted the term, under the justification that allows States to measure the scope of their obligations.

Another important divergence occurs in relation to the geographical boundary, since, on the one hand, some States affirm that the 51st Convention can be applied to any refugee in the world and, on the other hand, other States understand that this instrument should be applied only to European Refugees, who are most in need of protection. This latter position was the one used the text of the Convention.

Therefore, at the end of the Plenipotentiary Conference, the full text of the 51st Convention was born, which presents in its first article the concept of refugee, which is any person who:

> […] As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (ONU, 1951).

In light of this concept introduced by the 1951 Convention, it seems that this instrument:

> […] established a temporal and geographical limitation, since the status of refugee was limited to events that occurred before January 1, 1951 on the European continent. This means that refugees were only recognized as such if they were the result of episodes that occurred before January 1, 1951. Although it applies to thousands of people – since the 1950s, most refugees were Europeans –, this definition has been ineffective over time (PIOVESAN, 2003, p. 119).

The mass displacement was not limited to Europeans, while in many other countries in the world this phenomenon was repeated, perhaps with the same intensity. People who are forced to leave their country for the same reasons as set out in Article 1 of the 51st Convention are left unprotected because they are not protected by the Status of Refugees due to territorial and temporal limitations.

In view of this situation, the international community realized that it was necessary to fill this gap, expanding the scope of the definition of refugee, so that on January 31, 1967, the Protocol Relating to the Status of Refugees was published, which in its Article 1 renounces the territorial and temporal boundaries that existed until then.

Thus, from the elaboration of the 1967 Protocol in particular, as provided for in its Article 1, paragraph 2, refugees were not only Europeans affected by the events that took place before January 1, 1951, but any person in the world who, fearing, with good reason, persecution because of his/her race, religion, nationality or political opinion, is outside the country of his/her nationality and cannot return to it due to that fear, or that having no nationality and is outside of his/her country of habitual residence as a result of such events, is unable or due to that fear does not want to return to it (UN, 1967).

In principle, for an individual to be recognized as a refugee, there must be two requirements that are interdependent: extraterritoriality and a well-founded fear of being persecuted for reasons of race, religion, nationality, social group, or political opinion.

It is observed that the refugees are not common foreigners, but foreigners who are at risk within their own country (FOSTER, 2014) and, therefore, are forced to abandon it.

It is evident that the 1951 Convention and the 1967 Protocol, although regulating the same subject, are independent and distinct documents, and this, as seen, was created to eliminate the previously established temporal and territorial limit of the original text, extending the concept of refugee to non-Europeans. It is important to note that it is perfectly possible for States to adhere to only one of them, as well as it is also possible to adhere to both, without obligation in the face of that which has not been ratified.

The 1951 Convention and the 1967 Protocol are instruments of global protection that occupy the top of the pyramid of the legal institute of refuge, since the content of their texts was used as a parameter for the design of other subsequent documents that regulate refuge, both at the regional level, such as the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration on Refugees, and at the internal level of States, such as Brazilian Law 9,474/97 (Status of Refugees).

2.2 1969 Organization of African Unity Convention and 1984 Cartagena Declaration on Refugees

The initial concept of refugee, later extended by the 1967 Protocol, with the consequent rupture of territorial and temporal limitations, remains insufficient to meet the growing and wide demand of people who are forced to leave their country for several reasons, but no less important than those established in the 1951 Status of Refugees and in its Protocol.

There was no protection structure capable of accommodating this group of people who, despite being in latent danger, were completely unprotected due to a legal loophole, which kept them excluded from the category of refugees.

Faced with this reality, African countries that had the intense flow of forced displacement due to the civil wars caused by the decolonization process and the consequent independence of these States were forced to create a regional document that could extend the concept of refugees to people who were not covered by the 1951 Convention and its 1967 Protocol.

Then, to protect these atypical displaced persons, OAU Refugee Convention was signed in 1969 in Addis Ababa, edited to regulate the specific aspects of the problems of refugees in Africa.

This African regional document brought an important innovation to the legal framework for refugee protection, while extending its original concept by extending its applicability in Article 1, II:

> […] to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

The importance of this Convention also refers to the degree of concern about people who migrate from one place to another within the same territory: "[…] the African Union's Regional Treaty Organization of African Unity is so far the only evidence of preparation to provide a legitimate legal status for those people's protection".

Years later, there was another intense migratory flow of people in the Americas, due to armed conflicts in Central America caused by guerrillas who wanted to overthrow military dictatorships.

In order to solve this problem, in 1984, a meeting was held between Latin American countries in Cartagena de Indias (Colombia), opportunity that highlighted the need for creating a document similar to the one

published by the OAU and that could meet the refugee demand in America

This meeting resulted in the text of the 1984 Cartagena Declaration on Refugees, an instrument of regional protection for refugees that, in addition to proclaiming the mechanisms and strategies necessary to solve the problem of forced displacement, and following the spirit of the African Declaration, expanded the concept of this institute. Therefore, the Third Conclusion to that Declaration contains the following:

> […] Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order".

It is important to note, however, that:

> […] The enlarged definition and the traditional definition of refugee should not be considered exclusive and incompatible, but, on the contrary, complementary. The concept of refugee, as defined in the Convention and the Protocol, provides an adequate legal basis for the universal refugee protection.

Thus, as the backbone of this institute, it derives from the global protection instruments, ramifications capable of extending the rudimentary concept of refugee, allowing, then, the technical-legal use of all these instruments concurrently, as a form of integral protection to these people.

It is not possible to deny that the extension of the concept of refugee by these two regional instruments represents a significant advance in the field of protection to these people. However, as they are not global documents, applicability by other States is optional. Thus, other States are not obliged to admit refugees in their countries due to the extension of the concept brought by the 1969 African Convention and the 1984 Cartagena Declaration. In this sense:

> The only problem with the extension of the concept of refugee by some States is the lack of uniformity in the definition, so that refugees recognized as such by the OAU or by the Cartagena Declaration (1984) are not protected as refugees in other States, which prevents the application of homogeneous criteria worldwide, which would allow the creation of a truly universal system that would make UNHCR's work more difficult.

Even so, both documents deserve to be celebrated, because, in addition to representing an advance in this matter, they are recognized as

precedent refuge protectors, serving as a reference for other States, such as Brazil, that adopted in their domestic legal system the expanded concept of refugee.

3 REFUGEE STANDARDIZATION IN BRAZIL: STATUS OF REFUGEES

In the Brazilian legal system, refuge is regulated by Law 9,474/97. It is responsible for governing the entire structure of this institute, and it is considered by the United Nations (UN) and by the subject scholars as one of the most modern, innovative and comprehensive laws in this matter worldwide.

According to Liliana Lyra Jubilut:

> It turns out that most of these laws address the issue of refugees under immigration or asylum law, for example, in the United States and Japan, and there is no specific law. The relevance of Brazilian national legislation lies in the elaboration of this law, since this fact allows a better adaptation of the legal text to the refugees' needs (JUBILUT, 2007, p. 191),

In the words of Valerio de Oliveira Mazzuoli "[…] this law is the first to apply a human rights treaty in Brazil, and remains the broadest in Latin American that exists to solve the issue" (MAZZZUOLI, 2016, p. 351). However, although it is considered as such, it is still poorly understood, even by refugees and asylum seekers themselves.

This law was approved in Brazil on July 22, 1997, by the then president Fernando Henrique Cardoso, and edited with the aim of defining mechanisms capable of incorporating the entire normative text of the 1951 Convention and the 1967 Protocol into the Brazilian legal system.

Nevertheless, the refugee law in Brazil was not limited to adopting only the legal content of texts related to refugees worldwide, but incorporated the innovations reflected in the 1984 Cartagena Declaration on Refugees, which expanded the concept of refugee.

It is worth emphasizing that Law 9,474/97 is quite complete and unambiguous and it is possible to understand its content through a simple reading. Therefore, it is not necessary to carry out an exhaustive and individualized analysis of each of its articles, so that only the most relevant points are highlighted, starting with the concept of refugee it provides. Article 1 states that:

> An individual shall be recognized as a refugee if:
> I – due to well-founded fears of persecution for reasons of race, religion, nationality, social group or political opinions, he or she is out of his or her country of nationality and cannot or does not wish to rely on the protection of such country;
> II – having no nationality and being out of the country where he or she had previously retained permanent residence, cannot or does not wish to return to such country based on circumstances mentioned in item I above;
> III – due to severe and generalized violation of human rights, he or she is compelled to leave his or her country of nationality to seek refuge in a different country.

Therefore, the following are essential requirements for recognition of refuge: (a) a well-founded fear of persecution; (b) the condition of extra-territoriality; and, finally, and in an innovative way; (c) a serious and widespread violation of human rights

It should be noted that Brazilian legislation, such as the 1984 Cartagena Declaration, adopted the expanded concept of refugee, granting protection to those who, due to serious and widespread human rights violations, are obliged to leave their country of nationality seeking refuge in another country.

In this perspective, it is necessary to recognize that individuals who leave their country because were affected by an environmental disaster were obviously suffering human rights violations. As mentioned extensively, environmental disasters that destroy a country's infrastructure limit the access to health,[3] education,[4] and decent housing, that is, make access to basic rights impossible for people affected by this disaster.

Therefore, it is imperative to grant these people the benefit of refuge as they present the legal requirement of a serious and widespread violation of human rights, and the concept of refugee has been expanded in the text of the law. There is no doubt that those displaced by environmental issues should be recognized in Brazil as traditional refugees.

However, on the contrary, Brazil mistakenly does not recognize as refugees the victims of the environmental disaster that seek refuge here. It is possible to mention, for example, the case of Haitians who were forced to leave their country, devastated by an earthquake, which prevented them from remaining there due to serious and widespread human rights violations.

To meet this demand, the National Immigration Council issued Normative Resolution 97/2012, which regulates the granting of a permanent

3 Gonçalves (2017).

4 Gonçalves (2018).

visa to these people for humanitarian reasons, the "humanitarian visa". However, we believe that it was not a correct decision, as our legal system has specific legislation capable of protecting this situation more effectively. The right thing would be to recognize them as refugees and then it would be totally unnecessary to create a normative subterfuge.

In view of this, it is clear that Brazilian law did nothing to adopt the expanded concept of refugee if the text of the law does not apply to the proposed case; then, the concept is void of effectiveness as long as it exists, being a dead letter and not applicable.

CONCLUSION

From this research, it is possible to conclude that there is a clear need for expansion of the concept of refugee established by the 1951 Convention and its Additional Protocol, while these normative instruments did not keep pace with changes in the world and ended up being insufficient in their protective function. This occurs because, currently, the reasons that lead people to leave their country for protection elsewhere are not limited to the persecution criteria, and it is extremely important to recognize that one of the main factors that cause the displacement of people today comes from the occurrence of environmental disasters.

In this sense, it is convincing to recognize that people who are forced to leave their country of origin as a result of environmental disasters should be recognized as refugees under the 1951 Convention and, consequently, receive all due protection.

This protection should be provided mainly because a region affected by an environmental disaster, which caused the destruction of the entire infrastructure, such as the collapse of hospitals, schools, and health centers, undoubtedly causes the direct effect of not rendering basic services to the society, also impairing the condition of living with dignity in this context.

If there is no health, education, food, clean water, housing or hygiene, it becomes difficult to survive with a minimum of dignity in that place. There is no doubt that the most basic rights of these people will be violated and, for that reason, it is necessary to recognize the need for granting their protection, regardless of whether or not they comply with what the standard prescribes.

In our opinion, human rights violations are the natural result of a harmed living condition. Logically, when an entire country is affected by

an environmental disaster that caused thousands of deaths, destruction of the basic infrastructure, impairing its normal functioning and causing damage and losses to society as a whole, especially to human development, it is possible to say that this environmental disaster causes to the Indian people a serious and widespread violation of their rights, making them vulnerable and lacking effective protection.

This is how the State should not, with excessive formality, consider only the text of the law to the detriment of something much greater. In this case, what should be taken into account, mainly because it is about human rights issues, is the unrestricted observance of the pro homine principle, in order to guarantee the environmental disaster victims ample and large-scale protection.

What we are trying to prove is that if there is a patent violation of human rights as a result of an environmental catastrophe, the victims of this phenomenon should have the greatest possible protection, that is, the granting of the status of refugee and not just a humanitarian visa, in order to deal with the refuge of a much more powerful institute, capable of protecting those who benefit from it more effectively.

In Brazil, the legislation that regulates the institute of refuge, in particular Law 9,474/97, adopts the expanded concept of refugee, recognizing as a refugee the individual who is forced to leave his/her country of nationality to seek refuge in another country due to serious and widespread human rights violation. In this sense, Brazil should also recognize people who come to the country due to the occurrence of an environmental disaster in their country of origin as refugees. This is because immigration also occurred due to the violation of human rights resulting from an environmental disaster, that is, the case in question is perfectly adapted to the legal type, allowing these people to be recognized as refugees.

Therefore, the conclusion is that, given the emergency situation and the relevance of the situation in which these people find themselves, the lack of definition of the term and the legal vacuum of specific protection in global protection documents, it is convincing to extend the concept of refugee or, alternatively, promulgate a specific law which would grant this group of displaced people a set of rights and guarantees, capable of providing them with the minimum of dignity, as they were affected by a problem that is not only theirs, but also of global responsibility, mainly because part of this problem is due to the absence of a sustainable development for humanity.

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