

MIGRANTS AND REFUGEES

An approach based on the
centrality of work and social justice



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Labor Prosecution Service

Prosecutor General of Labor
Alberto Bastos Balazeiro

Deputy Prosecutor General of Labor
Maria Aparecida Gugel

Chief of Staff of the Prosecutor General of Labor
Sandra Marlicy de Souza Faustino

Chief of Staff of the Deputy Prosecutor General of Labor
Ludmila Reis Brito Lopes

National Coordination of the Eradication of Slave Labor and Confronting Human Trafficking – Conaete

Lys Sobral Cardoso - *National Head*

Italvar Filipe de Paiva Medina - *Deputy National Head*

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Organization:

Cristiane Maria Sbalqueiro Lopes
Priscila Moreto de Paula

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Sâmya Gheneim Marin

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Organization

Cristiane Maria Sbalqueiro Lopes
Priscila Moreto de Paula

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Preface

Dear Sir/Madam

The work *Migrants and Refugees: an approach based on the Centrality of Labor and Social Justice* is a project of the National Coordination of the Eradication of Slave Labor and Confronting Human Trafficking (Conaet), of the Labor Prosecution Service.

The work reflects the spirit of expanding guidelines and renewing the challenges faced today that led to the evolution in the nomenclature of the National Coordination, with the express increase of the fight against human trafficking through our Ordinance PGT No. 1256.2020. Global human movements show the continuing need for improvement in the protection of fundamental social rights in the face of a migrant population that suffers and is exposed to many risks within the natural search for better conditions and happiness. The work consolidates experiences lived by the MPT and its partners in the struggle for the realization of the social rights of migrants and refugees and points out ways to implement public policies favorable to the reduction of inequalities and guarantee of the country's development.

It is no accident that immigration is dealt with, in the Labor Prosecution Service, within the Coordination that fights for the eradication of slave labor. Slave labor, unfortunately, is part of the history of this one that was one of the last countries in the world to ban such shameful practice. The survival of slave labor in Brazil can only be so long because it counted on the impossibility of reaction by its victims. This impossibility was both a cause and consequence of the vul-



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nerability of the people who arrived here disconnected from their family and community ties, without being recognized as subjects of rights and without any possibility of support for their own emancipation in “other people’s” lands.

Brazil can be understood as the result of its migratory processes, all of which are very distant from the myth of racial miscegenation that was sought to be created here. Although we are a people made up of a mixture of indigenous, white, and black people, the broth of this mixture was not based on harmony and solidarity.

On the contrary, our history is full of negative examples about the treatment of indigenous peoples and the enslavement of trafficked persons. Not to mention the various attempts to manage immigration in a utilitarian way, either with the objective of populating, replacing labor, whether in the constitution of a myth of national identity that would favor the permanence of social structures as they were: unequal and excluding.

But celebrating is necessary. Brazil has evolved and the 1988 Federal Constitution consolidates another country, which is willing to correct the wrong ways in its history. Now, it is our essential community principle to build a free, just, and supportive society, guarantee development, eradicate poverty and marginalization and promote the good of all, without any form of discrimination.

Therefore, the book already begins with an article written by migrants. We do not intend to “do it for them”, we want to build together this Brazil of solidarity that we aim to be. The authors of the introductory text, all migrants, set the tone for what will come next: the desire for success in



each migration project is a dream that is dreamed together, because it builds a country. The responsibility is greater when we think that any project of personal fulfillment goes through the centrality of the work. Even when the work does not necessarily cover all of the migrants' wishes, it is still extremely central to ensure survival and encourage them to keep going.

After the introductory text, the first chapter reaffirms the constructive proposal of the entire international system for the defense of human rights, which understands immigration not as a problem, but as a solution for humanity. Furthermore, the bet for the construction of a world citizenship goes from the macro to the micro; from the global system to the regional system (Inter-American); and, more closely, through the regional integration system: Mercosur. Mercosur is an alternative that manages, at the same time, to favor the incorporation of immigrants in Brazil and of Brazilians abroad, as it brings together reception with reciprocity. In Brazil, with favorable migration legislation, we aim directly at the large gap that we need to overcome: the recognition of the professional skills that migrants bring from their own countries.

With this in mind and within the constructive proposal of this work, the second chapter opens to shed light on important aspects of what our migration policy should be, according to the challenges of our time. I dare to summarize the contributions of this chapter: the reduction of inequalities, the fight against poverty and all forms of discrimination are not achieved with passivity, but with the effective adoption of measures aimed at correcting the social injustices potentialized by the system.



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The third chapter celebrates our happy meetings and partnerships on this journey for the common good. In addition to the Labor Prosecution Service, we are many actors in this journey, starting with the Brazilian Army, which coordinates governmental actions on the border with Venezuela, helping to manage the flow of people, with the support of human rights organizations, such as UNHCR (United Nations High Commissioner for Refugees) and IOM (International Organization for Migration). Other partners in the justice system, such as the Federal Prosecution Service and the Federal Public Defender's Office, also register participation in actions aimed at defending social interests. Civil society, for its part, has done an exceptional job, filling all the gaps that sometimes the system of social assistance or even the promotion of dignified work failed to fill. Some of these journey partners were able to contribute their experiences in this work, such as the Missão Paz, the IMDH (Institute for Migration and Human Rights) and the CDHIC (Center for Human Rights and Citizenship of Immigrants). Not to mention the role of Brazilian universities, which have done so much to welcome migrants and refugees, in dozens of extension projects throughout Brazil, among which we highlight those developed by UFPR, UFRR, and Unicamp.

Chapter four sheds light on how the Labor Prosecution Service faces, in practice, aspects related to immigration. Unfortunately, migrants constitute a considerable part of the victims of slave labor, sexual exploitation and human trafficking. Here we are referring not only to international migrants, but also to those Brazilians from poor regions and without prospects. The fact is that migrants for humanitarian reasons and refugees are more vulnerable to job insecurity and discrimination in employment, and this reality is evident



when we analyze the effects of the degradation of the labor market on people who live from work.

Finally, and with the deliberate intention of captivating, we collected some good practices developed within the scope of the MPT, since the intention of the MPT is to act as a catalyst for social change: the Liberdade no Ar Strategic Project, the actions of Somos Livres, the projects in Roraima and the actions of welcoming indigenous people of the Warao ethnic groups.

Institutions are expected to be ports and lighthouses during crises, never a sailing ship fleeing the storm. It aims at something more: that they grow, at least, in the way to behave in the face of the responsibility that falls on their shoulders.

It is in this perspective that the Labor Prosecution Service has been conceiving its intervention in all issues related to immigration that are present today: the – constitutional – order is to welcome, to recognize the right to have rights, to allow migrants walk on their own feet, as a subject of rights, and a participant in the nation's prosperity. At this point, our governing law, the Migration Law, favors the expectation of prosperity for all, without recognizing nationality as an exclusion criterion, but citizenship as an inclusion criterion. The path is to allow migrants access to citizenship, without discrimination, and in this regard, it is necessary to always be aware, because prejudice is like weeds, which grow and take over the garden, if we are not vigilant. This book invites us to be watchful and teaches us how to garden.



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In this context of so many challenges, we are sure that together and together we have achieved a lot and, above all, the renewed hope in the legacy of solidarity, institutionality, and inclusion that only a collective work is capable of leaving behind.

With faith and conviction that our efforts will not be in vain.

A strong and fraternal embrace.

Alberto Balazeiro
Prosecutor General of Labor



A success for one is a success for
all: the centrality of dignified
work in migratory projects

Phanel Georges
Khairul Islam
Adama Konate
Cynthia Sampaio
Merlina Saudade

Introduction

We are all migrants. We are men and women. We are Malian, Haitian, Venezuelan, Bengali, Brazilian. We are warriors of many battles. We win many times, we lose sometimes. We still believe that the path is built by walking. We are unique, but collective. We are complex and contradictory. We migrate alone, with our family members or form families throughout our migration project. We planned to migrate, we chose to migrate, we were forced to migrate for several reasons. If we could have “chosen” in the literal sense of the word, we might not have migrated. We are workers. We live outside our countries. We operate in our work areas, we change professions, we keep trying to put ourselves in the job market, we are unemployed. We are accountants, educators, entrepreneurs, bricklayers, psychologists, social workers, telesales operators, community workers, workshop employees, teachers, and volunteers. We are everything we need to be to survive. We collaborate with our new communities, we help our families in our countries, aware of the burdens we carry along our journey. We know the

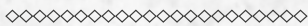


reasons that led us to cross international borders. Due to the success of our migratory projects, we have survived and dream of a better life in the countries where we now live.

Centrality of work in migrations

Work is, in addition to a means of livelihood, a fundamental instrument for our development as human beings. Through work, we can achieve our independence, whether in the place where we were born, and where we are native, anywhere. Even when the work we do does not cover all of our desires, it is extremely important for our survival, to feed our ideas, and motivate us to move forward. In our migratory projects, work has been a fundamental, primordial, indispensable element. It represents our hope of starting a new life. For many of us, work is one of the measures that have given meaning to our existence.

International migratory movements are generally motivated by the search for people for better living conditions outside their countries of origin. We migrated for different reasons. We migrated under different conditions. However, we are often faced with situations in which our fundamental labor rights ¹are violated in the countries where we now live. The absence of integrated migration laws based on a human



1 The Declaration of Fundamental Rights and Principles at Work was adopted by the ILO in 1998, establishing that the fundamental principles and rights of labor, including that of migrant workers, are: freedom of association and effective recognition of the right to collective bargaining, the elimination of all the forms of forced labor, the effective abolition of child labor, and the elimination of all forms of discrimination in employment and occupation. Available at: www.ilo.org/public/english/standards/declaration/declaration_portuguese.pdf.



rights perspective exposes us to situations of precarious employment, especially if we are in an unauthorized migratory condition.

We all know migrant people who have experienced, or even experienced ourselves, difficult situations in the workplace; unsafe and unhealthy working conditions; unfair working relationships; inability to enjoy the riches we help to create. However, many of us migrants may suffer additional discrimination in our search for dignified work: either because of our migratory situation, because we do not know the local language, because we have a certain skin color, because we are women or because we are in a less social class favored.

We often accept to receive lower wages and work in areas that are not compatible with our knowledge. We end up being deceived and exploited. The urgency that we have to generate income to support ourselves and the lack of a support network in the new country put us in difficult situations. We are more exposed to all forms of exploitation and mistreatment. In countries where inequalities are deep, we suffer from a lack of horizons. When society is culturally closed to migration, we feel that our resources are wasted, which causes hopelessness and regret. Those of us who have forcibly migrated have faced even more insurmountable barriers.

In search of dignified work

The International Labor Organization (ILO), a specialized agency of the United Nations, seeks to “promote opportunities for men and women to obtain productive and quality work, under conditions of freedom, equity, security



experiences that we bring from our countries are often not recognized and we have to work in jobs that are below our capabilities. We are all searching for our ways. While some have already found good work experiences as migrants – more as a result of their own efforts and not necessarily through policies of reception and labor insertion – others still seek their place under the sun. But, in all cases, we are seeking to accumulate experiences that will allow us to progress and achieve our purposes.

Our success is everyone's success

We had positive experiences in our work where we were well received and recognized as committed people. We brought new ways of working, gave good results, and positively influenced the organizational culture. We exchange knowledge with our superiors, co-workers, and with people of other nationalities. We made good friends. We get rich and feel valued. In some cases, we create job openings for other migrants and also for nationals.

We know that we collaborate with the communities where we live, we reinforce the workforce in sectors of the economy that are very heated, we accept jobs rejected by nationals, we pay taxes and social contributions, we consume goods and services and, when we have the opportunity, we contribute to the social protection system. For these reasons, among others, we see international migration as an experience that should be more harmonious and effective.

We believe that, when migration policies use a more honest approach, based on studies and research, and are built within the framework of human rights, we can cross



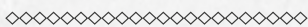
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international borders more safely and generate more benefits for the welcoming countries and our countries of origin. When migratory governance treats migration as the economic, social, and cultural development factor that has always been and will continue to be, we migrant workers find better conditions to be inventive, entrepreneurial, and successful.

We understand that our success represents everyone's efforts and dreams: of our families and friends where we came from, of our affective circles where we live, of the support services we find along the way, of the communities that have welcomed us, of the fundamentally interconnected global society of the present day. Things we have in common are experiences of political action, volunteering, and leadership where we were able to exercise solidarity with others and make so many voices, through ours, be heard. We share experiences, ideas, and proposals that need to be shared. We are in a condition and urgency to talk.

We know our role as protagonists and the responsibility that this implies. After all, no matter which side of the "border" we find ourselves on, we are all human beings and have the right to live, work with dignity, and participate in building more just and humanized societies that **"promote sustained, inclusive and sustainable economic growth, full and productive employment, and dignified work for all"**⁴.

Phanel Georges, a Haitian, 34, a lawyer, arrived in Brazil in 2014 on a humanitarian visa for Haitian



4 Sustainable Development Goal 8. Available at: <https://nacoesunidas.org/pos2015/ods8>.



nationals. He has a Law degree from the State University of Haiti (UEH) and a Teacher Training degree from the Public University of Artibonite in Gonaives. He is a Specialist in Citizenship and Human Rights in the Policy Context from PUC-Minas, where he is currently studying Social Work. He moved to Brazil alone and arrived in Belo Horizonte following the advice of an uncle who already lived in the region. He started a family in the country and has a son. Over the years, he understood that Brazil, despite having given him an opportunity to start his life over, is unable to offer adequate conditions for his academic progress due to the difficulties in validating his undergraduate degrees.

AHM Khairul Islam, 32 years old, Bengali, professional cricket player and merchant, arrived in Brazil in 2013 as a refugee. He migrated to Bolivia in 2013 and faced many difficulties until he decided to move to Brazil that same year. He first lived in São Paulo, where he received support from his compatriots. He worked in the clothing trade and later as a volunteer interpreter for Bengali journalists who came to Brazil to cover the World Cup in 2014. He focused his efforts on learning Portuguese, despite not being able to take free classes. He served as a volunteer for the Bengali community in attending the Federal Police and served as a focal point for his embassy in Brazil. He tried to establish himself in Brasilia as a merchant for a period, but returned to São Paulo, where he now lives and acts as a director of the Legal Department of the NGO África do Coração. He opened a clothing factory that employed Brazilians and migrants, which was closed due to the covid-19 pandemic.

Adama Konate, 39, Malian, accountant, arrived alone in Brazil in 2012 on a tourist visa. He had the



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dream of visiting Brazil due to the curiosity he acquired when approaching Brazilian literature. He was in the process of migrating to the United States, when he got to know Brazil. His initial idea was to pay just one visit, but he met many interesting people and realized that there were promising opportunities for study and professional progress. In 2013, he founded the NGO União Malinesa in São Paulo in Brazil (UMSPB) and acted as a volunteer translator with migrants of different nationalities who needed assistance in the Federal Police. In 2014, he was elected deputy member of the São Paulo municipal immigrant participative councilor and effectively elected as a councilor in 2016. In addition to his work with the migrant community, he also works for a multinational company within his academic background.

Cyntia Sampaio, 41, social worker, from Pernambuco. An internal migrant in childhood and adolescence (São Paulo) and adult life (Brasília), an international student (United States, Canada, Germany, Norway, Costa Rica and Slovenia), a migrant worker (Germany) and an “expatriate” (Italy). In common with all the experiences living outside of Brazil, she had the privileges of a regular migratory condition and maintained the objective of returning to her country and consolidating professionally in the field of migrations and refuge. Her life is permeated by the wins and losses provided by the migratory processes and, thanks to the provisions sent by her sister, she completed her graduation. She used to live in northern Italy, when the covid-19 pandemic was decreed by the World Health Organization in March 2020. Far from her references, relatives, and support networks, and with the impossibility of mobility, she had to deal with the countless insecurities



and uncertainties of the migratory process as she had never experienced before.

Merlina Saudade, 37, Venezuelan, psychologist, arrived in Brazil in 2016 with her husband and two children, where she initially sought refuge, until she obtained temporary residence on a humanitarian visa. She left Venezuela because of the crisis in the health system, which deepened when her second child was born. Migration emerged as the only alternative to offer decent living conditions to her young children and she saw Brazil as an uncertain option at first. She lived in Boa Vista for almost 2 years, where she worked as a volunteer in an NGO serving migrants and as a housekeeper. In 2018, she moved with her family, on her own, to Florianópolis due to the worsening social tensions in Roraima. The second adaptation process was quite different, due to the regional differences of a country of continental dimensions. She still wants to act as a psychologist, but the process of revalidating her diploma seems to be an unattainable dream in the current context. She is concluding a specialization in Neuro-learning and still supports other Venezuelans internalized by the government's programs to be inserted in Santa Catarina.



CHAPTER 1. IMMIGRATION LAW



Global system for the protection of human rights and International Migration Law

Leonardo Ono¹

1. Human dignity, human rights, and protection systems

The modern understanding of the dignity of the human person is unmistakably inspired by the teachings of Immanuel Kant (1724-1804)² and constitutes the philosophical pillar of human and fundamental³ rights established in the various international treaties and in the national legal system.

Recognizing the dignity of the human person means that the only presupposition for the recognition of rights is human existence itself, that is, without any other condition or characteristic that differentiates the subjects of law. The



- 1 Labor Prosecutor of the Labor Prosecution Service. Specialist in Labor Law and Labor Procedure from the Pontifical Catholic University of Paraná. Bachelor of Laws from the Pontifical Catholic University of Paraná.
- 2 In a brief summary of the work of Immanuel Kant, the thought of the German philosopher starts from the assumption that the human person is not an instrument. Its dignity is recognized from the idea that it is an end in itself and not a means (object) for achieving the will of others.
- 3 The distinction between human rights and fundamental rights lies on the level of positivation. Fundamental rights are those established in the constitutional norm of a country's legal system, while human rights are found in documents of international law. This differentiation, however, does not mean that human rights and fundamental rights do not communicate with each other, because they interact with each other.



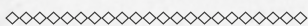
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Universal Declaration of Human Rights thus advocates in its article 1, by stating that “All human beings are born free and equal in dignity and rights”.

The recognition of the dignity of the human person and the internationalization process of human rights were strengthened in the second half of the 20th century, with the appearance of several normative systems of international protection of human rights (global and regional), with the purpose of protecting the people’s rights vis-à-vis the state itself.

The events of World War II and the deepening of globalization showed that the protection of people’s rights should not be restricted to the scope of a particular State, as it is a topic of interest to the international community. Thus, state sovereignty ceased to be seen as an absolute principle and began to be subject to limitations in favor of human rights, moving away from the famous medieval conception that “the king can do no wrong”.⁴

At the international level, the Universal Declaration of Human Rights (UDHR), proclaimed by the United Nations General Assembly on December 10, 1948, is the most important document in the field of human rights, since, in addition to adopting the dignity of the human person as “the foundation of freedom, justice and peace in the world”⁵, it incorporated the indivisibility, interdependence and interrelation of individual (civil and political) and social (economic, social and cultural) rights.



4 PIOVESAN, Flávia Cristina. *Direitos humanos e o direito constitucional internacional*. São Paulo: Saraiva, 2013. p. 192-193.

5 Preamble to the Universal Declaration of Human Rights.



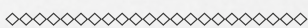
Professor Flávia Piovesan explains that, when conceiving human rights as an integral, unique and indivisible complex, the Declaration outlined the “contemporary conception of human rights”, by reconciling the values of freedom (civil and political rights) and equality (rights social, economic and cultural).⁶

The internationalization process of human rights in the twentieth century was strengthened in the post-war period, with the adoption of several international treaties within the scope of the United Nations (UN), which came to be called the global system of protection of rights humans.

In parallel to the global system, the countries, organized into blocs (Organization of American States, European Union, and African Union), also adopted international treaties for the protection of human rights, which came to be called the regional system.

The global and regional systems for the protection of human rights are not dichotomous and exclusive, on the contrary, they are rules that complement each other by establishing the duties of promoting and protecting human rights to States, as well as holding them accountable in the event of violation of the obligations assumed. when ratifying international standards.

In many cases, the scope of the global system is deepened by the regional system, in addition to the regional systems themselves interacting with each other, always guided by the *pro homine* principle, which guides the application or interpretation of international human rights



⁶ PIOVESAN, Flávia Cristina. *Direitos humanos e o direito constitucional internacional*. São Paulo: Saraiva, 2013. p. 208.



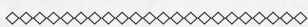
standards, always in the direction that ensures greater effectiveness of human rights.

2. Global system for the protection of human rights and its main international instruments

The global protection system consists, from a normative point of view, of international human rights treaties signed within the framework of the United Nations (UN), which currently has 193 Member States.

The Universal Declaration of Human Rights (UDHR), proclaimed by the United Nations General Assembly on December 10, 1948, consolidated the dignity of the human person as a fundamental pillar of human rights in the international legal order. The UDHR, however, is not a norm of international law (treaty), but a declaration of will expressed by the Member States when adopting Resolution No. 217 A (III) on December 10, 1948, constituting an interpretation authorized use of the term “human rights” in the United Nations Charter.⁷

Human rights have come to be positively affirmed in the global system for the protection of human rights in



⁷ Item 3 of Article 1 of the Charter of the United Nations states that one of the purposes of the United Nations is: “To achieve international cooperation to resolve international problems of an economic, social, cultural or humanitarian nature, and **to promote and encourage respect for human rights, human rights and fundamental freedoms for all**, regardless of race, sex, language or religion”.



the various conventions that have been adopted by UN⁸ Member States over the past few decades, and it is relevant to highlight those identified as the “core international human rights instruments”:

1. **International Convention on the Elimination of All Forms of Racial Discrimination**, adopted on December 21, 1965.

2. **International Covenant on Civil and Political Rights**, adopted on December 16, 1966.

3. **International Covenant on Economic, Social and Cultural Rights**, adopted on December 16, 1966.

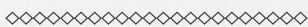
4. **Convention on the Elimination of All Forms of Discrimination against Women**, adopted on December 18, 1979.

5. **Convention on the Rights of the Child**, adopted on November 20, 1989.

6. **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, adopted on December 10, 1984.

7. **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**, adopted on December 18, 1990.

8. **Convention on the Rights of Persons with Disabilities**, adopted on December 13, 2006.



8 The list of treaties ratified by UN Member States can be consulted at the following address: <https://treaties.un.org> (in English).



9. International Convention for the Protection of All Persons from Enforced Disappearance,
adopted on December 20, 2006.

With the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the other international standards have been ratified by Brazil, thus having full regulatory force in the Brazilian legal system.

In this regard, it is worth mentioning that the Constitution of the Federative Republic of Brazil (CRFB) attributes the legal nature of a Constitutional Amendment to international human rights treaties and conventions approved in each House of Congress, in two rounds, by three-fifths of the votes of the respective members (article 5, § 3).⁹

The Supreme Federal Court, on the other hand, in the judgment of Extraordinary Appeal No. 466,343, recognized the supralegal nature of international treaties on human rights not ratified in the form of article 5, paragraph 3, of the CRFB, placing them “below the Constitution, however above domestic law”.¹⁰

International human rights law “establishes the obligations of governments to act in certain ways or to refrain from certain acts, in order to promote and protect the human rights and freedoms of groups or individu-



9 Currently, only 2 international treaties have been approved according to the rite provided for in article 5, § 3, of the CRFB: 1) Convention on the Rights of Persons with Disabilities and its Optional Protocol; 2) Marrakesh Treaty to Facilitate Access to Published Works for the Blind, Visually Impaired or with Other Difficulties to Have Access to Printed Text.

10 STF. HABEAS CORPUS: HC 95967, Rapporteur: Min. Ellen Gracie, Second Panel, judged on 11/11/2008, published on 11/28/2008.



als”.¹¹ International human rights standards are not intended to replace domestic states legislation, but serve as a source of subsidiary and supplementary law. In this sense, Piovesan explains:

[...] In the international system for the protection of human rights, the State has primary responsibility for the protection of these rights, while the international community has subsidiary responsibility. International procedures are, therefore, subsidiary in nature, constituting an additional guarantee of protection of human rights, when national institutions fail. In addition, treaties for the protection of human rights establish minimum protective parameters, and it is up to the State, in its domestic order, to go beyond these parameters, but never fall short of them.¹²

To this end, the main international standards, in addition to defining human rights and duties to States (normative part), also **established treaty-based bodies**¹³, *constituting independent expert committees that monitor their implementation by the States (accountability). Among the various attributions of the committees, we highlight: a) analysis of reports sent by*



11 According to information on the website “What are human rights?” of the UN. Available at: <https://nacoesunidas.org/direitoshumanos>. Access in: Apr. 26, 2020.

12 PIOVESAN, Flávia. *Direitos humanos e o direito constitucional internacional*. São Paulo: Saraiva, 2013, p. 239.

13 Are they: 1) Committee for the Elimination of Racial Discrimination; 2) Human Rights Committee; 3) Committee on Economic, Social and Cultural Rights; 4) Committee on Elimination of Discrimination against Women; 5) Committee against Torture; 6) Subcommittee on Prevention of Torture; 7) Committee on the Rights of the Child; 8) Committee on Migrant Workers; 9) Committee against Enforced Disappearances; 9) Committee on the Elimination of Racial Discrimination; 10) Committee on the Rights of Persons with Disabilities.



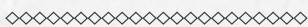
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the States; b) analysis of individual complaints and representations of States; c) publication of general comments / recommendations; and d) conducting inquiry procedures to investigate serious or systematic human rights violations.

The UN also has bodies with broad attributions related to human rights, created on the basis of the United Nations charter-based bodies itself. The Human Rights Council (which succeeded the Human Rights Commission) is the subsidiary body of the General Assembly responsible for “promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair manner. and egalitarian”¹⁴

The Office of the United Nations High Commissioner for Human Rights was created by Resolution No. 48/141, adopted by the UN General Assembly in January 1994. The Office of the United Nations High Commissioner for Human Rights is appointed by the UN Secretary General and has a mandate to promote and protect the effective enjoyment of all civil, cultural, economic, political and social rights, in addition to other duties related to the topic.

The promotion and protection of human rights in the international sphere are also carried out by the various specialized agencies that work in cooperation with the UN. These are autonomous international organizations, such as the International Labor Organization (ILO), the World Health Organization (WHO) and the International Organization for Migration (IOM), which, however, do not form part of the so-called global rights protection system. humans.



¹⁴ Articles 1 and 2 of Resolution No. 60/251 adopted by the UN General Assembly on March 15, 2006.

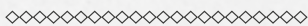


The protection systems, both global and regional, of human rights have progressively expanded in recent decades, as a result of the development of multilateral relations between States and the deepening of globalization as an essential element for economic development.

In the wake of Norberto Bobbio's teachings, international human rights standards must be understood in the context of "multiplication of rights". It is a process that, among other elements, involves the specification of the subject of law, that is, the human person is not only considered in the abstract, but in his specificity and concreteness of his diversity of social relations.¹⁵

Flávia Piovesan explains that, while in the general system of protection the subject of law is any and every person, in a generic way, in the special system he is determined, as it seeks to respond to a specific violation of law. In this system, certain groups are given special protection in the face of their vulnerability. Thus teaches the teacher:

The special protection system highlights the process of specifying the subject of law, in which it is seen in its specificity and concreteness. That is, the Conventions that integrate this system are addressed to a certain subject of law, that is, they seek to respond to a specific violation of law. [...] It is worth saying that, alongside the International Bill of Rights, which is part of the general protection system, the special protection system is organized, which adopts as a subject of law the historically situated individual, the subject of "concrete law", in the peculiarity and particularity of their social relations, affirming the recognition



15 BOBBIO, Norberto. *A Era dos Direitos*. Rio de Janeiro: Elsevier, 2004. p. 33-34.



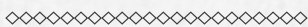
of their own identity. In this light, alongside the right to equality, the right to difference is born. It is important to ensure equality with respect to diversity.¹⁶

The movement of specification of the subjects is noticeable from the object of the international norms adopted in the scope of the systems of protection of the human rights, being necessary the deepening of the protection of the rights of those who are in a situation of greater vulnerability, such as children, women, people with disabilities, migrants and refugees.

3. The global system for the protection of human rights and international migration law

The International Migration Law, as defined by the International Organization for Migration (IOM), is the international legal system that regulates migration, consisting of the various sources of international law that apply to the movement of persons within or between States. It is an “umbrella” that covers all relevant rules for migration, such as international human rights law, international labor law, international humanitarian law and international refugee law.¹⁷

Thus, there is no international standard that comprehensively deals with the human rights of migrants and ref-



16 PIOVESAN, Flávia. *Direitos humanos e o direito constitucional internacional*. São Paulo: Saraiva, 2013. p. 262-267.

17 Glossary on Migration. Geneva: IOM, 2019. p. 113. Available at: https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf. Access in: May 1, 2020.

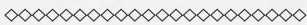


ugees.¹⁸This, however, does not mean that these people are helpless by the international legal system, since the basic postulate of human rights is the dignity of the human person, applying the generic international standards for the protection of human rights, without any distinction as to their origin (principles of equality and non-discrimination).

It is worth remembering that in 2001 the 3rd World Conference to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance was held, promoted by the UN, in which the so-called Durban Declaration was issued. Among its various provisions, participating countries recognized that:

[...] xenophobia against foreigners, particularly against migrants, refugees and asylum seekers, constitutes one of the main sources of contemporary racism, and that the violation of human rights against members of such groups occurs on a large scale in the context of discriminatory, xenophobic and racist practices;

In the same document, the vulnerability of these people was highlighted, "due to, among others, the departure from their countries of origin and the difficulties they encounter because of differences in language, customs and culture, as well as socioeconomic difficulties and other obstacles. for the return of migrants who do not have documents or are in an irregular situation".



18 In this sense, it is the information of the International Organization for Migration (IOM), contained in the following address: https://imldb.iom.int/_layouts/15/IML.Portal/AppPages/Home.aspx (in English). Access in: Apr. 26, 2020.



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Over the past few decades, the deepening of globalization and the increasing mobility of people around the world have made the issue of migration more and more relevant to the sustainable development of the world economy. In 2015, the UN General Assembly adopted the 2030 Agenda for Sustainable Development (2030 Agenda for Sustainable Development), containing the following statement:

We recognize the positive contribution of migrants to inclusive growth and sustainable development. We also recognize that international migration is a multidimensional reality of great relevance for the development of countries of origin, transit and destination, which requires coherent and global responses. We will cooperate internationally to ensure safe, orderly and regular migration that involves full respect for human rights and the humane treatment of migrants, regardless of the status of migration, refugees and displaced persons. Such cooperation should also strengthen the resilience of communities that host refugees, particularly in developing countries. We highlight the right of migrants to return to their country of citizenship, and recall that States must ensure that their returning nationals are properly received.

The importance of migration in the 2030 Agenda can be seen in its Goal 10: “Reduce inequality within and between countries”; which has as one of its goals: “Facilitate the migration and orderly, safe, regular and responsible mobility of people, including through the implementation of planned and well-managed migration policies” (item 10.7).

In pursuit of achieving the objectives outlined in the 2030 Agenda, in September 2016, the UN General Assembly

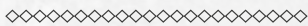


(Resolution A/Res/71/1) met to discuss issues related to migrants and refugees, and the New York Declaration for Refugees and Migrants was adopted, in which the member states made several commitments for the protection of the human rights of refugees and migrants, thus reaffirming the principles of the International Bill of Human Rights.¹⁹

In the introduction to the Declaration, it was stated that, despite having different legal frameworks, migrants, and refugees have the same human rights and freedoms, as well as facing common challenges and similar vulnerabilities. Thus, the participating countries committed themselves to preparing two documents, the Global Compact on Refugees and the Global Compact for Safe, Orderly, and Regular Migration.

The Global Compact on Refugees was adopted by the UN General Assembly on December 17, 2018 (Resolution A/RES/73/151). It should be noted that the RMP includes the Comprehensive Refugee Response Framework, as agreed in the New York Declaration, highlighting among its principles the shared responsibility of countries in receiving refugees.

In December 2018, in the city of Marrakesh (Morocco), the text of the Global Compact for Safe, Orderly and Regular Migration was adopted, which was, in the words of the United Nations High Commissioner United for Human Rights,



19 5. *We reaffirm the purposes and principles of the United Nations Charter. We also reaffirm the Universal Declaration of Human Rights and recall the main international human rights treaties. We reaffirm, and we will fully protect, the human rights of all refugees and migrants, regardless of their condition; all are right holders. In our answer, we will fully respect the international and international human rights issues and, when appropriate, the international refugee and international humanitarian issues.*



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the first intergovernmental agreement to comprehend all dimensions of international migration, in a holistic and comprehensive manner.

The PGM is not an international norm, not having a binding legal character, but it constitutes an important legal instrument that expresses the political commitment of States to promote international cooperation as an essential element to deal with migration. The Pact also reaffirms the principles already adopted in the New York Declaration for Refugees and Migrants, further recognizing that “no state can resolve migration on its own due to the inherently transnational nature of the phenomenon”.

In this sense, the following introductory section of the PGM stands out:

This Global Compact expresses our collective commitment to improve cooperation in international migration. Migration has been part of the human experience throughout history, and we recognize that it is a source of prosperity, innovation, and sustainable development in our globalized world, and that these positive impacts can be optimized by improving the governance of migration. Today, most migrants around the world travel, live and work in a safe, orderly and regular manner. However, migration undeniably affects our countries, communities, migrants and their families in very different and sometimes unpredictable ways.

It is crucial that the challenges and opportunities of international migration unite us, and not divide us. This Global Compact establishes our common understanding, shared responsibilities and unity



of purpose in relation to migration, making it work for everyone.

The Global Compact was built based on a “cooperative framework”, consisting of 23 objectives, each with a range of actions (relevant public policies and good practices), in order to guarantee safe, orderly and efficient migration. regular. Among these objectives, the following stand out:

6. Facilitate fair and ethical recruitment and safeguard conditions that guarantee dignified work.
7. Address and reduce vulnerabilities in migration.
15. Provide access to basic services for migrants.
16. Empower migrants and civil society for full inclusion and social cohesion.
17. Eliminate all forms of discrimination and promote evidence-based public discourse to shape preconceived ideas about migration.
23. Strengthen international cooperation and global partnerships for safe, orderly and regular migration.

Furthermore, it is necessary to point out that international cooperation does not conflict with the sovereignty of States. On the contrary, the PGM recognizes national sovereignty as one of the principles that guide the objectives and actions set out in the document, by stating that: “[...] it reaffirms the sovereign right of States to determine their national migration policy and their prerogative governing migration within its jurisdiction, in accordance with international law”.



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The Pact effectively emphasizes international cooperation without disregarding national sovereignty, seeking to reconcile these two elements in the search for safe, orderly and regular migration, as well as the promotion and protection of the human rights of migrants.

As stated in the PGM, in an increasingly globalized and connected world, all States are countries of origin, transit and destination, which is why international cooperation is becoming increasingly essential in the formulation of migratory policies based on respect for human rights.

The dignity of the human person and human rights constitute the fundamental pillar of the post-World War II international legal system, serving as an inspiration to the legislator when formulating the 1988 Constitution of the Federative Republic of Brazil.

In our Magna Carta, the dignity of the human person also assumes a central role when it is raised as one of the foundations of the Federative Republic of Brazil (article 1, III). The constituent, in addition to making human rights positive in the constitutional text, also adopted as one of the principles to be followed in international relations the prevalence of human rights (article 4, II).

Thus, there is no doubt that human rights assume a relevant role in our national legal system, so that, due to the international commitment assumed by Brazil (especially when integrating the United Nations and the Organization of American States), it deals with it as a true constitutional duty to ensure the full realization of human rights, in accordance with international standards of the global and regional protection systems.



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THE INTER-AMERICAN HUMAN RIGHTS PROTECTION SYSTEM AND THE PROTECTION OF MIGRANT WORKERS

Lorena Vasconcelos Porto¹

1. The Inter-American Human Rights Protection System

Regional systems for the protection of human rights are present today in Africa (African Union), America (Organization of American States – OAS) and Europe (Council of Europe). The Inter-American System for the Protection of Human Rights (SIPDH) covers states characterized by social exclusion and some countries with democracies in the process of consolidation and a culture marked by violence and impunity. The challenges, therefore, are to break with the dictatorial legacy and consolidate the democratic regime in these countries, comprising the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (Inter-American Court)².

Within the framework of the inter-American system, the 1948 American Declaration of the Rights and Duties of Man was issued, the same year as the UN Universal Declaration of Human Rights. In 1959, the Inter-American Commission on Human Rights was created, which, in 1965, was already authorized to examine complaints and petitions in specific cases of human rights violations. In 1969, the American Convention on Human Rights (ACHR), known as the San José Pact of Costa Rica, was approved. In 1988, the Additional



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Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador) was issued.

The Inter-American Court of Human Rights was established with the ACHR. Its performance depends on the express acceptance of its jurisdiction by the States involved and provided that the proceedings before the Inter-American Commission are exhausted. The Inter-American Court is based in San José (Costa Rica), being one of the three regional courts for the protection of human rights, alongside the European Court of Human Rights and the African Court on Human and Peoples' Rights. The Inter-American Court consists of seven judges, who are nationals of OAS member states and of different nationalities. Only the Member States and the IACHR can submit cases to the Court's decision (art. 61 of the ACHR).

The Inter-American Court has jurisdiction to deal with any case relating to the interpretation and application of the ACHR, having contentious functions (art. 62) and consultative (art. 64). Regarding such powers of the Inter-American Court, Valério de Oliveira Mazzuoli clarifies the following:

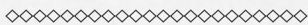
The Court has an advisory competence (regarding the interpretation of the provisions of the Convention, as well as the treaty provisions concerning the protection of human rights in American States) and a contentious jurisdictional competence, appropriate for the judgment of specific cases, when alleges that any of the States parties to the American Convention has violated any of its precepts. [...] When ratifying the American Convention, the States Parties already automatically accept the advisory competence



of the Court, but in relation to the contentious competence, this is optional and may be accepted³.

The human rights provided for in the ACHR that allow direct protection of economic, social and cultural rights (DESC), including labor rights, before the Inter-American Court are: prohibition of slavery and serfdom (art. 6 of the ACHR), freedom of association (art. 16), protection of the family (art. 17) and the rights of the child (art. 19). Furthermore, the Court has been building important jurisprudence with the transversal interpretation of rights traditionally understood as civil and political, based on the dignity of the human person, in order to ensure the justiciability, even if indirect, of the DESC. Articles 25 (judicial protection) and 26 (progressive development) of the ACHR, which received this interpretation by the Inter-American Court, can be mentioned, as well as the sentences issued by the latter in the following cases: "Case Five Retired vs. Peru", "Case of Acevedo Buendía et al. Peru" , "Case of Lagos del Campo vs. Peru" , "Ximenes Lopes Case vs. Brazil" , "Case of Niñas Yean y Bosico vs. Dominican Republic" , "Case of Gonzales Lluy et al. Ecuador" and "Case of Farmers Brasil Verde vs. Brasil"⁴.

Renata Bregaglio Lazarte emphasizes that, although indirect judicialization was important, it is necessary that the inter-American system open the door for the direct



3 MAZZUOLI, Valério de Oliveira. *Curso de Direito Internacional Público*. São Paulo: Revista dos Tribunais, 2007. p. 732.

4 AZEVEDO NETO, Platon Teixeira de. *A justiciabilidade dos direitos sociais nas cortes internacionais de justiça*. p. 146-152.



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judicialization of DESC.⁵ This could be done through more appropriate interpretation work or regulatory developments, including a DESC list in the ACHR (which currently contains civil and political rights) or by expanding the individual petitioning system of the San Salvador Protocol to allow the direct claim of all rights provided for therein.⁶

The Inter-American Commission on Human Rights is made up of seven independent commissioners, elected by the OAS General Assembly in a personal capacity, not representing their countries of origin or residence. Under the terms of art. 112 of the OAS Charter, the IACHR's role is to promote the observance and defense of human rights and to serve as an advisory body to the OAS in this area. The IACHR presents cases to the Inter-American Court and appears before her in the disputes arising from them, in addition to observing the general human rights situation in the Member States, being able to carry out on-the-spot visits and publish reports on specific states. The Inter-American Commission may request advisory opinions from the Inter-American Court regarding the interpretation of the ACHR.

It should be noted that, in addition to the OAS Member States, any person, group or NGO may file a complaint with the Inter-American Commission alleging a violation of the rights protected by the ACHR and/or the American Declaration. The Commission investigates the complaint and seeks a friendly settlement between the victims and the State, such as the payment of an indemnity. If the Commission finds the violation of human rights and does not obtain conciliation, it sends the application to the Inter-American Court.

As an example, the "Case José Pereira vs. Brazil" established within the framework of the Inter-American



Commission based on the denunciation of work practice in conditions similar to that of slavery in Brazil, especially at Fazenda Espírito Santo (PA), in which José Pereira was seriously injured and another worker was murdered when they tried to escape of that farm in 1989. Due to the absence of effective judicial protection in the domestic sphere, the complaint was submitted to the IACHR, which reached an agreement in 2003, with José Pereira receiving compensation and the Brazilian State committing itself to combat slavery across the country, which did not was fully honored, as shown by the conviction in the case “Farmers Brasil Verde vs. Brazil”, by ruling of the Inter-American Court of October 20, 2016.

Antônio Augusto Cançado Trindade emphasizes that the Inter-American Commission has a preventive function, by directly influencing state legislative activity through recommendations, from which “laws, decrees and other provisions that negatively affected the effectiveness of human rights were derogated or modified”. The IACHR also calls on “OAS Member States to incorporate certain categories of rights (e.g., in labor matters) into their Constitutions and to



harmonize their respective laws with the precepts contained in ILO Conventions and Recommendations”.⁷

The creation, within the framework of the Inter-American Commission, of the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (DESCA) in 2017 is noteworthy. On the occasion, the President of the IACHR stressed that, through the new Special Special Rapporteur, the Inter-American Commission will be able to strengthen and deepen its work to defend and protect economic, social, cultural and environmental rights – which face great challenges for their guarantee in the region -, being a historic moment in the Inter-American Human Rights System⁸.



7 TRINDADE, Antônio Augusto Cançado. *Direito das organizações internacionais*. 6. ed. Belo Horizonte: Del Rey, 2014. p. 327. As an example, one of the measures adopted by the Brazilian State due to the agreement signed before the IACHR in “Case José Pereira vs. Brazil” was the amendment to article 149 of the Penal Code in 2003, which ceased to be a blank criminal rule to specifically provide for the conduct that characterizes the crime of Reducing the condition analogous to slavery” (forced labor, exhausting work hours, degrading working conditions and debt bondage). Likewise, Law 11.340/2006, known as the Maria da Penha Law, which creates mechanisms to curb domestic and family violence against women, was enacted due to the agreement signed by the Brazilian State before the IACHR in the “Case of Maria da Penha Maia Fernandes vs. Brazil”.

8 Argentine lawyer Soledad García Muñoz was chosen as the first Special Rapporteur on Economic, Social, Cultural and Environmental Rights (DESCA), having taken office on 8/15/2017 for a period of three years, renewable once. The rapporteur noted that “in a critical context of important challenges for the full enjoyment of economic, social, cultural and environmental rights in the American continent, the creation of this Special Rapporteurship is an opportunity for the Inter-American System to be a leader in addressing human rights. in their interdependence and indivisibility”. Available at: www.oas.org/es/cidh/prensa/comunicados/2017/090.asp. Access on: Apr. 20, 2020. (free translation of the original).



2. Conventionality control

Conventionality control at the American level can be carried out internationally or nationally. At the international level, it can occur when a country's Constituent Power draws up a new Constitution or carries out a constitutional reform, or when the legislator approves a law, or when the administrator edits an administrative act, incompatible with art. 2nd of the ACHR (duty to adopt provisions of domestic law), violating the human rights recognized in the ACHR. It can also occur when there is incompatibility between jurisprudence, administrative or judicial practices in relation to ACHR.

At the national or diffuse level, the control of conventionality occurs when a judge in a country dismisses the application of domestic law and applies the ACHR or another treaty through a normative confrontation examination (domestic law x treaty) in a specific case and makes a decision protecting the rights of the person. In this process, the principle of the most human-friendly norm (*pro homine* or *pro persona* principle) must be applied, with the primacy of the norm that, in the specific case, most protects the human person. This is a fundamental hermeneutical principle of international human rights law. It should be noted that it is up to the constitutional courts or the supreme courts (such as the STF, in the case of Brazil) to have the last word internally regarding constitutionality, but the Inter-American Court has the last word regarding the control of the conventionality of the CADH.

According to the understanding signed by the Supreme Federal Court (STF), international human rights treaties – as is the case of the standards produced within the scope



of the OAS, the UN and the ILO –, when not approved according to the parameters established in art. 5, § 3, of the 1988 Federal Constitution (CF/88), enter the national legal system with supralegal status. There are only two international treaties approved according to the rite of art. 5, § 3, namely: the International Convention on the Rights of Persons with Disabilities and its Optional Protocol; and the Marrakesh Treaty to Facilitate Access to Published Works for Blind People, Visually Impaired People or People with Other Difficulties in Accessing Printed Text.

Thus, all domestic legislation – including the changes promoted in the CLT and other labor laws – must be interpreted in accordance with international standards, including the treaties signed within the scope of the OAS and ratified by Brazil, such as the Pact of San Jose de Costa Rica and the Protocol of San Salvador, because they have, at the very least, a supralegal hierarchy. As Eduardo Ferrer Mac-Gregor, magistrate of the Inter-American Court, points out, “National judges become the first inter-American judges. They are the ones who have the greatest responsibility to harmonize national legislation with the inter-American parameters”⁹.

According to the lessons of José Joaquim Gomes Canotilho, human rights have four fundamental functions: defense or freedom, social benefit, protection from third parties and non-discrimination¹⁰.

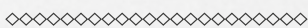
All state agents are bound by the duty of protection before third parties of human rights, which entails the duty of the Legislative Power not to produce norms contrary to such rights and, if this occurs, the Judiciary’s duty to make the violating rule succumb, through constitutionality and



conventionality controls. The state agent is legally prevented from acting in a way that defies international human rights law; it is forbidden to produce and apply a rule that violates human rights, even if approved according to the procedures of the national legislative process¹¹.

Thus, the national Judiciary, including first instance judges – under penalty of international responsibility from the Brazilian State –, has the legal obligation to carry out the conventionality control of domestic laws *ex officio*, as they are state agents bound by the rules of law International Human Rights. This legal obligation stems from Article 5, § 2, of CF/88, as well as from international human rights treaties ratified by Brazil (Article 2.2 of the 1966 UN International Covenant on Civil and Political Rights, approved by Legislative Decree No. 226/1991 and promulgated by Decree No. 592/1992; Articles 1 and 2 of the 1969 OAS American Convention on Human Rights, promulgated by Decree No. 678/1992; and Article 2 of the Additional Protocol to the American Convention on Human Rights in matter of Economic, Social and Cultural Rights, of 1988, of the OAS, approved by Legislative Decree No. 56/1995 and promulgated by Decree No. 3.321/1999).

This understanding has even been enshrined by the STF and the Inter-American Court of Human Rights, whose jurisdiction was recognized by Brazil through Legislative Decree No. 89/1998. In this sense, the STF decision in RE No. 466.343 (judgment date: 12/3/2008), as well as the following decisions of the Inter-American Court of Human Rights: Constitutional Court Case vs. Peru Merits, Reparations and Costs. Judgment of January 31, 2001. Series C. No. 71;



11 See NETO, Silvio Beltramelli. *Direitos humanos*. 4. ed. Salvador: Juspodivm, 2017.

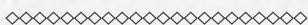


MIGRANTS AND REFUGEES

Case of *Bámaca Velásquez vs. Guatemala*. Merit. Judgment of November 25, 2000. Series C. No. 70; Case of *Paniagua Morales et al. Guatemala*. Merit. Judgment of March 8, 1998. Series C. No. 37; Case of *Albán Cornejo et al. Ecuador*. Merits, Reparations and Costs. Judgment of November 22, 2007. Series C. No. 171; and Advisory Opinion OC-14/94, on international responsibility for the enactment and application of laws that violate the Convention (arts. 1 and 2 of the American Convention on Human Rights)¹².

It is noteworthy that, within the scope of the Labor Courts, the duty to control the conventionality of labor laws arises, giving them an interpretation in accordance with the international human rights treaties ratified by Brazil, under penalty of the Brazilian State being held internationally responsible. In this regard, see the following sentences from the Inter-American Court of Human Rights:

Based on Article 1.1 ACHR [American Convention on Human Rights], the State is obliged to respect the rights and freedoms recognized in the Convention and to organize public power to guarantee to people under its jurisdiction the free and full exercise of human rights. According to the rules of the law of international responsibility of the State, applicable to the International Law of Human Rights, the action or omission of any public authority, regardless of its hierarchy, constitutes a fact attributable to the State (Constitutional Court Case vs. Peru Merits, Reparations and Costs. Judgment of January 31, 2001. Series C. No. 71; Case of *Bámaca Velásquez vs. Guatemala*.



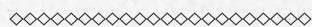
12 See NETO, Silvio Beltramelli. *Direitos humanos*. 4. ed. Salvador: Juspodivm, 2017.



Merit. Judgment of November 25, 2000. Series C. No. 70)¹³.

State responsibility can arise when an organ or official of the State or of a public institution unduly affects, by action or omission, some of the assets protected by the American Convention. It can also result from acts practiced by private individuals, such as when the State fails to prevent or prevent the conduct of third parties that violate these legal assets (Albán Cornejo et al. Vs. Ecuador. Merits, Reparations and Costs. Judgment of November 22, 2007. Series C. No. 171)¹⁴.

Valério de Oliveira Mazzuoli observes that international human rights treaties, including ILO conventions, must be applied at the domestic level based on the principle of *pro homine* or *pro persona*, with the primacy of the rule that, “in the specific case, more protects the worker subject to rights”. The labor magistrate must declare the invalidity of domestic laws incompatible with ILO conventions, through



13 GARCÍA, Fernando Silva. *Jurisprudencia interamericana sobre derechos humanos: criterios esenciales*. Mexico: Dirección General de Comunicación del Consejo de la Judicatura, 2011. p. 13-14. (free translation of the original). In PORTO, Lorena Vasconcelos; NETO, Silvio Beltramelli; RIBEIRO, Thiago Gurjão Alves. *Manual do Grupo de Trabalho de Controle de Convencionalidade do Ministério Público do Trabalho: Themes of Law no. 13,467/2017 (“labor reform”) in the light of international standards*. Brasilia: Office of the Prosecutor General of Labor, 2018.

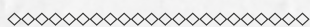
14 GARCÍA, Fernando Silva. *Jurisprudencia interamericana sobre derechos humanos: criterios esenciales*. Mexico: Dirección General de Comunicación del Consejo de la Judicatura, 2011, p. 13-14. Free translation of the original. In PORTO, Lorena Vasconcelos; NETO, Silvio Beltramelli; RIBEIRO, Thiago Gurjão Alves. *Manual do Grupo de Trabalho de Controle de Convencionalidade do Ministério Público do Trabalho: Themes of Law no. 13,467/2017 (“labor reform”) in the light of international standards*. Brasilia: Office of the Prosecutor General of Labor, 2018.



the “**control of conventionality** of laws in **diffuse** mode” and, for that, it is necessary to expand the training of Brazilian judges to apply international standards¹⁵.

In the same sense are the lessons of Bruno Barbosa Borges, José Henrique R. Torres and Victoriana Leonora Corte Gonzaga:

When incorporating an international human rights treaty into their domestic legal system, States sovereignly express their willingness to adhere to the human rights protection system and assume the duty to guarantee its effective and efficient application, even if it is necessary to invalidate the internal rules in view of their contradiction with conventional rules. And for the correct interweaving between the different legal orders to occur, it is essential to carry out the conventionality control of the internal regulatory system. International human rights treaties, after being formally inserted into the national legal order, require the compatibility of these systems. It is, therefore, up to national judges, with a true inter-American, and even international jurisdiction, to assume their role of protecting human rights and to carry out, in the daily context of their jurisdiction, the compatibility of domestic law with the normative system. international protection of human rights. [...] declaring invalid, even, the rules that present incompatibility and discrepancy with the inter-American legal framework. [...] for this control to be effective, judges and judges must also maintain a



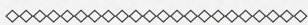
15 MAZZUOLI, Valério de Oliveira. Integração das Convenções e Recomendações Internacionais da OIT no Brasil e sua aplicação sob a perspectiva do princípio *pro homine*. *Revista do Tribunal Regional do Trabalho da 15ª Região*, n. 43, p. 71-94, 2013, p. 92-93.



constant dialogue with the jurisprudence of the Inter-American Court and Commission, as well as with the decisions, advisory opinions, resolutions and recommendations of the other international organizations of the system for the protection of human rights, in search of higher parameters for the protection and harmonization of internal and inter-American regulations, so that it is possible to properly interpret and apply the conventional ethical paradigms required for the preservation of human dignity”¹⁶.

3. Guardianship of migrant workers within the framework of the Inter-American System for the Protection of Human Rights

Protection of migrant workers can only be effective and complete if the following requirements are simultaneously observed: the prohibition of forced labor; the prohibition of child labor, in accordance with ILO Conventions 138 and 182; the absence of discrimination; union freedom, including the right to strike; and job protection. In effect, the migrant is very vulnerable to forced and child labor, because, due to the pressing need, he is subjected to jobs in which basic labor rights are not respected. The report of the III Global Conference on child labor, held in Brasilia in 2013, warns of the need for greater effectiveness of specific policies



16 BORGES, Bruno Barbosa; TORRES, José Henrique R.; GONZAGA, Victoriana Leonora Corte. *O dever dos juizes de harmonizar o ordenamento com os tratados de direitos humanos*. Available at: <https://www.jota.info/carreira/o-dever-dos-juizes-de-harmonizar-o-ordenamento-com-os-tratados-de-direitos-humanos-06092019>. Access in: Apr. 9, 2020.

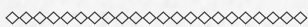


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and structural programs that prioritize intersectorality in combating child labor in contexts of migration¹⁷.

Likewise, States cannot discriminate or tolerate discriminatory practices to the detriment of migrants, and any distinction between nationals and migrants, or between documented and undocumented migrants, must be reasonable, objective, proportionate and in compliance with human rights¹⁸. In addition, also due to the principle of equality, the other rights of migrants, including freedom of association, including the right to strike, and the protection of employment, must be respected. As Platon Teixeira de Azevedo Neto points out, it is necessary “to visualize the worker as a subject of law and a citizen of the world, especially in a scenario of globalization and strengthening of International Human Rights Law. In this sense, the protection of migrant workers is materialized in the context of the humanization of international law”¹⁹.

In the words of Arnaldo Süssekind, “a migrant worker is one who moves to a country that is not his own, with the spirit of integrating into it or, at least, of working on



17 AZEVEDO NETO, Platon Teixeira de. *A justiciabilidade dos direitos sociais nas cortes internacionais de justiça*. p. 226-227.

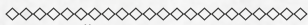
18 ROBLES, Manuel E. Ventura. Jurisprudencia de la corte interamericana de derechos humanos en materia de derechos económicos, sociales y culturales. In DIREITO, Carlos Alberto Menezes; TRINDADE, Antônio Augusto Cançado; PEREIRA, Antônio Celso Alves. *Novas perspectivas do direito internacional contemporâneo: estudos em homenagem ao Professor Celso D. de Albuquerque Mello*. Rio de Janeiro: Renovar, 2008. p. 569.

19 AZEVEDO NETO, Platon Teixeira de. *A justiciabilidade dos direitos sociais nas cortes internacionais de justiça*. p. 227-228.



a non-transitory basis”²⁰. In international human rights instruments there is, to a greater or lesser extent, protection for migrant workers in a regular administrative situation in the country. However, there is a differentiation between workers in regular condition and those who are in an irregular situation in Europe, who may be expelled from the country in which they reside irregularly²¹. In the inter-American system, however, the Inter-American Court, through Advisory Opinion No. 18, removed any margin of discrimination against irregular migrant workers.

The American and European Conventions and the African Charter do not have specific and express rules on migrant workers. The Treaty on the Functioning of the European Union, in Article 45, guarantees the free movement of workers from the Member States, prohibiting any discrimination based on nationality as regards employment, remuneration and other working conditions. In its article 48, this treaty guarantees to migrant workers, wage-earners and self-employed persons, social security benefits, considering



- 20 SÜSSEKIND, Arnaldo. Proteção ao Trabalhador Migrante. In BAPTISTA, Luiz Olavo; MAZZUOLI, Valerio de Oliveira. *Doutrinas essenciais: Direito Internacional*. São Paulo: Revista dos Tribunais, 2012. p. 1.117.
- 21 GONZÁLEZ, Carmen Pérez. *Migraciones irregulares y Derecho Internacional: gestión de flujos migratorios, devolución de extranjeros en situación administrativa irregular y Derecho Internacional de los Derechos Humanos*. Valence: Tirant lo Blanch, 2012. p. 69-70. This issue is very well portrayed in the following film based on a true story: MARTIN-LAVAL, Pierre-François (direction). *A chance de Fahim*. Movie. France: 2020. Synopsis and trailer available at: www.adorocinema.com/filmes/filme-266327. Access in: Apr. 9, 2020.



the total of all periods taken into account by the various national laws²².

In the context of the inter-American system, Mexico, in 2001, asked the Inter-American Court whether “the migratory quality of a person could be used as a justification to deprive him or her of the enjoyment and exercise of his rights, such as those of a labor nature, and whether deprivations would be compatible with the State’s duty to guarantee non-discrimination”²³. The Mexican State therefore asked the Inter-American Court whether the deprivation of the enjoyment and exercise of certain labor rights for migrant workers is compatible with the obligation of the American States to guarantee the principles of legal equality, non-discrimination and equal and effective protection of enshrined in international instruments for the protection of human rights. Mexico requested the interpretation of the following provisions: arts. 3 and 17 of the OAS Charter, art. II (right to equality before the law) of the American Declaration of the Rights and Duties of Man, arts. 1.1 (obligation to respect rights), 2 (duty to adopt provisions of domestic law) and 24 (equality before the law) of the American Convention on Human Rights, arts. 1, 2.1 and 7 of the Universal Declaration of Human Rights, and arts. 2.1, 2.2, 5.2 and 26 of the International Covenant on Civil and Political Rights.



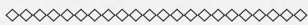
22 EUROPEAN UNION. *Tratado sobre o Funcionamento da União Europeia*. Available at: <https://euricando/legal-content/PT/TXT/?uri=celex%3A12012E%2FTXT>. Access in: Apr. 9, 2020.

23 CAMPOS, Bárbara Pincowska Cardoso; CALABRIA, Carina. Revisitando Pasárgada: igualdade, não discriminação e subintegração da jurisprudência da Corte Interamericana de Direitos Humanos. *Revista do Instituto Brasileiro de Direitos Humanos*, year 14, v. 14, n. 14, p. 75-94, 2014.



Thus, in Consultative Opinion OC-18/03, of September 17, 2003, requested by the Mexican State, which deals with the “Legal Condition and Rights of Undocumented Migrants”, the Inter-American Court stated that States cannot condition compliance with the principle from equality before the law to the consequence of the objectives of their public policies, whatever they may be. Thus, the principle of non-discrimination prohibits States from denying workers fundamental rights due to their migratory status²⁴.

In paragraph 100 of Advisory Opinion OC-18/03, the Inter-American Court affirms that all States, as members of the international community, must fulfill their obligations to respect and guarantee human rights, without any discrimination, thus ensuring the right to equal protection under the law. Thus, any discriminatory treatment in relation to the protection and exercise of rights, including labor, creates the international responsibility of States. Depending on the Inter-American Court, especially in the vote of Antônio Augusto Cançado Trindade, the fundamental principle of equality is part of the *jus cogens*, so that States cannot discriminate, or allow discriminatory situations, to the detriment of migrants, and must guarantee due legal process and judicial protection to any person, regardless of their migratory status. Therefore, states cannot subordinate or condition compliance with the principle of equality before the law and non-discrimination to the objectives of their migration policies.



24 ORGANIZATION OF AMERICAN STATES. Inter-American Court of Human Rights. *Advisory Opinion OC-18/03*. Available at: www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_opiniones_consultivas.cfm?lang=es. Access in: Apr. 9, 2020.



The Inter-American Court, in paragraph 112, highlights that migrants are in a situation of vulnerability as subjects of human rights, on condition of absence or difference of power in relation to non-migrants (nationals or residents). Such a condition of vulnerability has an ideological dimension and presents itself in a different historical context for each state. The Inter-American Court also highlighted, in paragraph 113, cultural and ethnic damage, xenophobia and racism in relation to migrants, which causes several violations of human rights²⁵.

As for the rights of undocumented migrant workers, the Inter-American Court has stated that, once hired to work, they immediately become holders of labor rights, and therefore cannot be discriminated against for their irregular situation (paragraph 136). Thus, States cannot allow private employers to violate workers' rights, nor should the contractual relationship fail to observe the minimum levels of protection (paragraph 148), with labor rights being those that the national and international legal system recognizes for workers (paragraph 155). In paragraph 157, the Inter-



25 It should be noted that the condition of vulnerability of migrants is mentioned expressly in the documents produced by the IACHR and the Inter-American Court due to the global pandemic resulting from Covid-19, which leads to the adoption of policies, actions and special protection measures for migrants, without any kind of discrimination. See IACHR. *Resolución n° 1/2020*. Pandemia y derechos humanos en las Américas (Adoptado por la CIDH el 10 de abril de 2020). Available at: www.oas.org/es/cidh/decisiones/pdf/Resolucion-1-20-es.pdf. Access in: Apr. 21, 2020 and HDI Court. *Declaración de la Corte Interamericana de Derechos Humanos 1/20 de 9 de abril de 2020*. Available at: www.corteidh.or.cr/tablas/alerta/comunicado/declaracion_1_20_ESP.pdf. Access in: Apr. 21, 2019

ORGANIZATION OF AMERICAN STATES. Inter-American Court of Human Rights. *Advisory Opinion OC-18/03*. Available at: www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_opiniones_consultivas.cfm?lang=es. Access in: Apr. 9, 2020.



-American Court summarizes the rights of fundamental importance: the prohibition of forced or compulsory labor; the prohibition and abolition of child labor; special attention to working women; and the rights of association and freedom of association, collective bargaining, fair wages for work performed, social security, judicial and administrative guarantees, reasonable working hours and under adequate conditions of safety and hygiene, rest, and indemnity²⁶.

Regarding the decision of the Inter-American Court in Advisory Opinion OC-18/03, Antônio Celso Alves Pereira highlights the following:

Based on a fully evolving interpretation of international human rights law, the Inter-American Court considers that illegal immigrant workers in the countries where they work have the same labor rights that are accorded to other workers in that state. Urges all countries to review immigration or modify their immigration laws, policies, and procedures, which must be carried out to eliminate any element that could translate into discrimination of any kind, in accordance with the principles and rules established in international treaties to which they were parties. [...] It is not permissible for a state to tolerate the hiring of illegal immigrant workers by employers who, having prevailed the conditions of vulnerability of the foreigner, admit it in their companies by paying wages in amounts well below those that would normally be paid to nationals and, even more, denying them the exercise of labor rights that derive exclusively from the employment relationship. The state has an obligation to ensure



26 AZEVEDO NETO, Platon Teixeira de. The justiciability of social rights in international courts of justice. p. 231-232.



that such rights are not violated, no matter what situation, under the state's immigration rules and policies, the immigrant is in²⁷.

Likewise, Pedro Gravatá Nicoli points out that “the Inter-American Court of Human Rights [...] has ruled, in a paradigmatic Advisory Opinion (OC-18/03, of September 17, 2003), for the full labor protection of undocumented immigrants”. The same author affirms that the pronouncement of the Inter-American Court “should serve as a legal guide for the treatment of the issue in Brazil, in line with the dense international normative network, the guidelines of the 1988 Constitution and the proper application of the national labor law normative”²⁸.

Thus, the understanding set by the Inter-American Court in Advisory Opinion OC-18/03 should be applied in Brazil, as it is a signatory to the San José Pact of Costa Rica and the Protocol of San Salvador, as well as recognizing the jurisdiction of the Inter-American Court (Legislative Decree No. 89/1998).

Among the decisions of the Inter-American Court handed down in its contentious jurisdiction, the “Nadege Doerzema et al. Vs. Dominican Republic”, whose sentence was issued on 10/24/2012²⁹. In this case, which involved the excessive use of Dominican military forces against a group of Haitians, with the death of seven people and several other injuries, the Inter-American Court addressed the situation



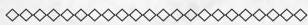
29 ORGANIZATION OF AMERICAN STATES. Inter-American Court of Human Rights. *Case Nadege Dorzema y otros Vs. República Dominicana. Fondo, Reparaciones y Costas. Sentencia de 24 de octubre de 2012. Serie C No. 251.* Available at: www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=es. Access in: Apr. 9, 2020.



veness on states, but also a horizontal effectiveness in the private sphere.³¹

In the European scope, the “De Souza Ribeiro vs. France”, tried on December 13, 2012, in which the plaintiff is a Brazilian who lived and worked in French Guiana (French overseas territory), having alleged violation of art. 8th of the ECHR. Although born in Brazil, the plaintiff lived for some years in French Guiana, where he even attended school and had relatives, having been arrested and deported because he had not proved his regularity in French territory. The plaintiff filed a lawsuit in French Guiana and, only after years, was he able to regularize his situation to live and work in that country. As a result, he demanded the French State before the European Court of Human Rights, which granted him the payment of an indemnity, although in a lower amount than claimed, having considered that the plaintiff was deprived of work and remained without the possibility of supporting himself during certain period. This decision, therefore, contributed to the protection of the migrant’s right to work³².

As highlighted by Platon Teixeira de Azevedo Neto, “the protection of migrants imposes itself as a fundamental measure to safeguard labor human rights”, as “it considers the worker as a subject of universal law, who deserves shelter wherever he or she is on the planet, especially in a period of intense globalization”, being certain that migrant



31 ALBUQUERQUE, Paulo Pinto; DOMÈNECH, Carlos Hugo Preciado. *Hablemos de derechos humanos. La doctrina del TEDH y su aplicación en España desde los votos particulares del Juez Paulo Pinto de Albuquerque*. Valence: Tirant Lo Blanch, 2020. p. 335-336.

32 EUROPEAN COURT OF HUMAN RIGHTS. *Case of de Souza Ribeiro v. France (Application n. 22689/07)*. Available at: <https://hudoc.echr.coe.int/fre#{%22i-temid%22: Renda%22001-115498%22}>. Access in: Apr. 9, 2020.



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The Sustainable Development Goals and the labor rights of migrants

Andrea da Rocha Carvalho Gondim¹

*I didn't know how was a border
like. How would it be? I had never
seen a border before. Would it have
an orchestra? It would have. And
dancing and partying and target
shooting. What about a circus? An
orchestra? For sure. As for the
Circus, I didn't know.*

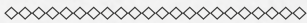
[...]

I left because I wanted to.

(Eduardo Galeano).

a) Introduction

The text by Uruguayan master Eduardo Galeano offers a poetic synthesis of reality when it comes to the wanderings of the author, who lived in exile in Argentina and Spain and only returned to his country with the end of the military dictatorship (1973-1985).



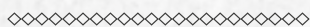
¹ Labor Prosecutor. Master in Labor Law from the University of São Paulo (USP). Member of the Working Group on Migration of the Labor Prosecution Service (MPT). Representative of Coordinfância and Conaete at PRT 16th Region. Participates in the Freedom in the Air Project (MPT).



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The experience of crossing the border makes crystal clear the dissatisfaction with the destiny that comes knocking at the door. The individual does not accept the flagellant situation in which he or she finds himself and decides to leave his homeland voluntarily², when he or she seeks better opportunities for employment, study or access to social services, or involuntarily, in cases of natural disasters, such as the earthquake in Haiti or the war that devastated Syria (2011 to the present day)³. It is an attempt to overcome misfortunes and live a better life.

Political persecution, widespread violence, and human rights violations, according to the analysis of data from UNHCR (United Nations High Commissioner for Refugees), signal an increase in the rate of migration due to involuntary displacement and, consequently, an increase in the number of



- 2 The migrant understands the cases in which the decision to migrate is freely taken by the individual who chooses to leave his or her country of origin in search of better living or working conditions, being able to return safely, if he wishes, according to the Glossary on Migration. International Migration Law No. 22. IOM. Geneva, 2009. p. 43.
- 3 According to Brazilian law, individuals are considered refugees who, due to a serious and widespread violation of human rights, are forced to leave their country of nationality to seek refuge in another country; those who leave their country of origin and cannot return to it, due to threats and persecutions, for reasons of race, religion, nationality, social group, or political opinions, not counting on the protection of their respective countries; or who, having no nationality and being outside the country where he previously had his habitual residence, cannot or does not want to return to him, due to threats and persecution, due to race, religion, nationality, social group or political opinions (Law No. 9.474/1997, art.1º, I, II, and III). Available at: www.planalto.gov.br/ccivil_03/leis/l9474.htm. Access in: Feb. 10, 2020.



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relentless search for survival, as the most fragile point in the working relationship, accepting the worst jobs, with night shifts and on weekends, being an easy victim for the trafficking of workers and work in conditions analogous to slavery, a situation that defies the protection of human rights.

The International Labor Organization (ILO), established by the Treaty of Versailles after the First World War, in 1919, emphasizes in its preamble that the appalling working conditions implied, for a large number of individuals, misery and privation that threatened the longed-for universal peace, so that the migration issue and the working conditions of employees abroad were invoked in the Declaration of Philadelphia with the consideration of the need to respect human rights (1944).

The three inspiring reasons for the creation of the ILO, according to Arnaldo Süssekind, were the feeling of social justice, the danger that social injustice can cause and the need for similar working conditions between countries, so that a nation that wishes to improve the lives of its workers is not impeded by other nations, hence the need to regulate the migration of workers¹². In this line, it is not too much to point out that the international regulation of human rights is fully applied to migrants, but as the specific object of this study is the condition of the migrant worker¹³, we turn our attention to the specific norms of protection for migrant workers, such as the Conventions of the ILO No.



12 SÜSSEKIND, Arnaldo. *Direito Internacional do Trabalho*. 3. ed. São Paulo: LTr, 2000. p. 124.

13 TRINDADE, Antônio Augusto Caçado. *A proteção internacional de direitos humanos: fundamentos jurídicos e instrumentos básicos*. São Paulo: Saraiva, 1991. p. 25.

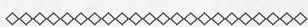


97, 118, 143, and the UN International Convention on the Protection of the Rights of All Migrant Workers and their Family Members¹⁴.

The possibility of migrating could not be dissociated from the dignity of the human person. In the same sense, Maurício Godinho Delgado points out that Labor Law is a face of Human Rights, bringing together dignity, citizenship and social justice. For him, “individual and social labor rights, as social, economic, and cultural human rights, are also protected by the broader Protection of International Human Rights Law¹⁵.

ILO Convention No. 19 on Equal Treatment (1925), ratified by Brazil on 4/25/1957, took the first step in relation to the topic by establishing equality between national and foreign workers in the event of an accident at work¹⁶. However, states were not always prepared to assist undocumented migrant workers, as stated by Cristiane Sbalqueiro Lopes¹⁷.

ILO Convention No. 97 on Migrant Workers (1949), ratified by Brazil on 6/18/1965, revised the Convention on



- 14 The UN Convention on Migrant Workers, adopted in 1990, presents the evolution of the matter to confer rights on all workers, regardless of their legal status. Available at: www.un.org/News/Press/docs/2003/sgsm9081.doc.htm. Access in: Feb. 5, 2020.
- 15 DELGADO, Mauricio Godinho; DELGADO, Gabriela Neves. A reforma trabalhista no Brasil com os comentários à Lei nº 13.467/2017. São Paulo: LTr, 2017. p. 67-68.
- 16 International Labor Organization. Available at: www.ilo.org/brasilia/convencoes/lang--pt/index.htm. Access in: Feb. 3, 2020.
- 17 LOPES, Cristiane Maria Sbalqueiro. Direito de Imigração: o estatuto do estrangeiro em uma perspectiva de direitos humanos. Porto Alegre: Núria Fabris, 2009. p. 226-227.



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Migrant Workers (1939) and adopted the *principle of non-discrimination* or *no less favorable treatment* to that applied to nationals, establishing basic rights related to the reception of the migrant, in a regular migratory situation in the country of destination, with the adoption of “appropriate measures against the misleading advertising related to emigration or immigration” (art. 3rd). Such a stipulation is necessary to avoid human trafficking, especially when used for the exploitation of work, since many workers accept suspicious job offers, which vitiate the will and the option to migrate. If they knew the conditions in which the work would be carried out, they would not accept the job proposal, which, therefore, appears to be a case of migration, but in essence presents the contours of the trafficking of workers.

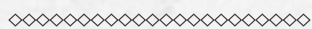
In accordance with the principle of no less favorable treatment, migrants have the same rights in relation to the possibility of membership in a trade union organization, the effects of collective agreements, social protection, remuneration, working hours, minimum age for admission to work and the work of women and adolescents (art. 6, ILO Convention 97). Annex II of this instrument deals with the recruitment, placement and working conditions of migrant workers, with free of charge for operations carried out by public employment services (art. 4), administrative simplification, institution of interpreter services (art. 6, a, b) and the obligation to require that a copy of the employment contract be delivered to the migrant before his or her departure, in writing, individually, indicating the remuneration and with information on the living and working conditions to which he/she will be submitted in the receiving country (art. 5, a, b and c). Such a measure is necessary so that the worker can compare the conditions offered with the reality



assuming the commitment to promote and guarantee equal opportunities and treatment in matters of employment, social security and union rights (art. 10). Art. 8 of the aforementioned convention brings an innovation to the provision that the migrant worker cannot be considered to be in an illegal or irregular situation simply for losing his or her job, so that the dismissal should not result in the revocation of his or her residence permit or work permit in the country recipient, for example, reclassification and readaptation must be guaranteed. This instrument advances when dealing with the undocumented migrant worker as a group to be protected, reaffirming the imperative to avoid excessive expansion and without assistance from migratory movements, due to its negative consequences from the social and human point of view, with the need for that eliminate illegal migrations and illegal employment of migrants with the responsibility of the perpetrators of trafficking in workers (art. 3 and 5). As Carelli says, this is a step forward, as it seeks the due and equal protection of all workers in the world, at least as regards fundamental rights¹⁹.

ILO Recommendation No. 151 details the need for equal treatment and opportunities for migrant workers, more specifically, as explained by Boucinha Filho, in areas where legality must be effective.²⁰

The UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Family



19 CARELLI, Rodrigo de Lacerda. *Trabalho do estrangeiro no Brasil*. Cedes – Center for Law and Society Studies – Bulletin. sea. 2007.

20 BOUCINHAS FILHO, Jorge Cavalcanti. International Conventions on Migration of Workers. P. 289-296. In: ALVARENGA, Rúbia Zanotelli, de; COLNAGO, Lorena de Mello Rezende (Coord). *Direito Internacional do Trabalho e as Convenções Internacionais da OIT Comentadas*. São Paulo: LTr, 2014. p. 195.



of origin and any other forms of discrimination, reaffirming the application of rights and fundamental guarantees for migrants in the national territory. Workers, regardless of their migratory status, must have observed their labor rights, in recognition of the dignity that is inherent to every human being and that is the foundation of our Republic (art. 1, III, CRFB/1988). Otherwise, dignity itself is denied, recognized by all regardless of nationality, which summarizes the material unity of the Greater Law and the overcoming of the formalism that interpreted rules and not principles as Sarlet abbreviated²⁴.

George Marmelstein clarifies that the humanitarian character that inspires the Brazilian constitutional order leads to the conclusion that the important thing is that the person is under Brazilian jurisdiction, regardless of their nationality²⁵. José Afonso da Silva points out that immigrants residing in Brazil apply social rights, especially labor rights²⁶.

Despite the advances, CF/1988 used the term “foreigner”²⁷, an expression that was also used by Law No. 6,815/1980, produced during a dictatorial period with an emphasis on national security, in the relationship of the



24 SARLET, Ingo Wolfgang. *Dignidade da Pessoa Humana e Direitos Fundamentais na Constituição Federal de 1988*. 8. ed. rev. atual. e ampl. Porto Alegre: Livraria do Advogado, 2010. p. 97/112.

25 MARMELSTEIN, George. *Titularidade de direitos fundamentais por estrangeiros não residentes no país*. Available at: <https://direitosfundamentais.net/2008/04/29/titularidade-de-direitos-fundamentais-por-estrangeiros-nao-residentes-no-pais>. Access in: Apr. 10, 2020.

26 SILVA, José Afonso da. *Course of positive constitutional law*. 19. ed. São Paulo: Malheiros, 2001. p. 195.

27 V. CRFB/1988, art. 5th caput, XXXI and LII. Available at: www.planalto.gov.br.



foreigner as the “other”, the one who it opposes the national, deprived of citizenship, a real threat to the status quo.

According to Nadia Lacerda, the main criticism directed at the restrictive criteria that guided the Foreigner Statute, recognized for protecting the country's borders, were the exclusionary entry requirements that did not even allow the entry of qualified workers due to the extensive set of restrictions, such as mandatory attachment to a company, which should formalize the job offer²⁸.

The evolution of care for migrant workers corroborates that they contribute to the progress of the country of origin, with remittances of foreign exchange, relief from labor market pressures and exchange of acquired skills, in addition to contributing to the development of the destination country, enriching their culture, teaching new work techniques, meeting the necessary demands of the labor market and expanding the search for goods and services. This advance cannot be dissociated from the protection of workers, as the ILO points Oct.²⁹ Nevertheless, migration is treated as a problem for recipient countries that justify a public policy of discouraging migration in the need to guarantee national security and the lack of capacity of public services, taking



28 LACERDA, Nádia Demoliner. *Migração Internacional a Trabalho*. São Paulo: LTr, 2014. p. 17-18.

29 ILO. *Rights, labour migration and development: The ILO pproach*. Available at: http://webcache.googleusercontent.com/search?q=cache:oLFu3G-CAd7UJ:www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/briefingnote/wcms_203885.pdf+&cd=2&hl=p-t-BR&ct=clnk&gl=br&client=firefox-b-e. Access in: Apr. 8, 2020.



tation, and social security, with periodic adjustments that preserve his purchasing power, is the key to combat these abuses, as stipulated in art. 7º, IV, CF/88.

Understanding the importance of migration for the country's development, the New Migration Law (Law No. 13,445/2017 and Decree No. 9,199/2017) revoked the Foreigner Statute (Law No. 6,815/1980), overcoming the old-fashioned terminology on the subject, in line with the international standards adopted by the ILO Convention No. 97 (1949), which already used the term "migrant".

The new legislation is extremely advanced, in line with internationally recognized human rights standards, surpassing the Foreigner Statute by expressly adopting the principles of no less favorable treatment and non-criminalization of migration, recognizing social dialogue, repudiating and preventing xenophobia, racism, and any forms of discrimination. According to art. 3 of the New Migration Law, the Brazilian migration policy is governed by the following principles and guidelines:

I – universality, indivisibility and interdependence of human rights;

II – repudiation and prevention of xenophobia, racism and any forms of discrimination;

III – non-criminalization of migration;

IV – non-discrimination due to the criteria or procedures by which the person was admitted to national territory;

V – promotion of regular entry and document regularization;



VI – humanitarian reception;

VII – economic, tourist, social, cultural, sports, scientific and technological development in Brazil;

VIII – guarantee of the right to family reunion;

IX – equal treatment and opportunity for migrants and their families;

X – social, labor and productive inclusion of migrants through public policies;

XI – equal and free access by migrants to services, programs and social benefits, public goods, education, comprehensive public legal assistance, work, housing, banking and social security;

XII – promotion and dissemination of the migrant's rights, freedoms, guarantees and obligations;

XIII – social dialogue in the formulation, execution and evaluation of migratory policies and promotion of citizen participation by migrants;

XIV – strengthening the economic, political, social and cultural integration of the peoples of Latin America, through the establishment of spaces for citizenship and free movement of people;

XV – international cooperation with States of origin, transit and destination of migratory movements, in order to guarantee effective protection of the human rights of migrants;

XVI – integration and development of border regions and articulation of regional public policies capable of ensuring the effectiveness of the rights of border residents;



XVII – integral protection and attention to the best interests of migrant children and adolescents;

XVIII – compliance with the provisions of the treaty;

XIX – protection of Brazilians abroad;

XX – migration and human development in the place of origin, as inalienable rights of all people;

XXI – promotion of academic recognition and professional practice in Brazil, under the terms of the law; and

XXII – repudiation of collective expulsion or deportation practices.

Law No. 13,445/2017 expressly grants migrants, on national territory, the condition of equality with nationals, the inviolability of the right to life, freedom, equality, security and property, access to public health services, social assistance and social security, the right of association, including union, for lawful purposes and the guarantee of compliance with legal and contractual labor obligations, without discrimination on grounds of nationality and migratory status. Follows the wording of art. 4:

Art. 4 The migrant is guaranteed in the national territory, under conditions of equality with the nationals, the inviolability of the right to life, liberty, equality, security and property, as well as being ensured:

I – civil, social, cultural and economic rights and freedoms;



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II – right to freedom of movement in national territory;

III – right to the migrant's family reunion with his spouse or partner and his children, relatives and dependents;

IV – measures to protect victims and witnesses of crimes and violations of rights;

V – the right to transfer funds from your income and personal savings to another country, subject to the applicable legislation;

VI – right of assembly for peaceful purposes;

VII – right of association, including union, for lawful purposes;

VIII – access to public health and social assistance services and social security, under the terms of the law, without discrimination on grounds of nationality and migratory status;

IX – full access to justice and free full legal assistance to those who prove insufficient resources;

X – the right to public education, without discrimination on grounds of nationality and migratory status;

XI – guarantee of compliance with legal and contractual labor obligations and application of worker protection rules, without discrimination on grounds of nationality and migratory status;



XII – exemption from the fees referred to in this Law, by means of a declaration of economic under-sufficiency, in the form of a regulation;

XIII – right of access to information and guarantee of confidentiality regarding the migrant's personal data, under the terms of Law No. 12,527, of November 18, 2011;

XIV – right to open a bank account;

XV – the right to leave, to remain and to re-enter national territory, even while a pending application for a residence permit, extension of stay or transformation of a visa into a residence permit is pending; and

XVI – the immigrant's right to be informed about the guarantees that are guaranteed for the purposes of migratory regularization.

§ 1 The rights and guarantees provided for in this Law will be exercised in compliance with the provisions of the Federal Constitution, regardless of the migratory situation, observing the provisions of § 4 of this article, and do not exclude others arising from a treaty to which Brazil is a party.

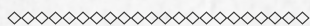
From reading the above transcribed article, it is observed that the normative evolution related to migrant workers seeks to establish an emancipatory agenda, in which the dignity of the human person is observed in conditions of freedom, of non-discrimination, with equal opportunities between men and women, regardless of the migratory condition, in line with sustainable growth.



As we already had the opportunity to score together with Cristiane Sbalqueiro Lopes:

We have a beautiful Migration Law, but in order to welcome the migrant population with dignity and security, we need to strengthen active policies for generating employment, work, income, as mandated by ILO Convention 88 and our current legislation (Law No. 13.667/2018), which designs a plural and democratic architecture of public budget construction. We also need to strengthen labor inspection to prevent workers from being enslaved, trafficked or exploited in servitude. In the same vein, we need to regulate the activities of employment agencies (ILO Convention 181) and pay special attention to the situation of migrant domestic workers (ILO Convention 189), since it is already known that these are the most vulnerable to exploitation in the world. work, alongside migrants working in the field and in civil construction (4th ILO Report on the 106th International Conference)³².

In the sense of the text transcribed above and despite the legislative effort, the Labor Prosecution Service continues to receive complaints of abuse by employers in relation to migrant workers of the most diverse nationalities³³, including those related to work in conditions similar to slavery and



32 GONDIM, Andrea da Rocha Carvalho; LOPES, Cristiane Maria Sbalqueiro. Atuação em rede no acolhimento de migrantes e refugiados: a perspectiva do Ministério Público do Trabalho. In: ESMPU; ACNUR (org.). *Percursos, percalços e perspectivas: A jornada do Projeto Atuação em Rede*. Brasília: ESMPU; ACNUR, 2020. p. 80-81.

33 AGÊNCIA BRASIL. *Imigrantes são mantidos em situação análoga à escravidão em São Paulo*. Exame.com. Aug 1 2017. Available at: <https://exame.abril.com.br/brasil/imigrantes-sao-mantidos-em-situacao-analog-a-escravidao-em-sp>. Access in: Apr. 8, 2020.



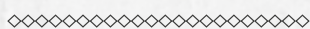
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of an existence limited to their own survival, in a condition of legal, material, social and cultural inferiority, as explains Antunes³⁶. The exploitation of the immigrant worker is the tip of the iceberg and, quoting Pietro Basso, the author explains that migrants deal with a scenario that goes beyond overexploitation:

In Europe, the entire existence of immigrants and their children is marked by discrimination. They are discriminated against at work, in access to work, in unemployment insurance, in retirement. Discriminated in access to the house, with more expensive rents for the most deteriorated houses and in more degraded areas. Discriminated, in fact, even in schools. Discriminated in the possibility of holding their own family together.³⁷

In view of the reality of migrant workers, with a working life marked by discrimination and exploitation, the SDGs, as well as international human rights standards, are fully applicable to migrants and must be used as beacons for the action of States, including with the possibility of filing of judicial measures for its implementation and observance by the Public Authorities.

The SDGs and their goals were built on the legacy of the United Nations Conference on Environment and Development



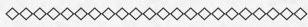
36 ANTUNES, Ricardo. The privilege of servitude. São Paulo: Boitempo, 2018. p. 74.

37 Ricardo Antunes *apud* Pietro Basso. ANTUNES, Ricardo. *O privilégio da servidão*. São Paulo: Boitempo, 2018. p. 74.



(Rio 92)³⁸, the Final Declaration of the Rio+20 Conference³⁹ and the Millennium Development Goals (MDGs)⁴⁰, but have progressed beyond continuous development priorities. The challenge was to structure global efforts, simultaneously and in a balanced way, in favor of the eradication of poverty and the effective integration of the economic, social and environmental dimensions of sustainable development.

SDGs are, therefore, broader and more inclusive, with a commitment to application in both developing and developed countries, not to be confused with the MDGs, which proposed sectoral goals. Those objectives take into



- 38 Eco-92 reaffirmed the Declaration of the United Nations Conference on the Human Environment, adopted in Stockholm in June 1972, establishing a new and just global partnership with new levels of cooperation between States, the key sectors of society and the individuals. Available at: www.un.org/esa/dsd/agenda21/?utm_source=OldRedirect&utm_medium=redirect&utm_content=dsd&utm_campaign=OldRedirect. Access in: Jan. 10, 2019
- 39 In the Rio+20 Declaration, the importance of UDHR was reaffirmed, highlighting the responsibility of all States to respect, protect and promote fundamental freedoms for all, without distinction, with the issue of observing human rights in migration emerging. States made a commitment to systematically consider demographic trends and projections in national rural and urban development strategies and policies, addressing the challenges associated with demographic changes, including migration (item 144). There was also an invitation to adopt actions that promote and protect the human rights and fundamental freedoms of all migrants, with treatment of international migration through cooperation and dialogue, recognizing the responsibilities of the countries of origin, transit and destination for the protection of these rights, emphasizing the importance of avoiding approaches that aggravate their vulnerability (item 157). UN. Final Declaration of the Rio+20 Conference, "The Future We Want". Available at: www.agenda2030.org.br/sobre. Access in: Jan. 10, 2020.
- 40 There are eight Millennium Development Goals (MDGs) established after the United Nations Millennium Summit in 2000, with the adoption of the Millennium Declaration. Available at: <https://nacoesunidas.org/tema/odm>. Access in: Jan. 10, 2019



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account the different national realities, social dynamics, capacities and levels of development, respecting national policies and priorities (paragraph 247 of *O futuro que queremos*).

Brazil participated in all the SDG negotiation sessions, showing great commitment in fulfilling the 2030 Agenda, creating the National Commission for Sustainable Development Goals (CNODS), a mechanism for coordination, monitoring and alignment between national public policies and the SDGs⁴¹. CNODS was a joint, consultative body for articulation, mobilization and dialogue between federative entities, civil society and the private sector⁴². National coordination around the negotiation of the 2030 Agenda and the SDGs resulted in the document *Elementos orientadores da posição brasileira*, which punctuated, in a tight synthesis, the need to eradicate poverty as a priority to achieve sustainable development, with the adoption of universal measures of social protection, ensuring a minimum floor to prevent or reduce poverty, vulnerability and social exclusion, with a gradual increase in the levels of protection offered, through programs such as Bolsa Família⁴³.

The construction of the SDGs should observe the perspective of inclusion, equity and the effective implementation of human rights, approaching inequality within countries



41 Created by Decree No. 8,892/2016, revoked by Decree No. 10,179/2019.

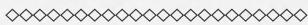
42 MINISTRY OF FOREIGN AFFAIRS. *Objetivos do Desenvolvimento Sustentável*. Available at: www.itamaraty.gov.br/pt-BR/politica-externa/desenvolvimento-sustentavel-e-meio-ambiente/134-objetivo-de-desenvolvimento-sustentavel-ods. Access in: Apr. 20, 2019

43 Law No. 10,836/2004, signed by then President Luiz Inácio Lula da Silva, instituted the Bolsa Família Program.



and between countries. In this regard, the economic aspect requires the adoption of means to make financial resources available, transfer technology, train and create opportunities for developing countries, as a central requirement to achieve the SDGs among nations. Within countries, on the other hand, a concrete solution, directly related to the labor field, is the adoption of practices that effectively combat wage differences based on gender, race or disability conditions and additionally because of the migratory condition. Promotion and respect for equality are essential for the maintenance of human dignity and for the positive social interaction of individuals, with judicial protection for the observance of this right by the State or individuals being fully applicable.

The SDGs should also guide national policies and international cooperation activities, in a transversal way, with sustainable production and consumption, using effective mechanisms to promote technological innovation and transfer of technologies between countries to achieve this goal. Sustainable production must have dignified work as a pillar, in a safe work environment. The concern with the environment is not recent, but the adoption of sustainable practices has become a trend among companies in recent years, despite the fact that sustainable fashion is still a distant reality, as André Jankavski points out.⁴⁴ Such a finding is unfortunate, precisely in a sector related to a series of complaints about work in a condition analogous to that of a slave in the Public Labor Mystery, involving large retailers



44 EXAM. *Moda sustentável ainda é uma realidade bem distante, diz pesquisa*. Nov 25 2018 Available at: <https://exame.abril.com.br/negocios/moda-sustentavel-ainda-e-uma-realidade-bem-distante-diz-pesquisa>. Access in: Apr. 19, 2019



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that use the abstract idea of social responsibility, without actions that really combat such practice. effective⁴⁵.

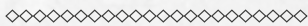
As noted, the 2030 Agenda stipulated the SDGs, balancing the economic, social and environmental dimensions, with a view to achieving sustainable development, observing labor rights with the promotion of safe and protected work environments for all, including migrants, in respect the principle of no less favorable treatment inscribed in ILO Convention No. 97, in line with the constitutional text and the New Migration Law, based on human rights with the repudiation of racism, xenophobia and discrimination. There is the possibility of equal access to public policies, such as health, work and full public legal assistance, and it is possible for migrants to sue the Judiciary in case of non-observance of their rights (arts. 3 and 4 of Law No. 13,445/17).

The agenda signals the evolution of the international norms presented in the previous topic in relation to the approach of migrant workers, especially the undocumented migrant, who was recognized the need to respect the inherent dignity of every human being, as observed in the UN International Convention on Protection of the Rights of All Migrant Workers (1990). An expression of respect for the inherent dignity of human beings is the obligation, under national law, to provide migrants with the opportunity to regularize their migratory status, before determining their deportation. According to the New Migration Law, "the deportation will be preceded by personal notification to the deportee, which expressly contains the irregularities verified and the deadline for regularization is not less than 60 (sixty) days, which may be extended for an equal period., by reasoned order and under the commitment of the person



to keep their household information updated” (art. 50, § 1 of Law No. 13,445/2017). In the same sense, art. 176 of Decree No. 9,199/2017. Observance of due legal process is a guarantee given to migrants in the face of possible abuses by the authorities. It is a necessary condition to ensure the smoothness of the procedure and to avoid persecution and the fear of being in an irregular situation without prior notice, a fear that silences many workers, who avoid reporting the abuses they suffer in the work environment for fear of deportation.

The ILO points out that the growth of irregular immigration and human trafficking are major challenges for the protection of the human and labor rights of migrants, especially in relation to less qualified workers who experience abuse and exploitation in order to survive⁴⁶. Aware of this problem, SDG No. 8 set as a goal the promotion of “sustained, inclusive and sustainable economic growth, full and productive employment and dignified work for all”⁴⁷. The same tonic had guided the Rio Declaration on the



46 SOMAVIA, Juan. Preface. *In: ILO. International Migration Programme. ILO's Multilateral Framework on Labour Migration; Non-binding principles and guidelines for a rights-based approach*. Geneva: International Labour Office, 2006. 55 p.

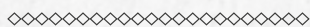
47 Agenda 2030. Available at: <https://nacoesunidas.org/pos2015/ods8>. Access in: Mar. 20, 2020.



Thus, there is nothing more appropriate and fair than for nations to come together to defend the right to dignified work, strictly related to productive work opportunities with fair income generation, security in the workplace and social protection for families, with better prospects of personal development and social integration, freedom of expression, organization and participation and equal opportunities and treatment for women and men⁵².

According to Beltramelli and Voltani, dignified work is a conception “that brings together a bundle of clear guidelines that guide the respect for fundamental rights in labor relations, not using slave or child labor”⁵³.

Decent work is included in Agenda 2030, which assimilated the priorities of Agenda 21 and advanced by pointing out “the ways to achieve social justice, with the express recognition of the need to promote dignified work for all, the supply of jobs (full and productive) and economic growth (sustained, inclusive and sustainable)”. For Carvalho and Barcellos, however, the Decent Work contemplated in the 2030 Agenda is nothing more than a declaration of intent, due to the lack of definition of its goals, if compared with the precision of those established for other objectives⁵⁴.



52 ILO. *Decent work*. Available at: www.ilo.org/global/topics/decent-work/lang--en/index.htm. Access in: Mar. 20, 2020.

53 BELTRAMELLI NETO, Silvio; VOLTANI, Julia de Carvalho. Investigação histórica do conteúdo da concepção de Trabalho Decente no âmbito da OIT e uma análise de sua justiciabilidade. *Revista de Direito Internacional*, Brasília, v. 16, n. 1, p. 165-185, 2019.

54 CARVALHO, Paulo G. M. de; BARCELLOS, Frederico C. Os Objetivos de Desenvolvimento do Milênio-ODM: Uma avaliação crítica. *Sustentabilidade em Debate*, v. 5, n. 3, p. 222-244, 2014.



The “Guiding Elements of the Brazilian Position” are very elucidative as to what it is intended to achieve and how. Thus, for example, in order to achieve SDG No. 8, it is up to the States to focus on actions that offer job opportunities, well-paid, with the free choice of productive work and with social dialogue and the provision of minimum means of subsistence, with access to security, social and dignified work. To do so, we need to invest in citizen education, carry out a review of labor reform (or counter-reform), revoking any precarious measure and implementing the rules that should have been implemented, such as the additional pain.

It is also necessary to make the population aware of the importance of the SDGs, in addition to acting repressively, when concretely there is an injury to the principle of equality or the non-recognition of legally established rights.

The adoption of immediate and effective measures to eradicate forced labor, eradicate labor in conditions analogous to slavery and human trafficking, and the elimination of the worst forms of child labor call for the strengthening of institutions that protect labor law in the country, resurrecting, therefore, the Ministry of Labor and Employment, strengthening and equipping the labor inspection and guaranteeing the independent performance of the Labor Prosecution Service and the impartial judgment of the Labor Justice. Overexploitation of workers, including migrants, is incompatible with sustainable development which recognizes respect for the free market as inseparable from respect for the freedom of individuals, so that acting in disrespect for the human rights of workers is an unfair way of exploiting the market, imposing responsibilities for those who act in this way, whether exploiting the migrant’s



tractor called Planusi, predetermined the entry of all workers sent to Angola as illegal aliens in the country, subject to sanctions provided for in Angolan law, including imprisonment, for not being allowed to work in the country. All workers, after being hired in Brazil, were sent abroad with only the ordinary visa affixed to their passports, which is considered a crime in Angola. As a result, workers who were picked up in the city of Cacusó by the Angolan police were arrested, with the majority preferring, after that, not to leave their quarters on the construction site itself.

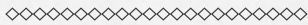
The inquiry points out that the companies sent letters to the Angolan Embassy requesting ordinary visas, valid for only 30 days, and the workers' permanence on Angolan soil was always contracted for an indefinite period.

Restriction of freedom – the evidence gathered by the MPT shows that Brazilian workers were also subjected to the restriction of their freedom, including through the appropriation of documents with the purpose of being kept confined on the construction site. Arriving in Angola, the procedure adopted by Biocom/Odebrecht was to immediately take all passports from all workers, an identification document that is essential to safeguard the rights of foreigners. In addition, employers were not provided with any transportation to leave, even on weekends and on breaks, from the construction site, several kilometers away from the nearest city, in a region that was not served by public transport. Odebrecht kept armed guards at the entrance to the jobsite, who were instructed not to let workers Oct. "I was even prevented from leaving the accommodation in the direction of the cafeteria to pick up



located in the country of origin (Philippines) remained, with an employment contract in the English language diverging from the employment contract in Portuguese., in addition to the deception based on a salary proposal higher than practiced, with restriction of freedom and exhaustive working hours (ACP No. 1001643-32/2017.5.02.0605, 5th Labor Court of Zona Leste, SP). Such a way of proceeding by the employment agencies conflicts with the obligation provided for in ILO Convention No. 97, ratified by Brazil, which establishes the requirement to deliver a copy of the employment contract to the migrant before their departure, in writing, individually, indicating the remuneration and with information on the conditions to which it will be submitted in the receiving country (art. 5, a, b and c).

Another paradigmatic example of MPT's performance was its performance in the face of Zara, the world famous clothing brand. The fiscal action report concluded by the configuration of labor in conditions analogous to slavery in the terms of art. 149 of the CP and ILO Convention No. 29, ratified by Legislative Decree No. 41,721/1957 due to the finding of debt bondage, the exhausting workday and the degrading conditions of the work environment, with undocumented migrant workers as victims⁵⁸. As we have already had the opportunity to discuss, the most common contour of degrading work in the textile industry occurs when basic rights to safety and health at work are subtracted⁵⁹.



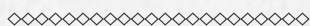
58 MTE – Ministry of Labor and Employment. *Relatório de Ação Fiscal Zara*. São Paulo, 24 ago. 2011. p. 125.

59 GONDIM, Andrea da Rocha Carvalho. *Trabalho em condição análoga à de escravo no meio urbano: análise das teorias da responsabilidade aplicáveis à cadeia produtiva na indústria têxtil*. São Paulo: USP/Law School, 2019. p. 134.



Regarding the issue of trafficking in persons for work, it is worth mentioning the Projeto Liberdade no Ar, an MPT initiative that, along with Brazilian airlines, seeks to disseminate content that sensitizes people regarding the scams involving human trafficking. When people are vulnerable, it is much easier to believe in miraculous job promises in other countries, especially if they are jobs that involve a certain glamor, such as a model, model or even a football player. On the other hand, even modest jobs like babysitting or domestic help can interest people who are tired of the lack of opportunities they experience in their country of origin. For this reason, Projeto Liberdade no Ar invests in awareness material (such as videos, comic strips, cards) and also in training aeronauts, airmen and employees of airport administrators, to disseminate knowledge on the matter⁶⁰.

The Brazilian State, following a friendly settlement in the José Pereira Case before the Inter-American Court of Human Rights, already adopted measures that converged with the need to observe dignified work before the publication of the SDGs with regard to combating work in a similar condition. to slavery, for example the creation of mobile inspection groups (MTE) and the emergence of the “dirty list”⁶¹ (2004). Despite the improvements, as of 2016, Brazil’s benchmark in the fight against slave labor was put at risk when the country temporarily stopped publishing the dirty list of slave labor and reduced the enforcement actions and actions of mobile



60 VILLAÇA, Carolina; ALMEIDA, Rafael. Liberdade pede socorro. Labor. *Revista do Ministério Público do Trabalho*, ano VI, n. 10, p. 54-55, 2019.

61 O *Cadastro de empregadores flagrados explorando trabalhadores em condição análoga à de escravo*, better known as the *Lista Suja*, was established by Inter-ministerial Ordinance (PI) MTPS/MMIRDH No. 4, of 11/5/2016.



among people⁶⁴. This struggle goes beyond the individual sphere and affects States and, in this sense, SDG No. 10 establishes the need to reduce inequality within countries and among them, with the express provision, in item 10.7, of adopting measures that facilitate migration and people's mobility. Baeninger and Patarra defend the need to advance the legalization of community citizenship in Mercosur, for example, as a way of reducing the number of undocumented migrants, expanding the free movement of workers, where there is free movement of capital.⁶⁵ Nothing is more fair in a globalized world where capital finds no borders, especially with the spread of global production chains, but people continue to bump into the policy of building walls and exclusion.

Five years have passed since the adoption of the 2030 Agenda and Sister Marlene Wildner asks about the possibility of more effective actions that can help migrants and refugees so that life on the border is not one of violence, exploitation and discrimination, but evolves into new opportunities for empowerment, autonomy and self-determination⁶⁶.



64 UNITED NATIONS BRAZIL. *ONU: um em cada cinco trabalhadores vive na pobreza*. Disponível em: <https://hacoesusnidas.org/onu-um-em-cada-cinco-trabalhadores-vive-na-pobreza>. Access in: Feb. 27, 2020.

65 BAENINGER, Rosana; PATARRA, Neide Lopes. Mobilidade espacial da população no Mercosul. *Revista Brasileira de Ciências Sociais, ANPOCS*, São Paulo, v. 21, n. 60, p. 83-102, 2006.

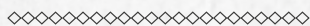
66 WILDNER, Marlene (org.). *Reconstruindo vidas nas fronteiras: desafios no atendimento junto a migrantes e refugiados*. Brasília: CSEM – Centro Scalabrianiano de Estudos Migratórios, 2019. p. 8.



return to their countries of origin due to the lack of conditions to pay for food and rent⁷¹.

Reports of people arrested in other countries and trying to return to their country of origin are already in the press. The situation of a cruise ship with passengers affected by the coronavirus was reported in the media and requested authorization to dock in several countries, but only Cuba accepted it⁷². More than ever, our humanity will be tested. Filippo Grandi, representative of UNHCR, warns that, despite the pandemic, other conflicts will not cease and people will need to leave their homes in search of security, expressing their concern: "I am increasingly concerned about the measures adopted by some countries that could block fully the right to seek asylum"⁷³.

Leonardo Sakamoto reports the death due to the covid-19 of two Bolivian workers in sewing workshops, in the city of Guarulhos (SP). Roque Pattussi, coordinator of the Centro de Apoio e Pastoral do Migrante (Cami), explains that: "In the poorest sewing workshops, there is no radio or television on to pass the minimum instruction on the disease. They end up losing their lives for lack of adequate information"⁷⁴.



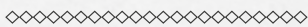
71 ALMEIDA, Lalo de; RODRIGUES, Artur. *Sem comida, estrangeiros de SP pulam refeições e já voltam para seus países*. On 4/12/2020. Available at: www1.folha.uol.com.br/equilibrioesaude/2020/04/sem-comida-estrangeiros-de-sp-pulam-refeicoes-e-ja-voltam-para-seus-paises.shtml. Access in: Apr. 13, 2020.

74 SAKAMOTO, Leonardo: *Covid-19: Dois trabalhadores bolivianos de oficinas de costura morrem em SP*. Portal Uol, 8/4/2020. Available at: <https://noticias.uol.com.br/colunas/leonardo-sakamoto/2020/04/08/covid-19-dois-trabalhadores-bolivianos-de-oficinas-de-costura-morrem-em-sp> .htm. Access in: Apr. 15, 2020.



The suspension of activities, absolutely necessary at this moment, is accompanied by the lack of food and the excess of accounts payable. Rodrigo Carelli points out that the pandemic poses challenges to the regulation of human work and raises questions about how to regulate work in a society divided between social isolation, treatment of the disease and external work with exposure to the disease, a situation that attracts state action in relation to the protection of self-employed and informal workers, to jobs in economic activities that have decreased or been paralyzed by government protection measures, to companies that have had their business unfeasible, to those infected and to those who continue to work. The author lucidly presents that one of the risks that this pandemic runs is the increase of xenophobia, with the widening of the distance between people beyond the borders erected between countries, which would be repudiated by the national order⁷⁵.

To overcome the challenges that arise, Jean Tirole says that we need more multilateralism and cooperation between countries in different areas, such as health, climate, finance, in addition to preparing for health crises, for global warming, for education and inequality which are long-term problems, but these difficulties have been poorly managed, so that independent agencies could help, assessing the performance



75 CARELLI, Rodrigo de Lacerda. *Coronavírus e a regulação do trabalho: a urgência, o risco e a oportunidade*. Mar 21 2020. Available at: <https://rodrigocarelli.org/2020/03/21/coronavirus-ea-regulacao-do-trabalho-a-urgencia-o-risco-ea-oportunidade>. Access in: Apr. 13, 2020.



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of states and informing the population to demand concrete actions from their governments⁷⁶.

It is the moment of unity of the State, of companies and of the whole society, with the need to adopt fiscal incentives and expand social protection for those less able to deal with the crisis to reduce the consequences of the pandemic, as explained by Juan Pablo Bohoslavsky, when proposing the introduction of a universal emergency basic income⁷⁷.

Due to the state of public calamity recognized by Legislative Decree No. 6, of March 20, 2020, and the public health emergency of international importance resulting from the coronavirus (covid-19), the Brazilian State adopted measures that benefit workers with the creation of emergency aid, a financial aid in the amount of six hundred reais, for those who do not have a formal employment relationship (Law No. 13,982, of April 2, 2020). The amount is not enough to support a family for a month and is very little compared to helping financial institutions, but it is in line with the measures to be adopted by the States to deal with the crisis and, since it is a social assistance law, it is extendable to migrants, in accordance with the New Migration Law (Law No. 13,445/2017, art. 4, VIII).



76 VIANA, Diego. Jean Tirole, *Prêmio Nobel de Economia aponta saídas para a crise*. Available at: <https://valor.globo.com/eu-e/noticia/2020/04/17/jean-tirole-premio-nobel-de-economia-aponta-saidas-para-a-crise.ghtml>. Access in: Apr. 19, 2020.

77 UNITED NATIONS BRAZIL. *Relator da ONU pede que países adotem renda básica universal diante da pandemia*. On 3/20/2020. Available at: <https://nacoesunidas.org/relator-da-onu-pede-que-paises-adotem-renda-basica-universal-diante-da-pandemia/amp>. Access in: Mar. 21, 2019



As an innovation in the field of migration, it is possible to highlight the New Migration Law, already mentioned in the previous topic and throughout this topic, which recognizes the migrant as a human being and not as a threat to national security, in line with the Major Law, conventions international standards on the subject and SDG No. 8.

Also noteworthy is Ordinance No. 87/2020, which regularizes the situation of victims of human trafficking, of work in a condition analogous to that of a slave and/or with violation of the law aggravated by their migratory condition. According to art. 3, III, of Ordinance No. 87/2020, the immigrant is a victim of violation of the law aggravated by his migratory condition when the occurrence of domestic violence, private prison, extortion or torture is verified, when the perpetrator of the crime prevailed over the migratory condition of victim.

The aforementioned ordinance adopts faster procedures for residence authorization, such as self-declaration, when the migrant does not have an official document proving his/her affiliation; or acceptance of the birth certificate, regardless of legalization, provided that it is accompanied by a declaration from the immigrant himself about the authenticity of the document; and, in exceptional cases, even without a sworn translation (art. 6, Ordinance No. 87/2020). The decision granting the residence permit should “consider, whenever possible, the effective collaboration of the immigrant with the authorities to elucidate the crime of which he was a victim and the degree of violation of the right to which he was subjected” (art. 2, § 1, Ordinance No. 87/2020).



The director of the Migration Department of the National Secretariat of Justice, André Furquim, explains that one of the advances is the inclusion of “questions about violation of rights aggravated by migratory conditions among the reasons for granting residence. This point protects abused immigrants, usually women, who suffer aggression and violent relationships”⁷⁸. The ordinance went well in this respect, in line with the recommendations of SDG No. 5, which aims to achieve gender equality and female empowerment, as a way of overcoming discrimination⁷⁹. Regarding gender, Jaime Roig warns that one of the main changes regarding migration is the profile of those who migrate, with an increase in the number of women who migrate alone, and most of them of reproductive age, particularly more vulnerable to human trafficking for purposes of sexual exploitation and violence⁸⁰.

The current situation threatens to reverse the Agenda 2030 and the actions taken in relation to workers, including migrants. Law operators have a fundamental role in achieving the SDGs and in guaranteeing the constitutional precepts that give workers a minimum level of civilization, so that a



78 MJSP (Ministry of Justice and Public Security). *MJSP publica portaria que regulariza residência de vítimas de tráfico de pessoas*. Mar. 24, 2020. Available at: www.novo.justica.gov.br/news/mjsp-publica-portaria-que-regulariza-residencia-de-vitimas-de-trafico-de-pessoas. Access in: Apr. 15, 2020.

79 Regarding gender and migration, it is recommended to read the article *Mulheres Migrantes: Análise das Especificidades do Gênero no Processo Migratório Internacional*, by Helena Duarte Romera. In: FREITAS Jr., Antônio Rodrigues; BOUCINHAS FILHO, Jorge Cavalcanti; TORRES, Daniel Bertolucci (org.). *Migração, Trabalho e Direitos Humanos*. São Paulo: LTr, 2017.

80 CONSOLAÇÃO, Maria da; CASTRO, Gomes de; FERNANDES, Duval (org.). *Entrelugares: trajetórias de migrantes, apátridas e refugiados*. Belo Horizonte: Jornalismo na Fronteira, 2019. p. 12.



state of health emergency should not be confused with an exception to the Democratic Rule of Law.

d) Conclusion

Sustainable and inclusive economic growth depends on full employment and the observance of dignified work for all, regardless of migratory status. However, the right to dignified work remains obscured when people are still found working without recognizing the dignity of the human person, in precarious jobs, without freedom or protection of the working environment that show the perverse face of a society far from reaching social justice.

The 2030 Agenda establishes a direction for actions that can be taken by States to eradicate poverty, overcoming the overexploitation of human work, through sustainable development. In addition to states and citizens, companies have a fundamental role in achieving this objective. In the exercise of free trade, companies must follow the guidelines of human rights, structured not only in the State's duty to protect against abuses by third parties, but in the corporate responsibility to respect their workers.

With only a decade left for States to fulfill the commitments made in the 2030 Agenda, they have never seemed so distant, especially in the face of a pandemic that is plaguing the entire planet, but the Labor Prosecutor's Office and the other bastions of democracy are attentive to avoid the setback. on workers' rights, including migrants, without losing sight of CF/88, Agenda 2030, international standards and the new Migration Law, guaranteeing the observance of human rights to all.



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apontar seu alcance e seus limites, em especial no que diz respeito aos trabalhadores migrantes. Para tanto, apresenta um panorama geral com relação à livre circulação de pessoas e a almejada, de trabalhadores, entre os Estados-Partes, as possibilidades de trabalho, estudo e residência dos migrantes, bem como a questão da seguridade social compartilhada no âmbito do Bloco.

Key words: Mercosur. Social Security. Social Security Law. Labor Law. Migrants. Migrant workers.

ABSTRACT

This article addresses the legal socio-labor stipulation in Mercosur, pointing out its scope and limits, especially concerning migrant workers. For this purpose, it presents a general overview regarding the free movement of workers between States, the possibilities of work, study and residence of migrants, as well as topics of Social Security in Mercosur.

Keywords: Mercosur. Social Security. Social Security Law. Labor Law. Migrants. Migrant Workers.

INTRODUCTION

In recent decades, there has been a significant increase in the number of people displaced across the globe in search of better opportunities for life and work. Such a scenario challenges national states to come up with coherent measures, as well as to deal with such displacements in a way that respects the human and fundamental rights of migrant workers.



In this area, with a view to addressing the issue of migrant workers within the scope of the Southern Common Market, this article discusses the socio-industrial stipulation of Mercosur, dealing with the possibilities of free movement of people and the longed-for free movement of workers among the Member States. Parties, as well as topics on Social Security Law and Social Security.

The first chapter concerns the regulation of labor matters within the scope of Mercosur, since the origins of the Economic Bloc, in 1991, with the Treaty of Asunción, including the creation of Work Subgroup 11 (later changed to Subgroup 10) initially labor matters and which had its scope expanded to “Labor issues, employment and social security”, until the emergence of the Mercosur Sociolaboral Declaration, in 1998, revised on July 17, 2015, at the 18th Social Summit of the aforementioned Bloc.

The second chapter clarifies the differences between the terms “migrant” and “refugee”, a very important topic nowadays, given that in the face of closer relations between countries and intense globalization, it is common for people who fit into the refugee condition to be considered migrants, which ends up causing problems for them to have access to the legal protection they need so much.

Subsequently, the third chapter deals with the free movement of workers in Mercosur, with emphasis on the Sociolaboral Commission, an auxiliary organ of the Common Market Group, whose objective is to monitor and promote the socio-collaborative instrument. The chapter also addresses the possibility of revalidating diplomas, certificates and titles between the States Parties to the Bloc.



Finally, the last chapter discusses Social Security in the scope of Mercosur, as well as the General Social Security Regime in force in the States Parties to the Southern Common Market.

1st SOUTHERN COMMON MARKET (MERCOSUR) AND LABOR LAW

The Southern Common Market (Mercosur) emerged with the Treaty of Asunción in 1991, but, unlike what happened with the 1957 Treaty of Rome, which created the European Economic Community, there was nothing specific about the theme of Labor Law, with the preface citing only the objective of economic development with social justice, in addition to improving the living conditions of the population.

The Asunción Treaty⁴ contained in the final part of its article 13 that the Common Market Group could constitute some Working Subgroups that were necessary to fulfill its objectives, initially counting 10 Subgroups, without any mention of the work.

On May 9 of the same year, due to pressure from union organizations, a meeting was held resulting in a Declaration by the Ministers of Labor of Mercosur, with the creation of a Working Subgroup, No. 11, on labor matters, modified in following year, extending the name to “Labor Relations, Employment and Social Security”, that is, expanding its scope.



4 The parts of the Mercosur normative documents, transcribed in the present study, were removed from the website www.mercosur.org.uy. Access in: Jul. 23, 2020.



Finally, the Resolution of the Common Market Group No. 20/1995 changed the number of the original Subgroup to No. 10, due to the exclusion of another previous subgroup.

On December 17, 1994, with the Ouro Preto Protocol, the Economic-Social Consultative Forum was created, being the first and only permanent body of constitutive documents of Mercosur of labor competence, and its sessions are attended by the most representative organizations workers and employers, as well as representatives of the governments of the Mercosur State Parties.

Another subsequent creation, in 1997, was the Labor Market Observatory (OMT), operating within the country that holds the provisional Presidency of the Southern Common Market, whose rotation is annual, which is exactly its problem, as there is little time to carry out any work. The objective would be research on various institutes, also linked to the Labor Market and the ideal would be to have a fixed headquarters, as is the case with the Secretariat in Montevideo, the Court in Asunción and the Parliament in Buenos Aires.

At the 15th Ordinary Meeting, on December 10, 1998, the Mercosur Social and Labor Declaration was born, being subdivided into the following parts: Individual Rights, Collective Rights, Other Rights and, finally, Application and Follow-up; and was based on the eight International Conventions of the International Labor Organization, called fundamental and which should be ratified by all its Member States.



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These Conventions and ratifications⁵ that have taken place in each of the States Parties are as follows:

Ratifications of the Fundamental Conventions of the International Labor Organization by the States Parties to Mercosur								
	Forced Labor		Union Freedom		Discrimination		Child labor	
	Conv. 29	Conv. 105	Conv. 87	Conv. 98	Conv. 100	Conv. 111	Conv. 138	Conv.182
Argentina	03/14/1950	01/18/1960	01/18/1960	09/24/1956	09/24/1956	06/18/1968	11/11/1996	02/05/2001
Brazil	04/25/1957	06/18/1965	-	11/18/1952	04/25/1957	11/26/1965	06/28/2001	02/02/2000
Paraguay	08/28/1967	05/16/1968	06/28/1962	03/21/1966	06/24/1964	07/10/1967	03/03/2004	03/07/2001
Uruguay	09/06/1995	11/22/1968	03/18/1954	03/18/1954	11/16/1989	11/16/1989	06/02/1977	08/03/2001
Venezuela	11/20/1944	11/16/1964	09/20/1982	12/19/1968	08/10/1982	06/03/1971	07/15/1987	10/26/2005

Brazil, therefore, is the only Mercosur State Party that has not ratified all 8 ILO Fundamental Conventions, leaving Convention 87 on Freedom of Association to remain, precisely because of our union uniqueness (article 8, item II of the 1988 Constitution).

The analysis on Social Pacts in Brazil has already been carried out by us⁶, including having participated in one of the most recent ones, “in July 2003, representing the Paraná Labor Lawyers Association, of a group from the State Labor Forum – Paraná, at UFPR, to analyze union freedom in a future Union Reform. We were asked to answer some questions that appear in a report resulting from four meetings that took place between July and August of the aforementioned year”, which generated Constitutional Amendment Proposal No. 469/2005, which was never carried out.



5 Information collected on the website of the International Labor Organization – www.ilo.org. Access in: Jul. 23, 2020.

6 VILLATORE, Marco Antônio César. Reforma Sindical. In: HASSON, Roland; VILLATORE, Marco Antônio César. (coord.). *Análise Crítica do Direito do Trabalho*. Curitiba: Juruá, 2006. p. 296.



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original); Individual Rights; Collective Rights; Other Rights; Application and Segment.

In article 32 of the new text of the revised Mercosur Sociolaboral Declaration, it was established that another review will be carried out in six years, that is, in 2021, in addition to the fact that the commission should meet at least twice a year to study what is being done. carried out in its States Parties.

2. MIGRANTS AND REFUGEES

In the current context of intense globalization and closer commercial and diplomatic relations between countries, it is assumed that all those who enter the national territory are migrants, without distinguishing them from refugees.

In view of this growing trend of considering asylum seekers as migrants, immigration rules are applied without taking into account their specific protection needs and the limits established by international instruments.

The United Nations High Commissioner for Refugees (UNHCR) establishes the differences between migration and refuge: “while refugees are in a very vulnerable situation, as they have no protection from their respective countries and suffer threats and persecution, international migrants have chosen to live abroad mainly for economic reasons, being able to return safely to their country of origin, if they wish”.

In turn, migrants choose to move in order to improve their lives and that of their families, whether for economic reasons, education, family reunion, among others. Therefore,

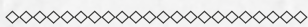


outside the country of their nationality and who cannot or cannot, because of this fear, he does not want to avail himself of the protection of that country, or that, if he does not have nationality and is outside the country in which he had his habitual residence as a result of such events, he cannot or, due to that fear, you don't want to go back to it.¹⁰

This was the first time that a universal concept was applied in the legal sense of the definition of refugee, further determining that the persecution would not need to be effective, that is, the real threat and fear already justify the international protection of the person.

In turn, the 1984 Cartagena Declaration starts from completely different bases for defining refugee status, considers that the situation in the political and social environment may affect any individual, based on the violation of fundamental human rights.

Accordingly, according to the Cartagena Declaration, people who have fled their countries are considered refugees because their lives, security or freedom have been threatened by widespread violence, foreign aggression, internal conflicts, massive human rights violations. or other circumstances that have seriously disturbed the political order.



10 The excerpt from the Convention on the Status of Refugees, transcribed in the present study, was taken from the website www.acnur.org/fileadmin/Documentos/portugues/BDL/Convencao_relativa_ao_Estatuto_dos_Refugiados.pdf. Access in: Jul. 23, 2020.



It should be noted that the definitions provided for in the different normative texts are complementary, not corresponding to exclusive premises.

In the national context, Law No. 9,474/1997 established a comprehensive humanitarian protection system for all forced displacement of people, resulting from the most varied violations of human rights, including hunger, intense economic needs and environmental catastrophes. In addition to defining the concept of refugee in accordance with the Cartagena Declaration, Brazilian law recognizes as refugees every individual who, due to a serious and widespread violation of human rights, is obliged to leave his country of nationality to seek refuge in another country.

Furthermore, the law provides that the effects of refugee consolidation extend to the spouse, ascendant, descendant, and family members who are economically dependent on the refugee. Once the refugee status is recognized, the foreigner receives protection from the Brazilian government, being able to obtain documents, work and study in the country.

Law No. 13,445/2017 innovated in providing for the rights and duties of migrants and visitors, equal rights, as well as the exclusion of the principle of protection for national workers, insofar as it equates the national worker with the immigrant in regular situation. However, it does not define or regulate the condition of the refugee in the country, due to the specific rule (Law No. 9,474/1997), which defined the mechanisms for the implementation of the 1951 Refugee Statute.



Recognition as a refugee is not enough, it is necessary to guarantee all human rights¹¹.

The importance of distinguishing between “migrant” and “refugee” is emphasized, as the mixture of terms can undermine the legal safeguards and protection that asylum seekers so need, especially in the current scenario, where forced displacement affects more than 1% of all humanity.

3. FREE MOVEMENT

The free movement of workers, for Héctor Babace¹², is an essential element for any integration process, being recognized as a fundamental right, being an essential theme in any integration process, especially in the Southern Common Market (Mercosur), which it must seek, in the conducting its policies and objectives, the social dimension, related to the insertion of the worker.

Legislation is required so that workers can settle in a country other than their own and exercise their productive activity there, with all rights (or the majority), both labor and social security.



11 JUBILUT, Liliana Lyra; APOLINÁRIO, Silvia Menicucci O. S. A população refugiada no Brasil: em busca da proteção integral. *Univ. Rel. Int.*, Brasília, v. 6, n. 2, p. 9-38, Jul./dec. 2008.

12 BABACE, Héctor. *Derecho de la Integración y Relaciones Laborales*. 2. ed. Montevideo: Fundación Educación de Cultura Universitária, 2004. p. 183/185.



In this sense, Oscar Ermida Uriarte¹³ stated that, so that citizens can fully and effectively exercise their rights (including those arising from Labor Law), it is necessary to have a regulatory framework that guarantees the effectiveness and effectiveness of those referred to. rights.

Unlike what happened in Europe, unfortunately, the Treaty of Asunción that created Mercosur did not have the same concern, and Augusto Conti Parra¹⁴ adds by stating the following:

When prevailing over other regulations, labor must be the essential concern of all peoples. Together with the primary rights of life, freedom, health, security, education and information, it is the basic objective of every organized community and, apart from picturesque clauses such as that of (as in the case of Brazil) establishing in the Charter the marital license because of the pregnancy, should compromise the Constitution's formulations to the point of being considered as one of the priority human rights.

Some attempts at free movement in general were carried out, for example Resolution No. 44/1994 of the Common Market Group, in which the States Parties undertook to recognize the validity of the personal identi-



- 13 ERMIDA URIARTE, Oscar. *La Dimensión Social del Mercosur. Cuadernos de Fundación. Derecho del Trabajo y la Seguridad Social*. Montevideo: Fundación Educación de Cultura Universitaria, 2004. p. 27/29.
- 14 PARRA, Augusto Conti. *Princípios para um "Código-Tipo de Direito do Trabalho na América Latina"*. In: PERONE, G. C., SCHIPANI, S. (coordenação). *Princípios para um Código-tipo de Direito do Trabalho para a América Latina*. São Paulo: LTr, 1996. p. 247.

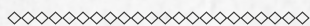


fication documents used by their citizens, but for different reasons has generated several problems at the borders.

On April 16, 1998, it was published in the *Diário Oficial da União*, in its edition 72, section 1, page 49, "Agreement on travel and return documents of the Mercosur States Parties and Associated States"¹⁵.

Decision No. 7/1995, of the Common Market Council, attempts to revalidate diplomas, certificates and titles, recognizing medium-level technical studies carried out in any of the signatory States, being updated by the *Protocolo de Integração Educativa e Reconhecimento de Certificados, Títulos e Estudos de Nível Primário/Fundamental/Básico e Médio/Secundário entre os Estados-Partes do Mercosul e Estados Associados*, signed by the Federative Republic of Brazil, in San Juan, on August 2, 2010, being internalized in Brazil by Decree No. 10,092, of November 6, 2019, published the following day, in the *Diário Oficial da União*, in its edition 216, section 1, page 7.¹⁶

Shortly thereafter, still at the end of November 2019, the then Brazilian Minister of Education, Abraham Weintraub, in a meeting with the Paraguayan Minister of Education, an



15 Agreement on travel and return documents from Mercosur Member States and Associated States. Available at: www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/10487129/do1-2018-04-16-acordo-sobre-documentos-de-viagem-e-de-retorno-dos-estados-partes-do-mercosul-e-estados-associados-10487125. Access in: Jul. 23, 2020.

16 Protocol for Educational Integration and Recognition of Certificates, Titles and Studies of Fundamental and Medium Non-Technical Level. 2019. Available at: www.in.gov.br/web/dou/-/decreto-n-10.092-de-6-de-novembro-de-2019-226515536. Access in: Jul. 23, 2020.



Argentine representative and without anyone representing Uruguay, decided as follows¹⁷:

The Ministry of Education (MEC) announced on Friday morning, November 29, the transition process for the exit of the Educational Sector from Mercosur. All partnerships entered into will be maintained without prejudice to the parties, such as, for example, the recognition of the equivalence of studies in the scope of basic education of students studying outside the country and belonging to the bloc as well as the accreditation system for undergraduate courses in the country. Mercosur (ARCU-SUL). Fellows will also have the benefit maintained.

As of now, the country ceases to participate in the bloc's meetings and has bilateral relations and agreements in the area. The government's decision to leave was motivated by the lack of efficiency and practical results that had a positive impact on the improvement of general Education indices, over 28 years, even with the investment of resources and the country's political presence

Between the two documents, we find many others¹⁸:



18 *Estudar (reconhecimento de títulos)*. Available at: www.mercosur.int/pt-br/cidadãos/estudar. Access in: Jul. 23, 2020.



Current Mercosur Normative on Securities Revalidation

Decisão	Título	Vigência*
07/1995	Protocolo de Integração Educativa e Revalidação de Diplomas, Certificados, Títulos e Reconhecimento de Estudos de Nível Médio Técnico.	BRA – PAR 26-JUL-1997 ARG 10-DEZ-1997 URU 19-AGO-1999 Vigente
08/1996	Protocolo de Integração Educacional para Prosseguimento de Estudos de Pós-Graduação nas Universidades dos Estados Partes do MERCOSUL.	PAR -BRA 26-AGO-1999 ARG 8-JAN.2000 URU 6-AGO-2000 Vigente
09/1996	Protocolo de Integração Educacional para Formação de Recursos Humanos no Nível de Pós-Graduação entre os Estados Partes do MERCOSUL.	PAR – URU 9-SET-1998 BRA 26-AGO-1999 ARG 8-JAN-2000 Vigente
04/1999	Acordo de Admissão de Títulos e Graus Universitários para o Exercício de Atividades Acadêmicas nos Estados Partes do MERCOSUL.	ARG-BRA 20-JUN-2004 PAR: 03-OUT-2010 Vigente
26/2002	Acordos Emanados da XXIII Reunião de Ministros de Educação do MERCOSUL, da República da Bolívia e da República do Chile.	ARG-CHI 17-JAN-2008 PAR 3-FEV-2008 BRA 23-MAI-2008 ECU 1-DEZ-2008 Vigente
06/2006	Mecanismo para a Implementação do Protocolo de Integração Educativa e Reconhecimento de Certificados, Títulos e Estudos de Nível Primário e Médio Não Técnico.	Vigente desde 20/07/2006
15/2008	Disposições Transitórias para Atualizar/Modificar e Implementar a Tabela de Equivalências Anexa ao Protocolo de Integração Educativa e Reconhecimento de Certificados, Títulos e Estudos de Nível Fundamental e Médio Não-Técnico.	Vigente desde sua aprovação (30/06/2008)
20/2008	Adesão da República do Equador ao Protocolo de Integração Educativa e Reconhecimento de Certificados, Títulos e Estudos de Nível Fundamental e Médio Não-Técnico Entre Os Estados Partes do MERCOSUL, a República da Bolívia e a República do Chile.	ARG-CHI 17-JAN-2008 PAR 3-FEV-2008 BRA 23-MAI-2008 ECU 1-DEZ-2008 Vigente



<p>22/2012</p>	<p>Adesão da República do Perú ao “Protocolo de Integração Educativa e Reconhecimento de Certificados, Títulos e Estudos de Nível Primário e Médio não Técnico entre os Estados Partes do MERCOSUL, a República da Bolívia e a República do Chile”.</p>	<p>Vigente desde a data de 29/06/2012</p>
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In relation specifically to the free movement of workers, the most significant action, in addition to the initiative on which we work, was the 14th Mercosur Summit, in July 1998, by which the Presidents of the States Parties signed an agreement in which they undertook to release the circulation, without restrictions, of professionals and service providers between the States, having as result of that meeting, on October 12 of the same year, the 15th Meeting of the Council of the Common Market, in which the Sociolaboral Declaration was created Mercosur.

Such Declaration, already in its art. 1, stipulated non-discrimination, in the following terms:

Art. 1 °. Every worker is guaranteed effective equality of rights, treatment and opportunities in employment and occupation, without distinction or exclusion on the basis of race, national origin, color, sex or sexual orientation, age, creed, political or union opinion, ideology, economic position, or any other social or family condition, in accordance with the legal provisions in force. The States Parties undertake to guarantee the application of this principle of non-discrimination. In particular, they undertake to take actions aimed at eliminating discrimination with regard to groups at a disadvantage in the labor market.

The States Parties have likewise committed themselves, by means of art. 14 of the aforementioned Declaration, in another essential attitude for the free movement of labor, “to



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promote economic growth, the expansion of the domestic and regional markets and to implement active policies related to the promotion and creation of employment, in order to raise the standard of living and to correct social and regional imbalances”, being an important vision.

The Common Market Group (GMC) met, on September 3, 1999, in the city of Asunción, in Paraguay; and, considering art. 20 of the Declaration in question, instituted the Sociolaboral Commission as an auxiliary organ of the GMC, aiming at the monitoring and promotion of the sociolaborative instrument. Thus, art. 1 of the creation of the Commission recommended it “as an auxiliary tripartite organ of the Common Market Group, which will have a promotional and non-sanctioning character, endowed with national and regional bodies, with the objective of promoting and monitoring the application of the Mercosur Sociolaboral Declaration”.

In a GMC meeting, in the same way, the Commission’s Internal Regulation was created by Resolution No. 85/2000, in the city of Brasília, on July 12, 2000.

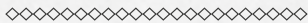
The Common Market Council meeting, held on December 14, 2002, in the city of Florianópolis, celebrated the Visa Exemption Agreement of the Mercosur States Parties, being one of the milestones in the free movement of workers, however, being limited to some professionals, such as teachers, professionals and specialized technicians, scientists, journalists, and professional athletes. For this purpose, the aforementioned professionals may travel, without the need for a visa, with multiple entries, in the States Parties, with a duration of up to 90 consecutive days, extendable for the same period, not covering self-employed workers, nor those employed in the Member State of ingress.



Decree No. 6,964, of September 29, 2009,¹⁹ promulgated the Residency Agreement for Nationals of the Mercosur State Parties, signed on the occasion of the XXIII Meeting of the Common Market Council, held in Brasilia, on December 5 and 6, 2002. Presidential Decree No. 6,975, on October 8, 2009,²⁰ brought the same rule, but for the citizens of Bolivia and Chile.

The free movement of workers in Mercosur depends on more effective actions to exist between the State Parties, with care not only for the employee, his qualification, his labor rights, his integrity and privacy protected, but also in relation to his future, through of meeting your basic vital needs, including your social security right and, finally, with the protection and rights related to your family.

It should be noted that we were selected by the Mercosur Secretariat on December 15, 2005 as a consultant to Mercosur to draft legislation on the Free Movement of Labor in the aforementioned Economic Block (2005/2006), but we had to sign a confidentiality agreement for the works executed there; and, as it has not yet become public, we can only say that it was a type of Bill with concern not only with the freedom to work, but also with access to qualification, with social security and, finally, with the family of the worker.



19 Decree No. 6,964, of September 29, 2009. Available at: www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Decreto/D6964.htm. Access in: Jul. 23, 2020.

20 Presidential Decree No. 6,975, on October 8, 2009. Available at: www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Decreto/D6975.htm. Access in: Jul. 23, 2020.



4. SOCIAL SECURITY

Due to the intense migratory flow, social security reciprocity agreements are necessary for the effective equalization between foreign and national workers, as well as for the promotion of social and financial stability among individuals.

In this sense, in order to promote integrated social protection among the States Parties, in 1997, the Multilateral Social Welfare Agreement of Mercosur was created, through Decree No. 19/1997, in force since 6/1/2005, ratified by Brazil by Decree No. 5,722/2006.

Under the terms of its art. 2º:

Art. 2º: 1. The rights to Social Security will be recognized to workers who render or have rendered services in any of the States Parties, being recognized, as well as to their relatives and the like, the same rights and being subject to the same obligations as the nationals of such States Parties with respect to those specifically mentioned in this Agreement.

2. This Agreement will also apply to workers of any other nationality residing in the territory of one of the States Parties, provided that they provide or have provided services in those States Parties. (emphasis added)

As a result of the Multilateral Agreement, the member states of Mercosur grant migrant workers a series of social security benefits, such as retirement for age and disability, sickness benefit and pension for death.



In the same wake, art. 27 of the Mercosur Sociolaboral Declaration, modified in July 2015, which deals with Social Security within the scope of the Bloc:

Art. 27: 1. Workers have the right to social security, at the levels and conditions provided for in the respective national laws, with due regard, for workers from the States Parties, to the MERCOSUR Multilateral Social Security Agreement.

2. The States Parties undertake to guarantee, by means of articulated and universal public policies, a minimum social protection network for their inhabitants, regardless of their nationality, in the face of adverse social contingencies, especially those caused by illness, disability, disability, old age and death. (emphasis added)

On a continuous basis, it is important to mention briefly the social security institutes of the States Parties that make up the Southern Common Market.

In Argentina, the partition system is back in place (before the system was mixed, with capitalization as well), in which contributions are reverted to a single fund and which, after the fulfillment of requirements, can be poured individually for each taxpayer. The basis of social security in the country occurs under Law No. 24,241/1993 and Decree No. 491/2004, and the Multilateral Social Security Agreement of Mercosur and the respective Administrative Regulation came into force in 2002, with the advent of the Law No. 25,655/2002.

Under the terms of art. 47 of Law No. 24,241/1993, male taxpayers over 65 years of age and women over 60 years of age will be entitled to the ordinary retirement benefit.



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In turn, Paraguay has a simple repartition system, as well as a complementary system, public and managed by two state entities, to which the employee can contribute in addition to the mandatory system.

Art. 60 of Law No. 98/1992 provides for retirement for taxpayers at least 60 years of age and 25 years of service, retirement due to disability resulting from common illness, accident or occupational illness, in addition to the death pension. The Mercosur Multilateral Agreement and its Regulations came into force after the enactment of Law No. 2,513/2004.

In the Uruguayan system, contributions are mandatory for both the public repartition fund and individual capitalization accounts. A third optional contribution is still possible for wages that exceed the mandatory contribution limit.

Depending on art. 18 of Law No. 16,713/1995, taxpayers of at least 60 years of age and 35 years of service are entitled to common retirement. It is also added that the Multilateral Agreement and its respective Regulation came into force with Law No. 17.207/1999.

In Venezuela, a State Party suspended from Mercosur on December 2, 2016 and, politically, on August 5, 2007, the Distribution Scheme is divided into three benefit systems: Health, Social Security and Housing. The financing is constituted by the shares of the affiliates, employees and by contributions from the State, according to the Organic Law of the Social Insurance System (Law No. 39,912/2012).



Finally, the Brazilian social security system is guided by the simple mandatory affiliation regime, under the terms of art. 201 of the 1988 Constitution.

Constitutional Amendment 103/2019, “Pension Reform”, significantly changed the contributory system in the country by promoting changes in the age requirements for ordinary retirement, minimum contribution time, rules for the transition to policyholders, among others. The rates started to be progressive and to apply to each remuneration range, similarly to the calculation of the Income Tax, and the new rules apply to policyholders of the General Social Security System (RGPS) and the Own Social Security System (RPPS) of the Union.

The general rule of retirement in the General Regime is at least 62 years of age and 15 years of contribution for women; and 65 years of age and 20 years of contributions for men.

In the case of the Self-Employed Scheme, the minimum age is 62 years for women and 65 for men, with 25 years of contribution, 10 years of public service and 5 years in the position in which retirement will take place.

FINAL CONSIDERATIONS

The free movement of workers corresponds to a fundamental right, so that States must promote, through public policies, measures in order to promote the insertion of migrant workers, especially within the scope of the Southern Common Market.



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The present article sought to point out the provisions regarding the free movement of workers in Mercosur, as well as the theme of Social Security shared among the Bloc States Parties, with emphasis on the Multilateral Social Security Agreement of Mercosur and its respective Administrative Regulation.

It should be noted that the free movement of workers in Mercosur depends on more effective actions to exist, both in the sense of safeguarding the migrant's labor rights, as well as in meeting their basic vital needs, including their social security rights and protection and rights. concerning your family.

Therefore, the existence of specific legislation is essential in order to guarantee Labor and Social Security Rights to workers who aim to exercise their productive activity in a different country.

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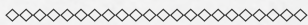


Migration and Refugee Law in Brazil: access to citizenship and recognition of diplomas and qualifications

Tatyana Scheila Friedrich¹

The Brazilian Migration Law 13.445/2017 presents a new reference for the theme of migration in the Brazilian infra-constitutional legal system: citizenship. The whole construction of said legislation, its structure and content focus on the subjectivity of migrants, as active human beings in the construction of their history in the host country, where they must have the full realization of their rights, access to public services and the possibilities to fulfill their duties by their own. Such protagonism in his self-construction as a subject presupposes that, in parallel, his basic needs are met. “Citizenship” here comes from the Portuguese word “cidadania” and doesn’t mean “nationality”.

Article 3 of that Act sets out the principles and guidelines that should govern Brazilian migration policy and its item XIII refers to “social dialogue in the formulation, implementation and evaluation of migration policies and promotion of citizen participation by migrants”. It is the requirement to think and carry out public policies of their own, with effective action by migrants at all stages, so that they are not mere spectators, objects or passive final recipients. For this purpose, the



¹ Professor of Private International Law at UFPR, with post-doctorate in Migration and Labor at Fordham University. She is the coordinator of the Migration Policy and Brazilian University program and the Sérgio Vieira de Mello Chair at UFPR.



same item deals with the “promotion of their citizen participation”, now reinforced with the rights provided for in article 4, including the right of assembly and association, including the union, in addition to the ample access to justice, as a guarantee for the realization of all those rights.

Item XIV refers to the construction of spaces for citizenship in a perspective that is not only domestic, but also goes beyond Brazilian borders and extends in the geographical context of Latin America. It means a commitment not only historical, but also current, which rescues the need for common planning and actions. This item aims at people who have many historical, cultural and socioeconomic similarities, great linguistic proximity, and is about a space in which there is a wide intraregional migration: “XIV – strengthening the economic, political, social and cultural integration of the peoples of Latin America, through the creation of spaces for citizenship and free movement of people”.

The Refuge Law does not use the term “citizenship”, but refers to the rights inherent to persons recognized as refugees and asylum seekers. Issued in another context (1997), it proposes to implement the Refugee Statute without more advanced and expressed considerations in relation to an expanded list of fundamental and human rights, guarantees of citizenship or public policies, referring broadly to duties, obligations, and respect for order.

Art. 5 The refugee shall have rights and be subject to the duties of foreigners in Brazil, the provisions of this Law, the Convention on the Status of Refugees of 1951 and the Protocol on the Status of Refugees of 1967, with the obligation to abide by laws, regulations and measures aimed at maintaining public order.



However, this absence not mean that the refugee should be removed from the dimensions of citizenship, since the law itself incorporates the expanded concept of refugee. It conceptualizes as one who cannot return to his country of nationality or domicile not only because of a fear of being persecuted there, but also one who is forced to leave his country due to a serious and widespread violation of human rights (art. 1, III). This item alone demonstrates an openness, a more inclusive and protective view. In addition, Brazilian law provides that its provisions must be interpreted in harmony with the Universal Declaration of Human Rights of 1948 and with “all pertinent provisions of an international instrument for the protection of human rights to which the Brazilian Government is committed” (art. 48).

It is important to note, finally, that the Migration Law has a wide application, which is not limited to the strict sense of migration, to the usually called “economic migrant”, but to all people who are nationals of another country or are stateless and who work, reside and establish themselves temporarily or permanently in Brazil. It therefore encompasses refugees, to whom both laws apply, especially in what is most favorable and even in what they are compatible. This convergence of protection is reflected in several articles of the Migration Law (which is more recent than the Refuge Law), as: art. 2 (its application does not prejudice the application of the Refugee Law, including during the process of recognition and naturalization of the stateless person); art. 26, § 2; art 120 (which deals with the National Policy on Migration, Refuge and Statelessness); and art. 121, which provides that “[in] the application of this Law, the provisions of Law No. 9,474, of July 22, 1997, must be observed in situations involving refugees and asylum seekers”.



Any critical analysis of migration, including the prism of integration through work, must have the perspective of migrants citizenship. It means that they must have not only the primary needs met, but also conditions to perceive the characteristics of the new society in which they are inserted and to locate the tools that are necessary to claim and fight for their rights and guarantees, individual and collective, for themselves, their families, and their compatriots and other migrants in the country.

1.1.2 Access to the recognition of skills and abilities: Education and the recognition of diplomas

Among all the reasons that lead human beings to migrate, the vast majority have work as their main factor, so that migrants can improve their life prospects, in material and even immaterial aspects. Access to dignified work, in dignified conditions, is the main factor for personal inclusion and social integration, in addition to generating the list of social security benefits.

To achieve the “Decent Work”, as advocated at the international level (by the ILO, Sustainable Development Goals and Agenda 2030, among others), requires an element that is not always explored: document regularization. In the case of migrant workers, this includes both personal documents, with migratory status, tax and labor regularization, as well as documents that recognize their previous training and skills, so that they are accepted and are effective in the host country. The second ones are essential and need to be able to produce concrete effects that allow the migrant to have



a job at a level and area compatible with his or her training and skills.

In Brazil, in general, recognition has occurred in relation to studies carried out outside the country in the scope of elementary and high school, under the responsibility of the municipal and state departments. Regarding higher studies, the situation is much more complex, involving universities. They are, therefore, questions that concern the convergence of the world of work with the world of education.

Refugees have the aforementioned special international protection, provided for in the International Convention on the Status of Refugees. It addresses the issue of education, stating that they are entitled to treatment as favorable as possible in relation to what is given to Brazilians, regarding primary education, and foreigners regarding the recognition of documents that certify studies at other levels, under the terms of art. 22:

Art. 22. Public education: 1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education. 2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, *as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.*

In addition to ratifying the aforementioned Convention by means of a Presidential Decree, Brazil also published Law 9,474/97, which contains the rights of refugees. This law



expressly refers to that Convention and, therefore, guarantees at least those treatments with regard to education.

The Migration Law also refers to education in several devices, already in art. 3, which deals with the guidelines of public migratory policy, item XI refers to “equal and free access by migrants to services, programs and social benefits, public goods, education, comprehensive public legal assistance, work, housing, banking and social security services”; and item XXI exalts the “promotion of academic recognition and professional practice in Brazil”. In the part related to public policies for emigrants, there is the provision of art. 77, item II, on “the promotion of decent living conditions, through, among others, the facilitation of consular registration and the provision of consular services related to the areas of education, health, work, social security and culture”; and item III, which deals with the “promotion of studies and research on emigrants and Brazilian communities abroad, in order to subsidize the formulation of public policies”. Art. 4, referring to the rights of migrants, announce the right to public education, and states that discrimination based on nationality and migratory status is prohibited (item X).

These are legal provisions that impose the guarantee of access to education at all levels, in the most diverse types of schools and institutes, by all migrants and refugees who are in the national territory, in addition to promoting the recognition of studies carried out before arriving in Brazil. In the case of undergraduate and graduate studies, only public universities, national or federal, are able to proceed with the recognition of diplomas.

Said process that takes place in educational institutions, related to study and recognition, is fundamental for the



migrant and the refugee to be able to get into the competitive labor market, in dignified positions compatible with their knowledge. In order to realize it, the requirements for the presentation, translation, legalization and apostille of the documents must be put into perspective. The subjects and syllabus already taken in institutions abroad must receive equivalence in the Brazilian institution even without a strict similarity of curriculum content or an exact correspondence of courses, when the original course and the equivalent in Brazil are compared; recognition processes, both academic and professional, must be fast; and registration in professional entities (class associations) should be facilitated.

Unfortunately, this is not a reality for most refugees and even less for economic migrants, with losses for both, the person and the host country. The human being loses by not taking advantage of its potential, and the host country loses due the waste of a qualified workforce that arrived ready to work.

Regarding the submission of documents, refugees may be exempted from presenting all the required documentation, whenever they are going to exercise their rights and duties – which extends to those carried out at the university level. Brazilian law expressly provides for the need to take into account its atypical condition when requesting documentation, including when recognizing studies, diplomas and certificates and also when enrolling in academic institution, and in these situations the requirements must be facilitated. Law No. 9,474/97, in its chapter “On Local Integration”, provides as follows:

Art. 43. In the exercise of their rights and duties,
the atypical condition of refugees should be



considered when it is necessary to present documents issued by their countries of origin or by their diplomatic and consular representations.

Art. 44. The recognition of certificates and diplomas, the requirements for obtaining resident status, and admission to academic institutions at all levels should be facilitated, taking into account the unfavorable situation experienced by refugees.

In relation to the presentation of translated documents, the Ministry of Education (MEC) regulations on recognition of diplomas demonstrate a new vision in relation to studies carried out abroad, with an online and faster process. In 2016, the Ministry of Education established new rules for the revalidation of diplomas obtained abroad. Thus, Resolution No. 3, of June 22, 2016, MEC/ National Council of Education/Chamber of Higher Education, WAIVED to everyone the translation of the diplomas issued in English, French and Spanish, according to §§ 4 and 5 of the arts. 7 and 18, transcribed and highlighted below, which must be interpreted in a systematic way and taking into account the conditions of the refugees:

Art. 7 The candidates must present, when filing the application for recognition, the following documents:

I – copy of the diploma, duly registered by the foreign institution responsible for the diploma, in accordance with the legislation in force in the country of origin, and authenticated by the competent consular authority;

II – copy of school transcripts [...]



§ 1 The period of validity of the academic documentation referred to in this article must be the same as that adopted by Brazilian law.

§2. The diploma, when recognized, must adopt the original nomenclature of the degree obtained by the applicant, and must be included in an appropriate handout, when applicable, in a similar degree used in Brazil corresponding to the original recognized degree.

§3. The recognizing public university may request additional information about the course offer conditions to support the assessment referred to in the caput.

§ 4 It will be up to the recognizing public university to request the applicant, when deemed necessary, a translation of the documentation foreseen in the caput.

§ 5 The provisions of the previous paragraph do not apply to lingua franca used in the academic training and university knowledge production environment, such as English, French and Spanish.

[...]

Art. 18. The recognition process will take place from the merit assessment of the academic organization conditions of the course and, when applicable, the overall performance of the offering institution, especially in the research activity. [...]

§ 5 It will be up to the university responsible for the recognition analysis to request, when deemed necessary, from the applicant for the translation of the documentation provided for in § 4.



§ 6 The provisions of the previous paragraph do not apply to lingua franca used in the institutional research work environment, such as English, French, and Spanish.

Such understanding of dispensing with the translation of the lingua franca, being admissible for the revalidation of an undergraduate diploma, must also extend to the documentation for access to schools and universities, equivalence of disciplines and issuing of certificates and diplomas.

Regarding the need for legalization of documentation, which is the stamp of the Brazilian consulate abroad, it is not necessary in relation to documents from countries that are part of the Apostille Convention. In August 2016, the Hague Convention on Apostille of Foreign Documents came into force for Brazil, through Decree No. 8.660/2016, eliminating the legalization of foreign public documents for the countries that ratified it and, therefore, dispensing with the process of legalization before the Brazilian consulate or embassy in the country of origin of the document. Now it is enough to affix the Apostille seal, made by the competent local body in the country of origin, usually a notary. Apostille documents do not need to be legalized.

It happens, however, that the migrant or refugee is often unable to affix to the document they have neither the legalization of the Brazilian representation in their country of origin, nor the handout of the governmental/notary representative also in their country of origin. In such cases, one of the arguments to support the request for waiver of this obligation is art. 2 of Decree No. 9,199/17, which regulates the Migration Act, which can be useful:



Art. 2 Immigrants are guaranteed the rights provided for by law. The requirement of impossible or unreasonable documentary evidence that hinders or prevents the exercise of their rights is forbidden.

Likewise, Law No. 9,747/07 can be an argument in order to relativize documents demands in relation to refugees, according to the aforementioned art. 43:

Art. 43. In the exercise of their rights and duties, the atypical condition of refugees should be considered when it is necessary to present documents issued by their countries of origin or by their diplomatic and consular representations.

The Resolution No 3/16 - CES/MEC expressly refers to refugees in § 3 of art. 8, when establishing the possibility for this category to request recognition without the complete documentation and without the translation of lingua franca, the entire process being able to be carried out by knowledge tests.

Art. 8 The process referred to in the previous article may be replaced or complemented by the application of tests or exams, covering the set of knowledge, contents and skills related to the complete course or dedicated to the stage or period of the course, or even to the specific discipline or mandatory academic activities.

§ 1 Tests and exams referred to in the caput must be given in Portuguese, organized and applied by the revalidating public university, except in cases where the legislation indicates direct organization by bodies of the Ministry of Education.



§ 2 – It will be up to the revalidating public university to justify the need to apply the provisions of the caput.

§ 3 Foreign refugees in Brazil who are not in possession of the documentation required for revalidation, under the terms of this Resolution, undocumented migrants and other cases justified and instructed by specific legislation or standard, may be subjected to the test of knowledge, content and skills related to the complete course, as an exclusive form of assessment for the revalidation process.

The Ordinance 22 MEC sets out the requirements for the process of recognition of diplomas, with request by the interested candidate at “Carolina Bori Platform”, available on the MEC website (carolinabori.mec.gov.br). There, the person must do a registration, upload the documents and chooses the Brazilian public university, among those that appear there with a vacancy for recognition. Some universities demand the personal presence, in some stage of the process. In this Ordinance there is a relativization of the requirements for refugees, in the same terms of the aforementioned resolution, but now in its art. 14:

Art. 14. Foreign refugees in Brazil, who are not in possession of the documentation required for revalidation and other cases justified and instructed by legislation or specific rule, may be subjected to proof of knowledge, content and skills related to the complete course, as an exclusive form of assessment intended to the revalidation process.

Sole paragraph. For the purposes of the provisions of this article, the applicant must prove



his refugee status by means of specific documentation, according to Brazilian standards, attaching to the process the supporting documentation of this condition, issued by the National Refugee Council of the Ministry of Justice – CONARE-MJ.

Unfortunately, Brazil still has a closed culture in relation to the recognition of diplomas and many universities still delay and hinder the processes, ignoring all the legal arguments exposed here to overcome the documentary obstacles faced by migrants and refugees. They are people who have already arrived in Brazil with completed training, with specialties that the country often needs due to a shortage of local labor, and who are unable to work in the area due to the absence of diploma recognition.

Given this reality and with the adoption of a policy of hospitality, openness, inclusion, and interculturality in relation to humanitarian migrants and refugees, the Federal University of Paraná (UFPR), as an example, innovated. It went beyond the system that internally regulates MEC regulations, provided for in Resolution no. 10/2017 and Resolution 16/17, both from the Teaching, Research and Extension Superior Council (CEPE/UFPR).

The University issued Resolution 2/16 – CEPE, which creates an exclusive system for revalidating diplomas for refugees and humanitarian migrants, in which there is a relativization of documentary requirements and the consequent compensation through examinations, in three stages: objective, subjective and interview. The public notices are issued annually by the UFPR Competition Center, which makes a public selection process, involving the coordination of the respective courses. In a practical view, there are still



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some obstacles: The numbers are still low; many course coordination do extremely rigorous tests; there is a lack of understanding on the part of many teachers. In general, however, it can be said that it has been a process of construction, with gradual growth in the understanding of the process, the values that inspire it and the importance of its result for the migrants and for the Brazilian society, including the university itself. 29 diplomas have been revalidated since the beginning of the proposal, a number much higher than the average of the other universities. In addition, there is nothing to prevent migrants and refugees from requesting revalidation through the regular procedure through the Carolina Bori Platform, which has been happening very frequently at UFPR.

Finally, it remains to be said that, based on this set of international, constitutional, national norms and administrative rules, it becomes evident that Brazilian universities need to enforce them and profit from their autonomy. They must adopt special treatment for cases involving humanitarian migrants, refugees and refuge seekers for issues involving documentation in general and recognition of their diplomas, as an indispensable mechanism to access the qualified labor market and to achieve social justice.



CHAPTER 2. LABOR POLICIES AND BRAZILIAN MIGRATION POLICY



Migration flow: an opportunity to expand the fledgling Public Employment System in Brazil

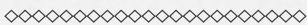
Priscilla Moreto de Paula¹

1. Introduction

In capitalism, there is no social peace with high unemployment rates. The working class depends on the sale of its labor force to survive. Without work, there is no food and decent living conditions, eating away at the social fabric and causing social upheaval. The scourge of unemployment is a social risk that requires state regulatory intervention to balance supply and demand in the labor market through the adoption and implementation of effective public employment policy.

The regulatory structure of this public policy, commonly called the Public Employment System, will be the subject of this article.

The first part will address the historical path of the normative formation of the Public Employment System at the level of the International Labor Organization (ILO) and at the level of the Brazilian legal system, demonstrating the international and national efforts in the construction of



¹ Specialist in Labor Law from the Law School of the University of São Paulo (USP). Member of the Working Group on Migration of the Labor Prosecutor's Office (MPT). Labor Prosecutor of the Public Labor Ministry (MPT).



the normative complex, given the importance of this public policy.

The second part will take care of knowing the structuring guidelines of the Public Employment System outlined by the ILO and comparing them with the normative structuring built in Brazil from the creation of the National Employment System (Sine). The effectiveness of the national Public Employment System and the current process of transforming public policy in search of expanding its capabilities will also be analyzed.

The third and last part will analyze the importance and the opportunity to effectively expand and consolidate the Public Employment System in the country in a context of intensifying the migratory flow, including for the prevention of serious human rights violations. It will also address the formal and material equality recognized to migrant workers as groups most vulnerable to the social risk of unemployment.

2. The historical path of the normative formation of the Public Employment System at the international (ILO) and national levels

Historical materiality, especially after the Second World War, highlighted the indispensability of state interventionism on the supply and demand of the workforce for the maintenance of world peace and the promotion of social justice, including in the regulation of the social risk of unemployment.



The problem of unemployment has been regulated by the International Labor Organization since its creation in 1919. In the same year, Convention No. 2 (Convention on Unemployment) was approved. In 1934, the issue of unemployment was the subject of yet another Convention (Convention No. 44) as an international regulatory response to the 1929 capitalism crisis (SILVA, 2020).

As early as 1948, at the international and deliberative level of the International Labor Organization, new guidelines were adopted aimed at the issue of unemployment to be implemented by the Member States. This is Convention No. 88 on the Organization of the Employment Service, which entered into force at the international level in 1950. In 1952, Convention 102 was adopted, which takes care of the cash benefit to be perceived by the worker in situations of unemployment (unemployment insurance).

Convention No. 88 provides for the institution and guidelines for free public employment services, with provision for the constitution of a network of institutions with the competence to mediate the relationship between claimants and providers of workforce (BORGES, 2003). The provisions of Convention No. 88 were based on the factual perspective of post-World War II promotion of a state of social well-being through the promotion of full employment and social protection.

In 1962, Convention 117 came to integrate the international regulation of unemployment protection. Such Convention has as its motto professional training, highlighting the importance of a broad professional training program.



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The context of the crisis of world capitalism, starting in 1970, gave rise to attacks on the policies of state interventionism and social protection and political-ideological dispute based on neoliberal ideas.

Nevertheless, the International Labor Organization has remained an advocate of public systems for the protection and promotion of employment as a means of inserting workers into the labor market.

Thus, in 1988, replacing Convention No. 2 (Convention on Unemployment), Convention No. 168 on Promotion of Employment and Protection against Unemployment was approved. "The message sent by the ILO was that, in a crisis scenario, the solution should be to deepen – not to repress – the national systems for the protection and promotion of productive work." (SILVA, 2020).

The set of these regulatory guidelines and this network of institutions structure the so-called Public Employment System (SILVA, 2020), whose primary objective is to protect the working class from the social risk of unemployment. In the case of social protection, the Public Employment System is part of the broad Social Security System.

State regulation of the unemployment risk protection system varies in each country, depending on the level of economic development and the country's insertion in the international division of labor (SILVA, 2020).

In Brazil, ILO Conventions No. 88, 102, 117, 122 and 168 were ratified. The need to present responses to the commitment assumed led the Brazilian State to adopt



initiatives to structure the Public Employment System to face unemployment.

Brazilian state interventionism on the issue of social risk of unemployment was slow to occur in Brazil. The first regulatory normative framework to deal with the theme was the 1946 Constitution, which provided for “assistance to the unemployed”. (SILVA, 2020).

Despite the fact that state interventionist policies on labor relations began to expand and consolidate in 1930, public regulation at that time did not yet provide coverage for the social risk of unemployment.

The market policies then in force, including the Consolidation of Labor Laws (CLT), were structured on the occupational condition of employment. Access to the employment relationship accredited to the worker the ownership of a range of rights for his dignified existence. In the historical period of 1930, the condition of unemployed was understood as a private problem of the individual and affected by his personal characteristics, even though the perverse effects of unemployment were generalized with an impact on society as a whole in several social relationships (SILVA, 2020).

Without prejudice to the innovation provided for in the 1946 Constitution, the constitutional provision for assistance to the unemployed was not regulated.

A new normative proposal capable of impacting on the issue of unemployment only came with the government of President João Goulart. Decree No. 53.324/63 created the first public policy program at the federal level aimed at



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professional training in Brazil. It was the Intensive Program for the Preparation of Industrial Labor (PIPMOI) (ROCHA, 2011).

The program instituted an employment service whose objective was to professionally prepare workers to meet the growing needs of the national industry. The execution of the program was entrusted to the network of partners, such as national learning services, technical schools, universities, unions and the industries themselves (SILVA, 2020).

Such a program, however, was incipient in comparison to the Public Employment System proposed by the ILO in its Conventions ratified by Brazil.

The 1967 Constitution, granted during the military regime instituted in the country through the military coup of 1964, was the first to provide insurance for the social risk of unemployment as a social right of Social Security (unemployment insurance) (SILVA, 2020).

The period was marked by violent repression, media control and offense to fundamental rights of the first dimension (civil and political freedoms). In addition, economic policy was marked by unequal benefits to the population that led to uneven growth and increased income concentration in the country.

Despite this, some timid actions have emerged to implement the Public Employment System proposed by the ILO guidelines. One of the points that favored the expansion of programs to protect workers and promote employment was the dismemberment, carried out in 1974, of the Ministry of Labor and Social Security in two different structures.



The theme of the work received specific treatment on the governmental agenda, meeting the ILO guidelines (SILVA, 2020).

In response to the new crisis of world capitalism in the 1970s, the Second National Development Plan (II PND) was announced in 1974, which provided for the creation of the National Employment System (Sine). Sine was created by Decree No. 76.403/75, which assigned coordination and supervision to the Ministry of Labor.

The institution of Sine was a Brazilian effort to comply with the ILO Conventions, especially that of No. 88, of 1948. In spite of the creation and normative institution of the Sine, there was no *“strong pressure in the period of the Decree’s edition for the establishment of a really efficient system to serve the public in search of jobs, since the big cities maintained upward flows hiring”*. (SILVA, 2018a).

The labor market policies adopted during the military regime were not very successful, being insufficient for the construction and concreteness of a Public Employment System. Sine was exposed to the activism of state governments, pointing out a series of factors that restricted the achievement of Sine’s objectives (art. 3 of Decree No. 76.403/75), such as: *“a fragile and unstable source of financing, limits of the federalist structure itself to the decentralized management proposal, and the lack of an unemployment insurance program that could create a stronger link between the state structure and the public of interest”* (SILVA, 2020).

The economic recession that hit the country in the 1980s impacted the level of Brazilian employment (POCHMANN,



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2008) and was decisive for the resumption of public debate on the issue of the social risk of unemployment (SILVA, 2020).

In this context, President José Sarney, in 1986, edited Decree-Law No. 2,284, launching the Cruzado Plan. The Decree-Law contained an express provision for the institution of “unemployment insurance, with the purpose of providing temporary financial assistance to the unemployed worker due to unfair dismissal, or due to total or partial stoppage of the employer’s activities”, as worded in art. 25.

As a result, insurance protection against unemployment risk finally entered the Brazilian legal system in a pragmatic way, going beyond mere formal adherences to ratified ILO Conventions. Unemployment insurance has been expanding and becoming the organizing axis of labor policies in Brazil (SILVA, 2020).

Despite the progress, there was no forecast of articulation between unemployment insurance and the network of intermediation and job placement agencies (AZEREDO, 1998).

The theme of state regulation of the labor market was the subject of debate in the National Constituent Assembly, giving rise to considerable regulatory advances, including the expansion and recognition of social labor rights as fundamental rights.

Unemployment insurance was raised to the nature of the fundamental right of urban and rural workers (art. 7, II), being fixed in the Constitutional Text itself (art. 239) the source of funding for the unemployment insurance program. The organization of the national employment system was



also provided for verbatim in the Republican Constitution when listing the Union's private powers (art. 22, XVI).

Shortly thereafter, Law No. 7,998/90 was enacted, which was "the main normative structure that ultimately led to the institution of its own model" of the Public Employment System in Brazil (SILVA, 2020).

The new normative regulation established guidelines for integration between the pecuniary provision of protection against the social risk of unemployment (unemployment insurance) and the public services of intermediation and professional qualification. It also created the Deliberative Council of the Fund for the Support of Workers (Codefat), composed of representatives of workers, employers and governmental bodies and entities with the competence to manage the FAT and deliberate on programs involved around the fund.

Sine's funding source, which in the 1970s was fragile and unstable, ended up being expanded through the creation of the Worker Support Fund (FAT), enabling the creation of professional qualification programs, such as the National Worker Qualification Plan (Planfor), instituted in the government of Fernando Henrique Cardoso (ROCHA, 2011). Such an expansion demonstrated the convergence of Brazil with the ILO guidelines assumed consensually with the ratification of Convention No. 168, of 1998.

The national normative rules resulting from it established the structuring bases of the Public Employment System in force in Brazil until the present day, whose axes and breadth can be summarized as follows:



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Name	Description
Unemployment insurance	Temporary financial assistance to the unemployed worker due to the unfair dismissal according to the salaried employment relationship proof in the subsequent period before the date of dismissal: i) at least twelve months in the last eighteen months, as of the first request; ii) at least nine months of the last twelve months, as of the second request; and iii) each of the six months previously to the date of dismissal, as of the other requests. It is paid in monthly installments, varying from 3 to 5, having as wage floor the minimum wage's amount.
Special Salary Raise	Benefit secured to the worker who earn 2 minimum wage as monthly salary, provided that they are registered for 5 years or more in PIS/PASEP e have worked at least thirty days in a formal job, in the previous year. Amount set out according to the number of months worked in the reference year, having as wage floor the minimum wage's amount.
Employment mediation	Positions search with companies e referring workers that are searching for jobs, besides general information provision.
Professional qualification	Professional qualification courses offering for unemployed workers or unemployment risk and microentrepreneur.
Employment creation and income generation	Productive credit granting to micro-enterprise and small enterprises, corporations and self-employed workers, through official public bank.

fonte: Silva (20 18a).

Other subsequent regulatory frameworks complemented the formation of this Public Employment System structure, such as Law No. 13.667/2018, which establishes the guidelines, organization, powers and financing of the National Employment System (Sine), created by Decree No. 76,403/1975.

In Silva's words, "despite the late character of the Brazilian experience in relation to countries with advanced capitalism, a complex and innovative arrangement was adopted for the operationalization of workers protection programs" (SILVA, 2020).

3. The Public Employment System

As seen in the previous chapter, the Public Employment System was (is) late to be structured and implemented in



Brazil along the lines of the guidelines outlined by the ILO Conventions.

Convention 88 establishes the duty of each Member State to maintain a free public employment service with the essential task of ensuring and maintaining full employment in the country. According to the Convention, the service must consist of a network of local and, if necessary, regional offices.

In its art. 6, the Convention stipulates that the public employment service must be organized in such a way as to ensure the effectiveness of the recruitment and placement of workers and for that it must:

a) help workers to find suitable employment and employers to recruit workers who suit the needs of companies by: (i) registering job applicants, noting their professional qualities, experience and tastes, interrogating them for employment purposes, examining, if necessary, their physical and professional skills and helping them to obtain, if necessary, professional guidance, training or rehabilitation; (ii) obtaining accurate information from employers about the vacant jobs notified by them to the service and about the conditions that must be met by the workers they seek; (iii) referral to candidates who have the required professional and physical skills for vacant jobs;

b) take appropriate measures to: (i) facilitate professional mobility in order to adjust the supply of labor to job opportunities in the various professions; (ii) facilitate geographic mobility in order to assist the movement of workers to regions that offer the possibility of convenient jobs; (iii) facilitate temporary transfers of workers from one region to



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another, in order to reduce a local and momentary imbalance between the supply and demand for labor; (iv) facilitate the movement of workers from one country to another that have been accepted by interested governments;

c) collect and analyze, in collaboration with employers, unions and governments, all the information available about the situation of the job market and its probable evolution in the country and in the different industries, professions or regions, and to place these information quickly and systematically. information available to public authorities, interested employers 'and workers' organizations, as well as the public;

d) collaborate in the administration of unemployment insurance and in the application of other measures aimed at supporting the unemployed;

e) assist other public or private bodies in the elaboration of social and economic plans designed to favorably influence the employment situation.

ILO Convention No. 168, in addition to the guidelines of Convention No. 88, stipulates that every Member State should adopt appropriate measures to coordinate its unemployment protection regime and its employment policy, and should provide that its system protection against unemployment and, in particular, unemployment compensation modalities, contribute to the promotion of full productive employment, freely chosen, and that do not result in dissuading employers from offering productive employment, nor workers from seeking it.

Art. 6 of Convention 168 prescribes that every Member State must guarantee equal treatment for all protected



persons, without any discrimination on grounds of race, color, sex, religion, public opinion, national ancestry, nationality, ethnic or social origin, disability or age.

In a chapter entitled “Promotion of productive employment”, arts. 7 and 8 assign the Member State the following duties:

a) to formulate, as a priority objective, a policy aimed at promoting full employment, productive and freely chosen, by all appropriate means, including social security, and these means should include employment services and professional training and guidance, among others. others;

b) to adopt special measures to promote additional employment possibilities and employment aid, and to facilitate productive and freely chosen employment of certain categories of disadvantaged persons experiencing or likely to encounter difficulties in finding sustainable employment, such as women, young workers, the disabled, older workers, the long-term unemployed, regular migrant workers and workers affected by restructuring.

According to the ILO normative guidelines mentioned above, the effective structuring of a Public Employment System demands a network of institutions and a series of public services and actions aimed at ensuring minimum income for workers during the unemployment period and supporting them in the rapid reallocation in the labor market, either by training them or by actively seeking job opportunities through intermediation.

In Brazil, as seen in the previous chapter, the set of structuring actions of the Public Employment System in Brazil



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encompasses five strategic axes: unemployment insurance, salary allowance, employment intermediation, professional qualification, and generation of employment and income.

Public strategies for implementing the five axes of labor market regulatory policy are substantially carried out by the network of institutions and units that make up the National Employment System (Sine).

Decree 76.403/1975, which timidly created Sine and did not outline mechanisms for its implementation and effective relevance in the regulation of the labor market, establishes the objectives of Sine in its art. 3º:

Art. 3º. Sine's objectives are:

I – Organize a system of information and research on the labor market, capable of subsidizing the operationalization of employment policy, at local, regional and national level.

II – To implement services and placement agencies, throughout the country, necessary for the organization of the labor market.

III – To identify the worker, through the Work and Social Security Card, as a participant in the Brazilian work community.

IV – To provide information and guidance to the worker regarding the choice of his job.

V – To provide information to the consumer market for labor on the availability of human resources.



VI – To provide subsidies to the educational system and the labor training system for the preparation of their schedules.

VII – To establish conditions for the match between the demand of the labor market and the workforce at all levels of training.

Law No. 7,998/1990, as seen in the previous chapter, was instrumental in structuring the Public Employment System in Brazil by establishing a fund (FAT) to fund public employment policies, such as the unemployment insurance program, the salary allowance and professional and technological education and economic development programs.

More recently, Law No. 13,667/2018 brought new provisions on the Sine, outlining guidelines, organization, skills and financing.

Art. 2 establishes the Sine guidelines:

I – the optimization of access to dignified work, exercised under conditions of freedom, equity, dignity and security, and to education and professional and technological qualification systems;

II – the integration of its actions and services in the different spheres of government in which it is present;

III – the decentralized execution of the actions and services referred to in item II of the caput of this article, in line with rules and guidelines issued at the national level;



IV – the sharing of management, financing and technical resources among the spheres of government that comprise it;

V – the participation of civil society representatives in its management;

VI – the integration and systematization of information and research on the formal and informal labor market, with a view to subsidizing the operationalization of its actions and services within the scope of the Union and the spheres of government that participate in it;

VII – the adequacy between the supply and the demand for workforce at all levels of occupation and qualification;

VIII – the technical and statistical integration with the education and professional and technological qualification systems, with a view to the preparation, implementation, and evaluation of each policy;

IX – standardization of service, organization, and offer of its actions and services within the scope of the participating government spheres, respecting regional and local specificities;

X – continuous improvement of service quality, in an efficient, effective, effective and sustainable manner, especially through the development of applications and technological solutions to be offered to workers;

XI – permanent articulation with the implementation of other public policies, with emphasis on those aimed at the population in conditions of social vulnerability.



Arts. 3 and 4 establish the Sine network organization. They provide that Sine's actions and services will be carried out by the Ministry of Labor, in conjunction with specific bodies integrated into the administrative structure of the government spheres that participate in it, and constitute Codefat (instituted by Law No. 7.998/1990) as Sine's regulatory body. They still recognize Sine's service units as Regional Labor Superintendencies and units implemented by federal institutions authorized by Codefat.

§ 2 of art. 4 textually stipulates that "the assistance to the worker, applicant or non-applicant for unemployment insurance, will be mandatorily performed through integrated actions and services of orientation, replacement and professional qualification, to assist him in the search or preservation of the job or to stimulate his employment. entrepreneurship [...]".

In terms of powers, arts. 6 to 10 recognize simultaneous and private competencies for federated entities (Union, states and municipalities). Sine services are provided and performed by states, the Federal District and municipalities through a partnership with the Union.

Sine, therefore, has the competence to provide services and insurance in view of the social risk of unemployment. In summary, the state normative regulation that structures the Brazilian Public Employment System attributes to Sine the execution: (a) of protection actions for workers during the unemployment situation, assuring them a minimum cash payment for their subsistence (unemployment insurance); and (b) actions aimed at the professional training of workers and the search for their replacement in the labor market, bringing together demand and supply of labor.



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However, this normative structuring of Sine does not keep proportionate concreteness and effectiveness in the factual reality.

Law No. 13,667/2018 itself is the result of the context of the ineffectiveness of Sine, especially regarding the labor intermediation service (BARBOSA FILHO; FERREIRA; ARAÚJO, 2020).

In 2018, Sine brokered less than 4% of the total number of workers admitted to formal job openings (NATIONAL LABOR MARKET OBSERVATORY, 2019).

The application for unemployment insurance requires the worker to be registered with Sine. The worker actively seeks the system and its registration with Sine. The labor intermediation service, on the other hand, requires an active movement of Sine's service units to capture job openings appropriate to the worker's professional profile. The inefficiency of this active search is recognized as part of the problem (BARBOSA FILHO; FERREIRA; ARAÚJO, 2020).

The realization of this inefficiency of the Brazilian Public Employment System, especially regarding the intermediation of labor, has motivated the adoption of measures to transform the current Sine model into a more effective model in the intermediation of labor (BARBOSA FILHO; FERREIRA; ARAÚJO, 2020), including to comply with ILO guidelines, which, more than mere programmatic proposals, have the purpose of guaranteeing the effective implementation of a public policy in the face of unemployment in the countries that consensually ratified the Conventions, as is the case of Brazil.



The current Sine improvement program aims at structural changes in the system, especially through the incorporation of digital technologies that allow a better classification of the worker as to the probability of obtaining a job. This improvement consists of aligning labor intermediation practices and mechanisms to those adopted in the countries of the Organization for Economic Cooperation and Development (OECD) (BARBOSA FILHO; FERREIRA; ARAÚJO, 2020).

The expected changes to be implemented include several steps. One of the steps, already implemented by Codefat Resolution No. 826/2019, is the so-called Sine Aberto. It is the sharing of the Sine database with legal entities of private law, with or without profit, including business companies (companies), associations, philanthropic entities and union entities, which perform labor intermediation activities.

These legal entities will act, after the qualification process, in partnership and in a complementary character to the actions and services of Sine. The database shared with the partner initially contains only general information, workers skills and requests, without personal data. Only after pairing, defined as the “process in which workers and job vacancies with closest characteristics are identified for referral purposes” (art. 2, II of the aforementioned Resolution) is that the partner may have access to contact information, such as the workers’ name, telephone and e-mail.

“The initiative seeks to accelerate the filling of vacancies available at the economy and, in addition, to include, through private companies, the millions of Sine’s registered workers



in the various job applications available on the market” (BARBOSA FILHO; FERREIRA; ARAÚJO, 2020).

Another step in the Sine transformation process, inaugurated with Law No. 13,667/2018, is the profiling of Sine workers. This step consists of using artificial intelligence to read the database of both workers offering workforce and job vacancies demanded by companies. The result of the operation will estimate the probability of (re) allocation of the worker in the labor market, giving their degree of employability (BARBOSA FILHO; FERREIRA; ARAÚJO, 2020).

According to Barbosa Filho, Ferreira and Araújo (2020):

This initiative is being developed in partnership with Microsoft. Every worker registered at Sine will be classified into one of three groups: i) workers who are ready to fill a job opening; ii) workers who need some professional qualification to be eligible for a job; and iii) workers who need professional qualification and other services to be eligible for a job. The objective is to provide a different treatment for each group, allowing a better application of public policies of intermediation and professional qualification.

The review and update of Sine’s digital platforms is also another step in the transformation process. Access to the services provided by Sine can occur through face-to-face service or through digital platforms, such as the *Emprega Brasil* portal and applications for mobile devices, *Sine Fácil Trabalhador* and *Sine Fácil Empregador* (BARBOSA FILHO; FERREIRA; ARAÚJO, 2020).

The objective of this step is also to improve the pairing system. Currently, pairing takes place from the Brazilian



Code of Occupations (CBO). Offerers and applicants for job openings inform the occupation of interest. The intention is to change this matching system to adopt as a matching mechanism the competencies demanded and offered, and no longer the occupation. Thus, the objective is to increase the probability of place the worker in the labor market gain, since it will allow the worker to match the employer based on skills that may be related with different occupations (BARBOSA FILHO; FERREIRA; ARAÚJO, 2020).

Another stage to be the object of transformation is the creation of an indicator of results obtained by the federated entity that is part of the service network. The indicator will assess the effectiveness of the services provided and link the distribution of federal resources. The indicator, called IGD-Sine, “it will be used to reward the entities that register the best performances with more resources from the Union” (BARBOSA FILHO; FERREIRA; ARAÚJO, 2020).

“The IGD calculation methodology is being developed within the scope of technical cooperation with the Inter-American Development Bank (IDB), to which the World Bank also contributed” and aims to “increase Sine’s participation in the total admissions of the formal labor market” (BARBOSA FILHO; FERREIRA; ARAÚJO, 2020).

A last step to be highlighted is the permission to open private Sine agencies, integrating private agents to Sine’s service network, which may be compensated for the registration and relocation of the worker in the labor market (BARBOSA FILHO; FERREIRA; ARAÚJO, 2020).

The expositions made start from the theoretical framework that conceives the Public Employment System as



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the institutional framework that articulates the payment of financial benefits to unemployed workers with the training and intermediation of these workers and has the function of reducing unemployment, especially when the cause is incompatibility. between the profile of labor supply and demand (due to training problems or lack of information).

In Brazil, this system is structured by Sine, which, as seen, has low effectiveness. The changes proposed with Law No. 13,667/2018 and the Codefat Resolutions, which are still pending implementation, aim to expand the practical effectiveness of Sine in our country, seeking to make the guidelines contained in ILO Conventions, especially No. 88 and No. 168.

This context of recognized ineffectiveness has a direct impact on Brazilian migration policy, making it equally ineffective, either because the inefficiency of a Public Employment System makes it difficult for migrants to obtain their own income that allows them to stay in the country under dignified conditions, or because it provides illicit intermediation of labor, such as human trafficking and work in conditions analogous to slavery, as we will see in the next chapter.

4. Migrant Workers and the Public Employment System in Brazil

As seen, the Public Employment System conceived within the normative scope of the ILO guarantees equal treatment to all workers, regardless of their nationality (art. 6 of Convention 168).



It also provides for the adoption of specific measures aimed at disadvantaged people who may find it difficult to find long-term employment, expressly listing migrant workers in a regular situation (art. 8 of Convention 168).

The ILO's normative provision for equal treatment guarantees the prohibition of discriminatory measures for migrant access to the services of the Public Employment System. This formal equality finds express legal support in the Brazilian legal system.

The structural regulations of Sine are expressed in guaranteeing formal equality, as is the case of art. 2nd, item I of Law No. 13.667/2018: "the optimization of access to dignified work, exercised under conditions of freedom, equity, dignity and security, and to education and professional and technological qualification systems".

In addition, the Migration Law (No. 13,445/2017) provides that the Brazilian migration policy has as one of its principles and guidelines the "equal and free access of the migrant to services, programs and social benefits, public goods, education, full public legal assistance, work, housing, banking service and social security" (art. 3, XI), among which are the services provided by Sine, including both the payment of financial benefits to unemployed migrant workers and the training and intermediation of migrant workers. It couldn't be different. The 1988 Republican Constitution ensures equality between people (art. 5, *caput*), without distinction of any kind.

Notwithstanding the guarantee of formal equality for migrants, material equality is not satisfied to the same degree at the national level. The ILO's normative guidelines



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for the Public Employment System establish the adoption of specific measures aimed at disadvantaged people, including migrant workers. This guideline, foreseen, as seen, in art. 8 of ILO Convention No. 168, the so-called material equality is positive, insofar as it proposes an active state posture in guaranteeing equality. It is not enough just to prohibit discrimination in the Public Employment System, the Member State must actively implement specific measures aimed at disadvantaged people who may have difficulty finding lasting employment, such as migrant workers.

The very context of Sine's recognized inefficiency would already allow us to conclude that there is much to be done for Brazil to adapt to this ILO normative guideline and get out of the situation of unconventionality in which it finds itself.

However, if that were not enough, the country went in the opposite direction of the ILO guidelines when dealing with emergency assistance measures to welcome people in situations of vulnerability resulting from the migratory flow caused by a humanitarian crisis with the edition of Provisional Measure (MP) No. 820, of February 15, 2018.

MP 820, later converted into Law 13,684, of June 21, 2018, was enacted in the context of increasing Venezuelan migratory flow to the country and sought to outline emergency assistance measures for welcoming people in situations of vulnerability due to the flow migration caused by humanitarian crisis. According to the MP (art. 3), the measures outlined aim to articulate integrated actions aimed at people, whether national or foreign, that are part of a disorderly migratory flow, to be carried out by the federal, state, district, and municipal governments, through



adherence to a federative cooperation instrument, in which the responsibilities of the federative entities involved will be established.

The legal text (art. 4) establishes that the measures envisaged are intended to expand policies for professional training and qualification (item IV) and mobility, contemplating the distribution and interiorization in the national territory, the repatriation and resettlement of people (item X).

However, MP 820 remained silent on the National Employment System (Sine) and on the labor intermediation policy for the safe placement of migrants in the Brazilian labor market. This gap was not filled with the conversion of the MP into Law No. 13,684/2018.

The migrant's unemployment situation, without any support from the incipient Brazilian Public Employment System (Sine), makes migrant workers even more vulnerable and exposed to situations of serious human rights violations, such as human trafficking and working conditions. analogous to that of a slave.

As stated, the ILO guideline provides for the duty of Brazil to implement a policy against the risk of unemployment with provision for specific treatment for migrant workers. The omission of Brazilian legislation shows the unconventionality of the rule and the serious fragility of the migratory reception policy.

In this context, the Labor Prosecution Service (MPT) issued Technical Note PGT No. 1, of April 2, 2018, provoking the Union to develop, in the creation and implementation of



the public policy of emergency assistance for reception, the “work axis”, instituting an effective employability policy for Venezuelan migrants.

According to the Technical Note:

[...] what is seen in practice is a distortion of reception policies, since, **despite being urged by the Labor Prosecution Service, the Federal Government has failed to present any proposal for the construction of an effective service coordination policy of employment, betting on the actions of the civil society tending to collaborate with the employability actions**, when and if the agreements of federative cooperation are signed with the States, Federal District, or Municipalities that are willing to formally accept Venezuelan migrants sent by the Federal Government.

[...]

As can be seen, in the normative parameter (provisional measure and regulatory decrees) created to support the humanitarian crisis in question, there is no development of the “work axis” in the reception policy. In addition, the National Employment System (Sine) ceases to participate in the formulation and implementation of public policy in question.

[...]

Sine is responsible for **organizing the labor market information system, implementing placement agencies throughout the country, identifying the worker through the Work and Employment Card, providing information to**



the worker and seeking to equalize supply and demand in the labor market. labor market.

Sine is also responsible for managing the **intermediation of labor**, which aims to place workers in the labor market through vacancies captured with employers, reducing waiting time and asymmetry of information in the labor market, for both the worker and the employer. Therefore, the Service seeks to promote the meeting of supply and demand for work, and comprises actions that include: **worker registration; employer registration; capture and registration of job openings; crossing the profile of registered workers with the profile of the vacancies captured; call for workers according to profile research and referral for job interview; and recording the result of the referral.**

As the ministerial body warned, the policy for welcoming people in vulnerable situations resulting from a migratory flow caused by humanitarian crisis was born with serious weaknesses by not including among the emergency assistance measures the expansion of the Brazilian Public Employment System, especially regarding the labor intermediation service for placing migrant workers in the national labor market.

The fragility of the migration policy instituted with MP No. 820 ends up directly impacting the imbalance between supply and demand for national labor, further increasing the social risk of unemployment in the country.

The serious omission by the State was partially circumvented, at least on a dogmatic level, with the aforementioned Law No. 13,667, of May 17, 2018. Art. 2, item



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XI, seemed to seek to align with ILO guidelines in the promotion of material equality. Sine's guideline foresees the "permanent articulation with the implementation of other public policies, with emphasis on those aimed at the population in conditions of social vulnerability", in which the migrant worker is certainly.

With such a prediction, the normative regulation structuring the Brazilian Public Employment System seems to be complemented with the specific look at the migrant worker that the ILO guidelines impose.

However, as already pointed out in the previous chapter, much remains to be done in Brazil in terms of the effectiveness of the Public Employment System. Sine brokered less than 4% of the total number of workers admitted to formal job openings in 2018 (National Labor Market Observatory, 2019).

In a context of intense migration flow, the structuring actions of the Public Employment System (Sine), especially employment intermediation, professional qualification and generation of employment and income, are essential for the success and effectiveness of any migration policy, including for the prevention of serious labor unlawfulness and human rights violations.

Even the interiorization policy, foreseen in art. 4, item X of MP No. 820, will produce all its potential effects without coordinated articulation of the Sine network in the execution of public employment services in favor of migrants who may voluntarily accept to mobilize in the national territory.



The registration of the migrant worker in Sine, the capture and registration of job vacancies and the matching of the worker's profile with the job profile are propelling actions of the interiorization policy itself.

Placement in the labor market has the potential to impact the migrant worker's interest in mobilizing, since their own income will allow them to remain in the country in dignified conditions, leaving the situation of scourge that is unemployment.

The intensification of migratory flows ends up making more evident the urgent need for the country to improve and materialize the structure of the Sine. Migration demands due to humanitarian crises are opportunities to be taken advantage of by the Public Power, not to practice measures of influx, but to finally expand, improve and concretely consolidate the actions and the network of the National Employment System (Sine).

The current Sine improvement program, discussed in the previous chapter, seems to advance in this direction, which meets the constitutional mandate to search for full employment (art. 170, item VIII).

5. Conclusion

The Public Employment System constitutes a public policy whose regulatory structure is within the scope of the International Labor Organization and whose objective is to protect workers from the social risk of unemployment through cash benefits and public job search services.



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At the national level, the Public Employment System began to be structured with the creation of the Brazilian Public Employment System (Sine), in 1975.

Since then, the public policy of social protection against the risk of unemployment in the country has been slowly being built, going through periods of influence in its consolidation and still suffering from evident ineffectiveness. In 2018, Sine brokered less than 4% of the total number of workers admitted to formal job openings (National Labor Market Observatory, 2019).

As seen, the intensification of migratory flows without the support of the national Public Employment System leads to social conflicts and serious violations of human rights.

The insertion of the National Employment System (Sine) in the measures and actions of migratory policy is fundamental for the ordering of migratory flows and even for the effectiveness of the measure of mobilization (interiorization) of the migrant across the country.

In this context, measures to expand the national Public Employment System are opportune to finally leverage public policy in the country and leave the situation of unconventionality in which it finds itself, given the inefficiency of Sine. Law No. 13,667/2018 seems to have driven this expansion and brought about the transformation process that Sine is currently going through.



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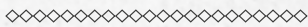
MIGRANTS, COOPERATIVES AND SOLIDARY ECONOMY

Lys Sobral Cardoso¹

1. Introduction

Research on the profile of workers subjected to contemporary slave labor in Brazil has all reached the same conclusion: these are people in conditions of extreme socioeconomic vulnerability, coming from a large part of the rural environment, with low education, who **migrate**, for more or less shorter distances, in search of alternatives for life and work².

Slave-like labor and the trafficking of workers in Brazil have an intrinsic connection with the historical concentra-



- 1 Labor Prosecutor. Currently National Coordinator of Conaete/MPT (National Coordination of the Eradication of Slave Labor). Master in Law from the Catholic University of Brasília (UCB).
- 2 THÉRY, Henry; MELLO, Neli Aparecida de; HATO, Julio; GIRARDI, Eduardo Paulon. *Atlas do Trabalho Escravo no Brasil*. São Paulo: Amigos da Terra, 2009. INTERNATIONAL LABOR ORGANIZATION – ILO. *Perfil dos Principais Atores Envolvidos no Trabalho Escravo Rural no Brasil*. 1 v. Brasília: OIT, 2011. Available at: <http://observatorioescravo.mpt.mp.br>.

The Digital Observatory of Slave Labor is an initiative of the Decent Work Smartlab of the MPT and the ILO in Brazil to promote the efficient and transparent management of public policies, programs and projects for the prevention and eradication of slave labor, so that these actions are increasingly results-oriented and evidence-based. Furthermore, it seeks to promote the improvement of information collection systems and the standardization (with integration) of existing databases, from different sources, relevant to the cause. As a result, the diagnoses and knowledge produced on the topic will be increasingly accurate to guide actions on the topic.



[...]

32 – To implement a policy of social reintegration in order to ensure that freed workers are not enslaved again, with specific actions aimed at generating employment and income, land reform, vocational education and worker reintegration.

[...]

34 – To support employment and income generation initiatives aimed at regions with high levels of enticement for slave labor.

There were also three national plans to combat trafficking in persons approved. The last of them, the III National Plan to Combat Trafficking in Persons, approved by Decree No. 9,440, of July 3, 2018, provides, in art. 2nd, that:

Art. 2º. The objectives of the III National Plan to Combat Trafficking in Persons are:

[...]

III – to reduce situations of vulnerability to human trafficking, considering the identities and specificities of social groups;

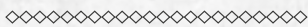
[...]

Law No. 13,445/2017, known as the new Migration Law, guarantees migrants the same rights to life, freedom, equality, security and property that are granted to Brazilians. It also institutes a temporary visa for humanitarian reception.

In the current context of the new coronavirus pandemic, situations of socioeconomic vulnerability, including migrants, nationals and foreigners (who are most often even more



vulnerable, for various reasons, such as documentation, authorization to reside in the country, language difference), evidently remain accentuated. ILO recognizes the condition of migrants as one of particular vulnerability ⁵in the covid-19 crisis. Thus, they are people who deserve peculiar attention from the public authorities, not least because, as mentioned, they end up more subject to being subjected to slave labor and human trafficking.



5 ILO. *Policy Brief. Protecting migrants workers during the covid-19 pandemic: recommendations for Policy-makers and Constituents*. abr. 2020. It is worth mentioning: "The covid-19 crisis is having an unprecedented impact on global economies, business and workers. ILO estimates that 2.2 billion workers, representing 68 per cent of the global workforce, are living in countries with recommended or required workplaces closures. Migrant workers represent 4.7 per cent of this global labour poor comprising 164 million workers, with nearly half being women. In many countries migrant workers represent significantly larger share of the workforce making important contributions to societies and economies, and serving on the front lines carrying out essential jobs in health care, transport, services, construction, and agriculture and agro-food processing. Yet, most migrant workers are concentrated in sectors of the economy with high levels of temporary, informal and unprotected work, characterized by low wages and lack of social protection, including in care work which in many countries are largely carried out by women migrant workers". Free translation: "The covid-19 crisis is having an unprecedented impact on global economies, business and workers. ILO estimates that 2.2 billion workers, representing 68 per cent of the global workforce, are living in countries with recommended or required workplaces closures. Migrant workers represent 4.7 per cent of this global labour poor comprising 164 million workers, with nearly half being women. In many countries migrant workers represent significantly larger share of the workforce making important contributions to societies and economies, and serving on the front lines carrying out essential jobs in health care, transport, services, construction, and agriculture and agro-food processing. Yet, most migrant workers are concentrated in sectors of the economy with high levels of temporary, informal and unprotected work, characterized by low wages and lack of social protection, including in care work which in many countries are largely carried out by women migrant workers".



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The theme has been the subject of studies around the world, while initiatives have been gaining momentum. The experience of the Mondragón complex, in the Basque Country region, Spain, has been explored for its success. The enterprise, named as a cooperative economy, started in 1965 and today brings together 30 thousand workers in



solidarity cooperation networks, among other forms of entrepreneurship. This form of socioeconomic organization must, therefore, be fostered.

Although the country has projected its economic development in the capitalist system (see Constitution, in its title VII, from art. 170¹¹), other forms of development are not excluded from the model or from the constitutional text itself, based on the dignity of the human person, the reduction of inequalities and social inclusion, citizenship, the social value of work, solidarity, and social justice. At the same time, it should be borne in mind that, since the country's economic order is founded on capitalism, profit-oriented production and subordinate labor, which thus guides the structuring of Brazilian systems and institutions, it is essential that solidarity economy initiatives, or practices inspired by self-managing principles, receive support from the State¹².

However, in November 2016, Senaes was extinguished by the Presidency of the Republic, even with the result of the *2º Atlas Digital da Economia Solidária* pointing out, in 2013, the existence of 19,708 Solidarity Economy Enterprises (EES)



11 Art. 170 of the Constitution that the Brazilian economic order is founded on free enterprise and is based on the principles, among others, of private property and free competition. Art. 174, § 2, in turn, establishes that “the law will support and encourage cooperativism and other forms of associations”.

12 ARAÚJO, Angela Maria C.; LEITE, Márcia de Paula; LIMA, Jacob Carlos. *O trabalho na economia solidária: entre a precariedade e a emancipação*. São Paulo: Annablume, 2015. p. 56.



registered in the country, organized and distributed among 2,713 Brazilian municipalities in all states of the federation^{13, 14}.

The extinction of Senaes represents a huge loss for the country and even more so in relation to sustainable initiatives for job insertion and generation of work and income for vulnerable populations, including migrants and refugees. Some Brazilian initiatives of successful solidarity ventures involving migrants and refugees in Brazil can be mentioned and prove the size of the loss due to the lack of priority of



13 Available at: <http://atlas.sies.org.br/sobre.html>.

14 Against what has been happening in several places in the world, including in the European Union. In the report on Social Economy in the European Union of the European Economic and Social Committee 2007 (www.eesc.europa.eu/resources/docs/eesc-2007-11-en.pdf), it is pointed out that several EU countries have a higher body in the national government with responsibilities explicitly recognized in matters related to the social economy. Such is the case of the Secrétariat d'État au Développement Durable et à l'Economie Sociale (Secretariat of State for Sustainable Development and Social Economy) the Belgian Government, of the Dirección General de Economía Social (Directorate-General for Social Economy), the Spanish Ministry of Labor and several regional governments, of the Délégation Interministérielle à l'Innovation, à l'Expérimentation Sociale et à l'Économie Sociale (Interministerial Delegation for Innovation, Social Experimentation and for the Social Economy) the French Government, Social Economy Unit – FAZ (Directorate of Social Economy – FAS) of Ireland, of the Direzione Generale per gli Enti Cooperative, Ministero dello Sviluppo Economico (Directorate-General for Cooperative Enterprises, Ministry of Economic Development), and the Agenzia per le Onlus (Agency for Social Non-Profit Organizations) in Italy, from the NGO Liaison Unit in the Maltese Government's Ministry for the Family and Social Solidarity Liaison with the NGOs of the Ministry for Family and Social Solidarity of the Government of Malta), the António Sérgio Institute for the Cooperative Sector (Incoop) and the Cabinet Office's Social Enterprise Unit and the Treasury's Charity and Third Sector Finance Unit Cabinet Office's Social Enterprise and the Charities and Third Sector Finance Unit).

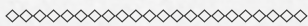
Also available at: <http://pt.euronews.com/2017/02/10/economia-social-e-solidaria-em-afirmaacao-na-uniao-europeia>).



the public authorities for such actions. As an example, on 5/23/2020, only the MEI (registration of individual microentrepreneurs) had 53,459 foreign nationals enrolled¹⁵.

In the metropolitan region of Curitiba, an economic and labor insertion project for the migrant community was carried out by the International Organization for Migration (IOM), in partnership with *Cáritas Brasileira Regional Paraná*, with the Secretary of State for Justice, Family and Labor of the Paraná (Sejuf-PR) and the United States Department of State's Office for Population, Refugees and Migration and directly benefited 109 people of different nationalities, including Venezuelans, Haitians and Brazilians, between September and November 2019¹⁶. Workshops were held to open solidarity economy ventures, and some organizations have already been effectively registered, such as the NGO *Hermandad sin Fronteras*, composed of Venezuelan and functioning people.

In April 2020, already in the context of the new coronavirus pandemic, the *Eu abraço esta causa: eu uso máscara!* campaign ("I embrace this cause: I wear a mask!")¹⁷ was launched, carried out by MPT in partnership with Unicamp, UNHCR and the United Nations Population Fund, with the aim of stimulating the creative economy of historically vulnerable groups, such as immigrants, refugees and trans people, who participated in the project *#Todos-ContraOTráficoDePessoas* (*#AllAgainstPeopleTrafficking*),



15 Available at: www.sebrae.com.br.

16 Available at: <https://brazil.iom.int/news/projeto-de-inser%C3%A7%C3%A3o-econ%C3%B4mica-e-laboral-beneficia-109-migrantes-em-curitiba-em-3-meses>.

17 Available at: www.nepo.unicamp.br/campanha_COVID-19.pdf.



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carried out in 2019, and which were strongly impacted by the new coronavirus. Such people make masks of African fabric that are distributed in institutions that support transgender people, the elderly, immigrants and refugees in São Paulo. It is based on the Sustainable Development Goals contained in the UN Agenda 2030.

Also in the context of the pandemic, the Faces and Sustainability project, once again carried out by MPT in partnership with Unicamp and UNHCR, proposes to operate initially in the Parelheiros region, a district located in the south of the municipality of São Paulo, the second largest in territorial extension, with a large part covered by environmental reserves of the Atlantic Forest. It is a region with areas of environmental protection and the presence of indigenous villages. The locality has a population of about 202,321 inhabitants and the HDI reaches the number of 0.747. The region has suffered from intense and unplanned urbanization, which impacts the quality of housing, basic sanitation, the level of deforestation, silting up processes, etc.

There is an important agroecological production in this space, responsible for the support of many families. However, it has been deeply affected by the pandemic, as customers have suspended their orders since social distancing measures were adopted, leaving producers without income, food without disposal and therefore lost, and new crops threatened by the lack of markets and resources. Thus, inputs from small rural producers in the Palheiros region will be purchased under the project and a training course will be offered to 30 people, including migrants, refugees, women victims of marginalization and



trans people, so that, in an industrial kitchen, be made warm to supply places plagued by poverty at the time of the pandemic, such as communities, refugee shelters and shelters for LGBTQI + individuals. The project's strategy is to create a production cycle that generates, at the same time, quality food for 1,000 people per day and that moves the agricultural and ecological production of 30 rural producers and their respective families.

There are also registered cooperative actions in the voluntary support to immigrants. In 2018, the Day of Cooperating (Day C) was held in the state of Roraima, as part of a major national movement supported by the Organization of Cooperatives of Brazil (OCB) system and again in adherence to the UN Sustainable Development Goals. About 40 Roraima cooperatives made more than 4 thousand visits to sheltered foreigners, with services in the health area, such as blood typing, blood pressure measurement, BMI and blood glucose checking, oral health guidance, etc., in addition to cutting hair. Courses certified by the National Service for Learning Cooperatives in Roraima (Sescoop/RR) trained immigrant adults and children in recycling, Portuguese, handicraft in garden jars, modeling clay workshop, balloon sculpture and circus art. The actions were carried out with the support of the OCB System, UNHCR, the Brazilian Army and other partners¹⁸.

The *Livelihoods for Migrants e Refugees in Brazil* report, published by ILO in 2019, presents the results of a field survey carried out in collaboration with UNHCR, with the aim of identifying possible ways for migrants and refugees to secure employment and income when they arrive in Brazil. One of the paths contained in the document are social cooperatives,



which, according to Law No. 9,867/1999, “constituted with the purpose of inserting people at a disadvantage in the economic market, through work, are based on the general interest community to promote the human person and the social integration of citizens”. Cooperatives, as explained above, are examples of a solidarity economy enterprise.

3. Conclusion

If, on the one hand, the forms of solidarity economy constitute a very positive experience in the insertion of work and sustainable generation of work and income, and even in welcoming immigrants and refugees, the creation of formal cooperatives or entry by immigrants is not an easy task. Some bureaucratic and legal barriers prevent them from being widely used and achieving success.

People, for example, who do not yet have a permanent resident visa do not have access to bank financing, nor can they establish or join a formalized cooperative. In addition, if access to land and means of production is an immense obstacle to the prosperity of solidarity-based economic ventures in the Brazilian reality, with regard to immigrants and refugees, it can be said that this difficulty is an impediment to actions.

The current situation of public calamity that Brazil is experiencing due to the pandemic of the new coronavirus, although it has greatly accentuated the socioeconomic recession that the country was already going through, may represent a phase of reformulation of production models and the inclusion of vulnerable groups, many of which, in fact, were never served by an efficient and comprehensive



public policy. It can thus represent a huge leap in terms of the prevention of slave labor and trafficking in workers, and assistance to those who have already been victimized.

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Brazil has legislation favorable to the reception of migrants. However, it took almost thirty years to pass a law related to the guidelines of the 1988 Constitution, which guarantees equal rights between Brazilians and resident foreigners (article 5, caput). In the meantime, we had to live with the “Foreigner’s Statute” (Law 6.815/80), a normative diploma granted during the dictatorship period, which conceived the “foreigner” as a possible threat to national security. In that block of history, the support of the dictatorship was forged in a supposed need to combat the spread of “communist” or “anarchist” ideals in the country. Much of the delusional persecutory ideology conceived of a migrant as a potential communist.

Over time, and after the dictatorial regime was over, the national security doctrine lost its meaning, but the restrictive bureaucracy persisted in the country. It took almost forty years to establish a new legal framework on migration, which overcomes many of the legal barriers to the full incorporation of migrants in Brazil.

But the simple approval of Law No. 13,445/2017 did not automatically produce the magic of, by itself, guaranteeing the overcoming of practices ingrained in Brazilian society, although it slowly progressed in a process of facilitating document regularization. In the field of social integration, on the other hand, when the new law was passed, the migrant found a country in a severe retraction of economic activity combined with the aggressive application of neoliberal policies on labor and with already noticeable effects of drastic deterioration in the level of employment, income and social protection. In this context, the elimination of effective actions to generate employment and income is part of the



Thus, it is logical to conclude that migrants and refugees, in general, make up one of the groups of people who will most need access to emergency policies to face the pandemic. Therefore, we will analyze the Brazilian social protection policy and the access of the migrant population.

2. Migration legislation as an inclusion tool

In Brazil, both migrants and refugees are protected by laws considered advanced as regards the recognition of their human rights, but in practice several obstacles are imposed to the full exercise of these rights.

Law No. 9,474/97 (Refugee Statute) guarantees the refugee (and the asylum seeker) the right to a free recognition process (art. 47), right to work from the beginning of the refugee recognition process (art. 21, § 1), the right to an identity card proving their legal status, work card and travel document (art. 6); consideration of the atypical condition in case of need for documents issued in the country of origin (art. 43); and facilitating the recognition of titles, certificates and diplomas (art. 44).

In practice, however, the refugee lives with the excessive duration of the process of recognizing his condition (several years). This delay obliges him to use the precarious provisional document that consisted of a sheet of sulfite paper cut in half, with a stamp from the police department, which predictably raised doubts as to the authenticity of those who received the “document”. Only after the new Migration Law was issued and regulated were refugees “awarded” with the approval of a document model more consistent with minimally tolerable



standards. The facilitation of the recognition of degrees, on the other hand, was very little implemented by Brazilian universities, which “did not facilitate” very much, contrary to the spirit of the Refuge Law.

For migrants in general, and especially those who migrate for humanitarian reasons, Law No. 13,445/17 came to consolidate a process of struggles whose duration allows us to intuit how much resistance there is in the face of the demand for recognition of migrants. Known as the Migration Law, Law No. 13,445/17 (art. 3) establishes, among others, the principle of:

IV – non-discrimination due to the criteria or procedures by which the person was admitted to national territory; V – promotion of regular entry and regularization of documents, VI – humanitarian reception; IX – equal treatment and opportunity for migrants and their families; X – social, labor and productive inclusion of migrants through public policies; XI – equal and free access by migrants to services, programs and social benefits, public goods, education, comprehensive public legal assistance, work, housing, banking, and social security; XIV – strengthening of the economic, political, social and cultural integration of the peoples of Latin America, through the establishment of spaces for citizenship and free movement of people.

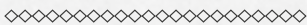
The Migration Law, in art. 4, expressly and abundantly lists the rights guaranteed to migrants as a result of the principles contained in the new legal discipline, as provided for in the subsequent items, among them: “VIII – access to public health and social assistance services and social



established requirements. These requirements are, for the elderly: a) to be over 65 years old; b) having a family income per capita of less than a quarter of the minimum wage.

Regarding family income of $\frac{1}{4}$ of the minimum wage, in view of the notorious rigidity of the criterion, the Supreme Court even declared the partial unconstitutionality of § 3 of art. 20 of the Organic Law on Social Assistance (LOAS), for recognizing the insufficiency of the objective criterion of miserability⁶; however, after that declaration, the interested parties started to need to demand in court to see the right to perceive the benefit recognized in their particular case.

In the context of the pandemic, Law no. 13.981/2020, of 3/23/2020, approved by the National Congress, which determined the amendment of the LOAS, to establish up to $\frac{1}{2}$ minimum wage the monthly family income per capita necessary to characterize the poverty, in the context of the pandemic. However, this provision was vetoed by President Bolsonaro, alleging that the rule in art. 195, § 5 of the Federal Constitution, which does not allow the increase in the social security benefit without a corresponding source of funding and also for offending the Fiscal Responsibility Law and the spending ceiling⁷. The Federal Audit Court (TCU) also quickly expressed its opposition to the new law and the government also filed an action for non-compliance with a



6 RE No. 567.985, with general repercussion, decided that the constitutional rule that declared the assistance benefit was not self-enforceable, but of contained efficacy, requiring action by the legislator to implement the command.

7 According to Veto Message 141, of 2/4/2020.



fundamental precept⁸, reported by Minister Gilmar Mendes, who suspended the effectiveness of the rule while the source of funding was not indicated by law. The rapporteur highlighted the reasons for deciding the same as those of the President of the Republic and recalled the validity of Constitutional Amendment No. 95/2016, which prohibited the increase in public spending for 20 years. Finally, the rapporteur clarified that he was aware that he was deciding at a time of social calamity and financial exceptionality and also that he could produce jurisprudence for the crisis, in the wake of the evolution of Portuguese constitutionalism. However, applying a weighting of principles, he preferred to suggest that the other branches should discuss the implementation of other temporary emergency aid, emphasizing that for these policies, the flexibility of the measures that would contradict the Fiscal Responsibility Law was authorized by the Supreme Court. The problem was, therefore, that the law did not constitute an emergency and temporary measure to face the covid-19, but a definitive expansion of the benefit⁹.

In the wake of this quick discussion, Law No. 13,982/2020 was approved, on 4/2/2020, which established the temporary access to the BPC for eligible people with a family income of up to ½ minimum wage, attributing to the INSS an advance of the benefit until 10/31/2020, regardless of the application of the assessment instruments for people



8 ADPF No. 662 MC, which emphasizes the principle of “fiscal prudence for mandatory expenses” and the jurisprudence of the STF in relation to arts. 17 and 24 of the LRF.

9 ADPF 662, MC, vote of the rapporteur, 3/4/2020, p. 32-37. Available at: <http://portal.stf.jus.br/processos/downloadPeca.asp?id=15342832909&ext=.pdf>.



social security agency. The migrant who finds himself in a situation of difficult survival due to age or disability will need to file a lawsuit in order to implement the aforementioned benefit.

3. Brazilian assistance policy before the health emergency

Brazilian assistance policy, from the 1988 Constitution, followed a trend of universalization and decentralization, responding to the constitutional mandate of arts. 203 and 204.

The administrative decentralization guideline reserved for the Union the task of defining general rules and allocating resources for execution centered on the municipalities, but the effective implementation of the constitutional design was slow to take shape. A first impulse was the publication of the Organic Law on Social Assistance (LOAS), in 1993. But, according to Teixeira, it was necessary to publish the National Social Assistance Policy (PNAS) in 2003 and the Basic Operational Norms (NOB) of SUAS, in 2004, to effectively sustain the new structure.

The National Social Assistance Policy (PNAS) defined the levels of social protection and the services, programs, projects and benefits that should be offered by the State and by the assistance entities, motivating the installation of the Social Assistance Reference Centers (CRAS), with coordinating the service network and also implementing basic social protection. The institutionalization of CRAS



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2001 and 2003. Bolsa Família is made up of the *basic benefit*, destined to family units in extreme poverty, plus variable installments, for families that have pregnant women, nursing mothers, children between 0 and 12 years old or teenagers up to 15 years old, being paid up to the limit of 5 benefits per family. Add to that the aggregate share for families with teenagers between 16 and 17 years old, within the limit of two benefits per family. It can also be added the portion of overcoming extreme poverty, for families with per capita income below R\$ 70.00 (the value of the portion will be the missing amount so that the minimum per capita income per family is R\$ 70, 00). As a strategy for using resources, the Bolsa Família Program establishes women's preference for receiving the portion destined for the family (§ 14).

Although the assistance policy was strengthened at BPC and Bolsa Família, it could also be supported by the Basic Citizenship Income, whose instituting law was published the day before the publication of the Bolsa Família Program Law. Law 10.835, of 1/8/2004, defined basic citizenship income as the "right of all Brazilians residing in the country and *foreigners residing in Brazil for at least 5 (five) years*, regardless of their socioeconomic status, to receive annually, a monetary benefit" (art. 1º). According to the norm, the universal coverage would be achieved in stages, starting with the most needy sections of the population, and the monetary value should be sufficient to meet the minimum expenses of each person with food, education and health.

According to Suplicy (2007), the normative provision for payment of minimum income for the rich and poor is not intended to enrich the richest, but to make everyone aware



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and quarantine (which goes beyond isolation to include restricting activities); allowed the restriction of entering and leaving the country, as well as interstate or intercity transportation; and authorized the import of products without registration with Anvisa.

The law defines, as a general rule, that health authorities must seek authorization from the Minister of Health for the adoption of the various coping measures mentioned in art. 3, but it also authorizes the independent performance of local health managers in the imposition of compulsory tests, epidemiological investigations and requisition of goods and services through subsequent indemnity (art. 3, VII). Finally, it authorizes the presumption of conditions for exemption from bidding for the emergency acquisition of goods and services.

With respect to citizens' rights, the law guarantees respect for human rights, the right to information about the state of health, the free care of the affected people (without any nationality restriction), according to art. 3, § 2, and also establishes that "the absence period resulting from the measures provided for in this article (art. 3º, § 3º)". The mandatory use of masks in public and private spaces accessible to the public was added to the law in question on 7/2/2020, although ineffectively, since several important items were vetoed, in part to



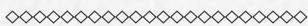
ensure the competence already exercised by other entities legitimated (states and municipalities).¹⁴

On March 11, 2020, WHO declared the state of the covid-19 pandemic, a situation that boosted, in the National Congress, discussions on the care of the vulnerable population.

With the impetus of covid-19, the new conditions were approved (briefly the severity of the loss of autonomy of the affected individual or level of expenses necessary to compensate for the loss of autonomy) and what came to be called “Emergency Aid” was instituted “In the amount of R\$ 600.00, during the initial three-month period, to workers who meet the established requirements. This is Law No. 13,982, of April 2, 2020¹⁵.”

The assistance policy, before the outbreak of the coronavirus-19, was in a moment of stagnation, with a strong tendency to divest, due to the approval of Constitutional Amendment No. 95, which established a spending ceiling for public services.

However, the outbreak of the pandemic imposed a drastic reformulation of the scenario of cutting social



14 According to Message No. 374, of 7/2/2020, there was a partial veto to art. 3-A, imposed by the President of the Republic, which excluded the interior of commercial, industrial, religious and educational establishments and other closed places with the gathering of people under the childish allegation of offense to the inviolability of the home. This attitude was worldwide disapproved as a regrettable incident in the fight against the pandemic in the history of Brazil.

15 The amount of R\$ 600.00, increased by the National Congress, contradicted the intention of the federal government, which was to institute aid in the amount of R\$ 200.00.



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to accounts of other banks, for any holder, and unlimited transfers between Caixa accounts. The account does not issue a physical card, the transaction is made through the Caixa Tem application.

After the first month of the pandemic, the number of claims for benefits was staggering. There are 19.2 million adults receiving Bolsa Família, in addition to another 10.8 million who were in the single registry and another 20.5 million informal workers. Brazil officially has 50.5 million adult people with CPF who declared they need the Aid¹⁸, without considering the other members of the families. With them, the number amounts to 95.3 million. And there was no mention of poor citizens who still have a formal employment contract.

The number of migrants in Brazil is not very significant in statistical terms. However, migrants have suffered from many obstacles to the effective receipt of the benefit. Although the system is computerized and apparently it is sufficient to download a cell phone application to register, problems occur when the registration data conflicts with those registered in the public databases. There is no way to interact with the Ministry of Economy or CEF or rectify data entered incorrectly. Add to this the fact that for migrants it is more difficult to understand the system of access to the benefit, due to the still incomplete mastery of the language. It is also a fact that the Federal Police service was suspended during the pandemic period, preventing migrants from being able to carry out rectifications or renewals in their records.



18 Available at: www.jornalcontabil.com.br/auxilio-emergencial-dataprev-lanca-portal-de-consulta-a-situacao-do-beneficio.



According to the Federal Federal Public Defender's Office, there are abundant reports of migrants who point out unreasonable demands on the part of CEF. On the one hand, sometimes migratory regularity or a photo document issued in Brazil is required and within the validity period, which is not always available to the migrant. At the same time, some bank agencies do not accept a passport or, in the case of South American nationals, the identity document of the country of origin (which would be valid in Brazil under the Mercosur treaties). As a result, it issued a recommendation to observe the following aspects:

a) The paying agent must note that the recognition of the right to Emergency Assistance has already occurred in general for all residents in the national territory who fulfill the eligibility rules and that the act of payment is only the final form of implementing the benefit. In other words, the right is already recognized by the CPF holder, without any restriction by nationality or even a migratory situation.

b) In the case of immigrants who have a residence permit, that is, who are regular in the national territory, the identification can be made by several documents, the main ones being: a) CRNM – National Migration Registration Card, previously known as CIE/RNE Alien Identification Card/National Alien Registration; b) DP-RNM – Provisional Document of National Migration Registry, formerly known as the Provisional Protocol of Asylum Request or Provisional Alien Identity Document (art. 22 of Law No. 9.474/97 and Decree No. 9.277/2018); c) passport or identity card from the country of origin, accompanied by protocol of application for a residence permit with QR Code verification and/



or with informative certificate from Sismigra, the Federal Police Department's computerized data system for migratory registration; or d) all Brazilian documents issued in their favor, such as CNH - National Driver's License, professional identification cards, and CTPS - Employment and Social Security Card. This forecast is based on Bacen Circular Letter No. 3,813/2017 – Central Bank of Brazil, available at www.bcb.gov.br/pre/normativos/busca/downloadNormativo.asp?arquivo=/Lists/Normativos/Attachments/50360/C_Circ_3813_v1_O.pdf.

c) In the case of asylum seekers, carrying the so-called DP-RNM, previously known as the Provisional Refugee Request Protocol or Provisional Foreign Identity Document, guarantees residence authorization and does not mean that the CRNM will be delivered immediately. As already explained, the applicant will use the protocol until his request is decided by Conare – National Committee for Refugees, which can take months or even years and whose services are temporarily interrupted. In these cases, the document is periodically renewed, an A4 paper sheet with a photo issued by the Federal Police or a paper ballot with an identification code, without prejudice to its migratory regularity. In this case, it is suggested that the number of the application process, with seventeen digits (xxxxx.xxxxxx/xxxx-xx) be used as the identification number.

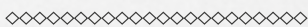
d) Due to the covid-19 pandemic and the suspension of assistance from the Federal Police Department, all validity periods for immigrant documents must be considered extended indefinitely, keeping immigrants in such a situation their migratory regularity. As announced



by the agency itself in its official statement, “the deadlines for the expiration of protocols, portfolios and other documents related to Migration Regularization activities are considered extended, including certificates to instruct the procedures, a situation that will last until the end of the emergency situation public health or the disclosure of a new PF guidance”, as per the link above. The exemption from checking the validity period is contained in the internal document CO390, according to CO020, by including items 6.1.2.1.1 and 6.1.2.2 on 5/18/2020.

e) the identification documents of the countries of origin, such as passport, consular card/card and identity card, especially in the case of South American countries, are documents capable of proving the civil identity of immigrants of any category, regardless of their situation regular or irregular migration. Law No. 13,982/2020 does not establish any specific requirement for documents such as RG and CNH, and even specific documents for immigrants such as CRNM – National Migratory Registration Card or DP-RNM – Provisional National Migration Registration Document, for the exercise of the right, so restriction through the paying agent would be impossible. The use of travel documents as identification documents for banking transactions is possible, according to BACEN Circulars 3,461/2009 (arts. 8, Paragraph 3, I and II and 9, Paragraph 2, V) and 3,691/2013 (arts. 18 and 19)¹⁹.

Another problem is that, with respect to migrants, it was very common for their requests to be frozen, “under



19 According to Circular Letter No. 3578466/2020-DPU SP/GABDPC SP/1OFMIG SP, of 4/24/2020.



analysis” according to the government application, which recognized the problem and committed itself to the Federal Public Defender’s Office to “zero out the queue” by mid-June. 2020. As a good part of migrants for humanitarian reasons or refugees only had access to precarious jobs, many were dismissed at the beginning of the pandemic and are not entitled to unemployment insurance. It so happens that the system does not recognize the dismissal and denies the benefit under the alleged justification that the worker is employed.

As if it were not little, migrants were victims of cyber crimes, with false news of “benefit from social rent”, which are very desired demands, but so far unmet.

5. Post-pandemic assistance policy

The approval of the labor reform (Law No. 13.467/2017) constitutes a milestone of the deconstruction of a paradigm of Labor Law that protects the hyposufficient and its replacement by a right closer to that of individual civil contractualization, typical of the neoliberal ideology, which has been implemented gradually in the country from the beginning of the 1990s. Alongside labor reform, the extinction of the Ministry of Labor and the corresponding secretariats in several Brazilian states and municipalities also marks the attempt to extinguish public policies for generating employment and income.

In addition to the labor reform (which included, among other things, the intermittent contract, whereby the employee assumes the risk of waiting for work without receiving it), the social security reform helps to design a framework of

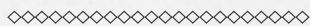


systematic deprotection, pushing people to work. informal market. Add to this the phenomenon of *uberization* of work, which has already transcended the boundaries of transport applications and is spreading in several sectors of the economy. We are moving at high speed towards realizing a future in which only 20% of workers will be enough to keep the pace of the economy in the 21st century. The society 20 by 8020.

Given this scenario, the damage to the labor market will need to be addressed to minimize the negative social impacts of the downturn in economic activity, added to the general decrease in workers' income. For this reason, debates abound about the need to make permanent what was created to be "provisional" during the pandemic: social assistance policies for vulnerable workers, the unemployed, precarious, uberized, intermittent, all victims of the deconstruction of the State of São Paulo. Social Protection.

Before the pandemic, Harari (2018) already proposed a reflection on the technological and economic disruptions of the 21st century, proposing the development of a new social pact to support a model of social protection based on some mechanism of universal basic income that covers basic needs of ordinary people. For the author:

These models should be guided by the principle that it is necessary to protect humans and not jobs. Many jobs are an unrewarding task that is not worth saving. Being a cashier is not anyone's life dream. We should focus on providing for



of activities carried out by the private sector and universal minimum income, all of which is the opposite to what has been happening in Brazil.

Although we have reached a point where income supplementation policies have become essential to prevent economic collapse, consensus in Brazil is restricted to the critical moment of the pandemic. Institutionalizing income transfer policy is not on the radar and the bet is on total deregulation, weakening of the State and any intention to manage market forces.

6. Conclusion

The current regulatory framework (Law No. 13,445/2017) is favorable to the integration of migrants, as it recognizes their *right to have rights*.

Although the *right to have rights* is guaranteed in the legislation, the effective implementation also depends on the political will and disinterested performance of the public agents (who should not intend to impose their vision of justice or their prejudices in the face of migrants). Let the migrants say that they were unable to access the Aid due to the bureaucratic stubbornness of some public agents linked to the paying bank.

But I wish the problem was just applying the law. Celso Lafer warns that:

In the contemporary world, social, political and economic situations continue to persist which, even after the end of totalitarian regimes, contribute to making men superfluous and



It is up to everyone to engage in the struggle for a re-foundation of the Social State that is truly committed to the dignity of the human person, with the centrality of work in people's lives, with a commitment to reducing social inequalities. It is necessary to boost solidarity, improving social protection programs, including minimum income and assuming everyone's right to a balanced environment, ensuring that essential public goods remain available to the people or are returned to them, as well as quality public services.

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International labor migration and employment agencies: instruments for a fair hiring policy

Elysa Tomazi¹

Luiz Gustavo Parfieniuk Neves²

INTRODUCTION

Migration flows are on the agenda of current political debates, given the economic and social challenges that this phenomenon has been causing globally. According to the International Migration Organization, in 2015 approximately 244 million people lived outside their country of birth, a number that has increased by almost 100 million compared to 1990. In 2013, when there were 232 million international migrants, 150.3 million of them were workers (IOM, 2018, p. 17).

Although not exclusively related to the search for work, migration has as a common feature the search for better living conditions, which is necessarily achieved with obtaining a job at the destination. Thus, work plays a central role in the migrant's life. This centrality, added to the fact that the migrant is inserted in a context of greater vulnerability (far from home, often with little professional qualification, without mastering the language of the place of destination), makes it imperative that migrations are compatible with the human rights.

The international legal system, reflecting the advances made in the area of human rights, has instruments that deal



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specifically with migration and migratory rights. One of the aspects of relevance in this regulatory framework concerns the recruitment of migrant workers, in view of the need to ensure that this process takes place within a minimum regulatory framework, which avoids the occurrence of fraud and promotes labor human rights. Such intent is directly related to the performance of employment agencies, which are responsible for intermediating job vacancies and workers, being the object of ILO Conventions 88 (public employment service) and 181 (private agencies).

The complexification of current migratory processes, in a world in which borders become increasingly fluid and the transit of people easier, and the alteration that the production process has undergone – currently centered on large production chains – has reinforced the intimate relationship between the recruitment process of migrant workers and the occurrence of human rights violations, reflected in cases of human trafficking and work under conditions of slavery. Hence the relevance of understanding this reality and discussing the role of employment agencies in the context of migration.

The present article intends, then, to understand the roles played by employment agencies in the context of labor migration and what are the main problems arising from this action when it comes to guaranteeing the human rights of workers. To this end, initially human rights and migration will be contextualized, and then an analysis will be made of what has been discussed and proposed at the ILO on the subject of equitable hiring. Based on these elements, Brazilian legislation applicable to employment agencies will be analyzed, with the identification of positive aspects, as



well as possible improvements, based on the analysis of specific cases and examples of good practices identified in other countries.

1. Labor migration and human rights

Historically, human rights developed within national states, aiming to protect those who lived on their borders and were subject to their sovereignty. The internationalization process of human rights, according to Piovesan (2008, p. 3), is “an extremely recent movement in history, arising, from the post-war period, as a response to the atrocities and horrors committed during Nazism”.

Prior to this time frame, Ramos (2015, p. 58-59) points out that internationalization efforts were still punctual and the international standards formulated did not come close to an ideal of effective internationalization, as there was no protection for all essential rights and, when it existed, it depended on a specific condition of the person (worker, foreigner), in addition to the fact that there are still no international institutions to supervise the States.

It was especially after the Second World War, as noted, that “humanity understood, more than at any other time in history, the supreme value of human dignity” (COMPARATO, 2010, p. 68), which gave strength to the internationalization measures of human rights.

The landmark of this paradigm shift was the Universal Declaration of Human Rights of 1948, approved by the United Nations General Assembly on December 10 of that year, which was based on the perspective of “universal protection,



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guaranteed, in the alternative and on the failure of the State, by International Human Rights Law” (RAMOS, 2015, p. 66).

This international instrument, due to its universalist character, did not specifically deal with the human rights of people who migrate from one place to another in the world. According to the lesson by Lopes (2009), art. 13 of the Declaration guarantees only a right of movement, to leave a country temporarily, to return to it, not providing for a freedom of establishment in a different country. According to the author, “although there is a human right to emigration, there is no human right to immigration” (LOPES, 2009, p. 238), a dichotomy that relates to the supposed self-sufficiency of States, which did not consider the possibility of people having to cross borders to find sustenance (LOPES, 2009, p. 239).

According to Ramos (2018, p. 1015), the Declaration also provided for the right to seek asylum (art. 14.1), which, together with the right to leave a country, composes what is called International Human Mobility Law, which does not cover the right to enter any country in the world.

On the other hand, even before the Second World War and the 1948 Declaration, the ILO Constitution approved in the context of the Treaty of Versailles, in 1919, already foresaw in its preamble the need to protect the interests of workers in foreign countries (ILO, 2014, p. 8). In 1925, ILO Convention No. 19 was approved, which established equal treatment between foreign and national workers in compensation for accidents at work; and, in 1939, Convention No. 97, which deals specifically with migrant workers (revised in 1949).



This last convention was subsequently updated, already in the context of the internationalization of human rights, in 1975, by Convention No. 143, with the title of Convention Relating to Migration in Abusive Conditions and the Promotion of Equal Opportunities and Treatment of Migrant Workers. According to an analysis by Lopes (2009, p. 231), this convention deals with a migratory scenario much more similar to the current one, since it updates the political understanding of migrations, which can no longer be analyzed only from the point of view of shortages and excesses of workforce at an international level, but from a perspective that takes into account the economic consequences of this phenomenon in the long term.

Within the scope of the United Nations, only in 1990 was the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families approved, which, according to Ramos (2018, p. 1015), “faced discrimination and offense to basic rights of migrant workers in receiving States”. Lopes (2009, p. 249) highlights points of relevance in this international instrument: it was established that the irregular situation of the migrant cannot give rise to the restriction of human rights, which include those related to work; guaranteeing the rights of migrant workers contributes to migration policies that limit the power of states; and compliance with the convention is driven by follow-up procedures and dispute settlement mechanisms.

It is clear, in this context, that migration is on the agenda of human rights and the international instruments relevant to them, in an attempt to guarantee basic legal support to an increasingly complex phenomenon. The labor aspects of migration, which are part of the ILO and UN Conventions,



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play a central role in this debate, because it is precisely when migrants are placed in the position of workers that they are exposed to the contradictions of the current system of production and circulation of goods.

In the context of globalization, with the weakening of the State, resulting from policies imposed in the 1990s by the International Monetary Fund (IMF) and other international financial agencies of the so-called “Washington consensus”, human rights, including the right to dignified work, were losing ancestry as inspiration for government policies and programs, starting to be considered “complicating business competitiveness”, sought by half “fat cuts”, or “rationalization measures”, or downsizing – all euphemistic expressions for the elimination of jobs employment (ALVES, 2008, p. 286-287).

The result of this was the emergence of a new class of excluded people, not participating in citizenship, which produced, among other consequences, the uncontrolled increase in migrations from poor areas, conflicting areas or even regions affected by weather conditions.

The context of vulnerability in which migration occurs is explained by Vichich (2015, p. 106), who highlights that the restructuring of the capitalist accumulation system extended to international migration, which ensures the supply of cheap labor, flexible and vulnerable.

This reality was perceived by the ILO, which launched in 2005 the ILO Multilateral Framework for labor migration. In this document, the organization emphasizes that, although migration brings benefits to the countries’ economy, it also creates serious problems, as migrants can be victims of



important abuses and exploitation, in a context in which irregular and accentuated migrations are accentuated. trafficking in persons (ILO, 2007, p. 5).

In view of this context, in which the contradictions and problems related to the migratory movement of workers are highlighted, the need to take as the horizon of any public policy the protection of human rights is evident.

Violations of these rights, during the migratory flow, are directly related and have as their starting point the recruitment process for migrant workers. According to an ILO publication, the term “recruitment for work” can be defined as:

The process in which a party provides specific services based on an agreement/contract signed between the provider and the recipient of the service (typically the employer and the worker/job seeker), with the aim of matching workers with available job offers. In the private sector, these services are normally offered for a fee, which both parties will have to pay after signing the contract. Recruitment involves several stages: scrutiny, testing, (pre-)selection, placement and, in some cases, repatriation of the worker. These steps may involve ancillary services, such as medical testing, document processing, or training job seekers. Placement can also include transportation within and outside international borders, reception and transfer to the employer's premises. (ANDREES et al., 2015, p. 18, free translation).

In this context, the lack of policies aimed at the work of migrants leaves this group of individuals at the mercy of unscrupulous intermediaries, who use this condition



to entice them and thus promote their indiscriminate exploitation, transforming the recruitment of workers into nefarious figures, such as human trafficking and slave labor.

Specifically in relation to employment agencies, there are certain nuances to be explored, such as the inefficiency and limitation of the state solutions offered, the existence of certain biases in the proposals and relationships established with workers in migratory processes, such as the undue and abusive collection of fees, misleading advertising, various frauds and, often, the establishment of abusive contracts with the recipients of the contracted labor.

This favorable scenario for human rights violations of migrant workers requires, therefore, an analysis of the performance of employment agencies, which will be done in sequence.

2. The role of employment agencies in the context of migration and the international legal order

Recruitment of migrant workers has employment agencies as their main means of achievement. These agencies can be public or private and, among the private ones, there are those that formally carry out their activities, those that work informally, those that charge fees or those that provide their non-profit services (ANDREES *et al.*, 2015, p. 18).

The performance of employment agencies is a relevant issue addressed by ILO in Conventions No. 88 and 181. The first deals with public agencies, establishing that each member of the organization must maintain a free public employment



service (art. 1), with the objective of “helping workers to find suitable jobs and employers to recruit workers that suit the needs of companies”, which covers the registration of job candidates with their qualifications and skills, the registration of vacancies, and referring workers to available jobs. In addition, the Convention establishes that the public employment service must facilitate “professional mobility in order to adjust the supply of labor to the employment possibilities in the different professions”, “geographical mobility in order to assist the displacement of workers to the regions that offer the possibility of convenient jobs” , “the temporary transfers of workers from one region to another, in order to reduce a local and momentary imbalance between the supply and demand of labor” and “facilitate a country to another the displacement of workers that have been accepted by the interested governments”. This Convention was ratified by Brazil on 4/25/1957, having entered into force domestically on 4/25/1958.

On the other hand, Convention No. 181, from 1997, deals with private employment agencies, complemented by Recommendation No. 188. As explained by Gravel (2006, p. 147-148), this instrument was the result of the revision of the text of Convention No. 96 and represented a true paradigm shift in terms of the performance of employment agencies, since the normative parameters of the ILO so far presupposed the monopoly of public employment agencies in worker recruitment services.

It is for these reasons that HESS (2006, p. 155-156) highlights that Convention No. 181 had the objective of allowing the operation of private employment agencies, enabling the better functioning of the labor market. But, at



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the same time, this objective should be directly compatible with another, namely the protection of workers who use the services of these agencies.

In this context, art. 1 of Convention No. 181 defines private employment agencies as any natural or legal person who, independently of public authorities, provides the services of: a) approximation between job offers and demands, without the agency taking part in labor relations ; b) placing the worker at the disposal of a third party (borrowing company), who determines the tasks and supervises the performance of the work; and c) other services related to job search.

In disciplining the issue, the ILO intends to provide guidelines for the agencies to act, in order to protect workers against fraud and illegality. Among these guidelines, the Convention emphasizes that States must create a system of licenses and certification, which determine the conditions under which private employment agencies are authorized to act (art. 3rd In addition, it expressly provides that it is the duty of Members to ensure that migrant workers recruited by private agencies are not victims of abuse, which includes the enactment of laws providing for sanctions for fraudulent conduct. In the case of international migration, it provides that the States involved consider entering into bilateral agreements to prevent the occurrence of abuses and fraud (art. 8°). Essential rights are established, such as the right to freedom of association and collective bargaining (art. 4), the prohibition of discriminatory conduct (art. 5), the protection of workers' personal data (art. 6), the prohibition against charging fees and other charges (art. 7) and the prohibition of child labor (art. 9°).



This concern to ensure that the recruitment process takes place in an environment of respect for human rights was also already present in ILO Convention No. 97, when dealing with migrant workers, together with Supplementary Recommendation No. 86. The instrument ensures that the recruitment carried out by the public employment service is exempt from any expense for workers (art. 7.2). Furthermore, in its Annex I, when dealing with the recruitment of non-contracted migrants due to collective migration agreements concluded under government control, it establishes that this process can only be carried out by official bodies or by employers that have the approval of the competent authority and by services duly authorized private individuals (art. 3.3). Annex II, on contracts made on the basis of bilateral agreements between States, included the provision that recruitment, introduction and placement operations may be carried out by public services and official bodies and by bodies established in accordance with an international agreement (art. 3.2).

Also worth mentioning is ILO Recommendation 169, adopted in 1984, which deals with employment policy. There is a specific topic on “international migration and employment”, with the orientation that the host and home countries take measures to avoid abuses in hiring labor and to guarantee the exercise of union freedom and the right to unionize and negotiate collective (art. 43). It also recommends the adoption of bilateral and multilateral agreements between States, to deal with the migration of workers and the guarantee of rights (art. 44).

This normative production served as a basis for the ILO to approve the Multilateral Framework for Labor Migration



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in 2005. This initiative followed up on the 2004 Resolution on Equitable Commitment for Migrant Workers in the Globalized Economy. Thus, the objective was to respond to requests from States regarding guidelines and measures to promote the positive aspects of migration (ILO, 2007, p. 6).

One of the principles listed in the document refers to how to manage labor migration, as the ILO has recognized that the process of recruiting and displacing workers across borders, if not properly monitored and regulated by countries, can contribute to the occurrence of abuses against workers. Thus, the close relationship between the ILO's international standards on the recruitment of workers, such as Conventions No. 88 and 181, and those that seek to ensure the rights of migrant workers, as in Conventions No. 97 and 143, was recognized.

The Multilateral Framework for Labor Migration has a specific principle (Principle No. 13) which states that "States should properly consider the establishment of a licensing regime and supervise the recruitment and placement services for migrant workers" (ILO, 2007, p. 26, free translation).

This principle is developed in eight practical guidelines, summarized as follows: the licensing and certification system for recruitment and placement agencies for migrant workers must be established in consultation with employers 'and workers' organizations, and these services must respect fundamental rights. migrant workers. In addition to ensuring that employment contracts are clear and that information is provided in an understandable language, States must take measures to ensure that recruitment does not take place in hazardous or risky jobs or that involves abusive and discriminatory treatment. States must sanction employment agencies



that adopt unethical conduct, encourage good practices and adopt a protection system to compensate workers for monetary losses resulting from possible non-compliance with the obligations of employment agencies. Finally, it must be ensured that recruitment fees and expenses are not borne by migrant workers (ILO, 2007, p. 26-27).

In memory of the preparations for the 103rd International Labor Conference, the ILO Director-General shed light again on human rights violations in labor migration, highlighting the fraudulent practices of private employment agencies (ILO, 2014, p. 23- 24). It pointed out the need for equitable hiring processes for migrant workers and for the ILO to intensify cooperation with governments to make these agencies subject to proper regulation and for workers to have access to means of reparation (ILO, 2014, p. 27).

Then, within the ILO, the Fair Recruitment Initiative was created, which has four objectives: to collect information on national and international hiring practices; reinforce laws, policies and control mechanisms regarding the performance of employment agencies; promote equitable business standards and practices; and to foster social dialogue, cooperation alliances and good practices (ILO, 2014, p. 34). Thus, it seeks to contribute to the prevention of human trafficking, forced labor and abusive practices during the hiring process, as well as to reduce the costs of labor migration (ILO, 2016a, p. 105).

During the holding of the 103rd CIT in 2014, the ILO also approved the Protocol on the Forced Labor Convention (No. 29, 1930). This instrument brought new nuances regarding modern forms of slavery, as it explicitly listed the need to adopt measures against trafficking in persons for



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the purpose of forced or compulsory labor (art. 2.3). The Protocol highlighted that measures to prevent forced labor must include “the protection of people, in particular migrant workers, against possible abusive and fraudulent practices in the hiring and placement process” (art. 2, d). This innovation is extremely relevant, as it is the first time that the issue of recruitment is included in one of the Fundamental Conventions of the ILO (ILO, 2015, p. 28).

The ILO, within the framework of the 328th Meeting of the Board of Directors in 2016, also approved the General Principles and Guidelines for Equitable Contracting. These are non-binding guidelines that aim to promote hiring based on equity. There are 13 general principles, which develop from the recognition that the process of hiring workers must be based on the respect, protection and enforcement of human rights. It is emphasized that hiring must be based on the needs of the labor market and not serve to displace or reduce an existing workforce or to breach dignified work standards. It is reinforced that States must establish laws and practices of transparency in hiring processes and strengthen inspection services and the action of authorities against abusive and fraudulent hiring practices. Emphasis is placed on the right of workers to freely choose to initiate and terminate employment contracts, to receive clear information about employment conditions, to be exempt from any expense and to have access to grievance mechanisms.

Principle 6, when dealing with transnational contracting, says that it “must be carried out in accordance with applicable national laws and regulations, labor contracts and collective agreements applicable to countries of origin, transit and



destination” (ILO, 2019, p. 13, free translation), always with respect to human rights.

To the recruiters of labor, a concept that includes public and private employment agencies and all intermediaries that offer hiring and placement services, the ILO has formulated guidelines that provide for: a) respect for human and fundamental labor rights, legislation of countries of origin, transit of destination, and international labor standards; b) the adoption of diligence measures to avoid cases of harassment or any other type of coercion or degrading or inhuman treatment; c) observance of bilateral or multilateral agreements on migration, made between the countries concerned; d) ensuring that workers are not misled as to working and living conditions at the destination and that they have a duly recognized and protected working relationship (ILO, 2019, p. 22-23).

In November 2018, ILO also defined the concepts of hiring expenses and other related expenses in relation to the processes of recruiting labor for workers, the collection of which it considers to be undue due to the risk of leading to situations of forced labor (ILO, 2019). Hiring expenses include:

Payments for hiring services provided by labor recruiters, whether public or private, designed to link job offers and demands; payments made in the case of hiring workers with a view to employing them to perform work for a third party; payments made in the case of direct hiring by the employer; or payments required to recover hiring expenses from workers (ILO, 2019, p. 30, free translation).



regulate the agency's operating conditions, its obligations and penalties, and ensure mechanisms and procedures for investigating complaints. It also highlights the importance of concluding agreements between countries to prevent abuses and fraudulent practices (art. 15). The Recommendation expressly points to the promotion of good practices in relation to private employment agencies, in line with Convention No. 181 (art. 23). Brazil ratified Convention No. 189 on February 31, 2018.

This recent ILO normative production on employment agencies and labor migration reflects the understanding adopted by the ILO in the "Resolution on fair and effective governance of labor migration", of 2017, in the sense that "fair hiring is essential to reduce the exposure of migrant workers to exploitation and abuse [...] and to improve the balance between skills and jobs" (ILO, 2017, p. 3)

After briefly describing the normative production and international debates regarding employment agencies, the next topic will situate Brazil in this scenario.

3. Employment agencies in Brazil and other initiatives to promote fair hiring

3.1. Public employment agencies

In line with the text of the ILO's already mentioned Convention 88, the Brazilian migration policy is governed, under the terms of art. 3 of the new Migration Law (Law No. 13,445/2017), for the social, labor, and productive inclusion of migrants, through public policies, as well as the equal



and free access of migrants to services, programs and social benefits, public goods, education, comprehensive public legal assistance, work, housing, banking, and social security.

Such guidelines, it should be noted, are diametrically opposed to the legal discipline established in the derogated Foreigners' Statute (Law No. 6,815/80), which was promulgated during the military government and had an approach based on national security and the control of access to the labor market. In this sense, moreover, is what established art. 2nd of the nominee diploma: "in the application of this Law, national security, institutional organization, political, socioeconomic and cultural interests of Brazil will be taken into account, as well as the defense of the national worker" (TIMÓTEO, 2017, p. 55).

In this light, Law No. 13,445/2017 determines that migrants are guaranteed on national territory, on an equal basis with nationals, the inviolability of the right to life, freedom, equality, security and property, as well as being ensured guarantee of compliance with legal and contractual labor obligations and application of the worker protection rules, without discrimination due to nationality and migratory condition (article 4, caput and item XI).

Although it does not contain any specific provisions in relation to the placement and protection of the migrant's work, Law No. 13,667, enacted in May 2018, which establishes guidelines for the National Employment System (SINE), meets the provisions outlined in the Migration Law, striving to defend the scopes conceived since the genesis of the aforementioned System, recommending the implementation of services and placement agencies, throughout the country, aimed at the organization of the labor market



and the provision of information and guidance to the worker regarding choice of your job.

Currently carried out by the Ministry of Economy, the execution of actions within the scope of the National Employment System comprises the provision of personnel and infrastructure necessary for the execution of SINE's actions and services and their financing through fund-to-fund transfers, being among the main actions carried out by public employment agencies, intermediation of labor and referral to social and professional qualification courses.

According to the Annual Report of the Observatory of International Migration (CAVALCANTI et al., 2019), between 2011 and 2018, more than 490 thousand long-term immigrants were registered, that is, who remain for more than a year in the country, being Haiti, Bolivia and Venezuela are the main origins of these workers, whose hiring is predominant in the production of industrial goods and services and in the service sector.

Although no consolidated data on the role of public employment agencies in the allocation of immigrant labor force entering Brazil was found, news indicate an increase in the demand, on the part of these workers, for official state services of employment agency and intermediation, as well as the concern of the Public Power to improve the forms of service to migrant workers.

Examples include the case of Porto Alegre, where there was a 100% increase in the number of immigrants served at SINE agencies in the city of Porto Alegre between the years 2016 and 2017 (MERLIN, 2018). In Manaus, likewise, the Municipality recently reported services made available



to immigrant workers by the local agency of the National Employment System (SINE). According to the published article, this is an action aimed at the integration of refugees and immigrants, in order to help them enter the formal labor market (SAMPAIO, 2019).

Another interesting example occurred in Florianópolis/SC, in the year 2018, when the Reference and Assistance Center for Immigrants and Refugees (CRAI) was created and implemented, in which people received legal assistance, guidance to regularize documents, psychological assistance, assistance for the solution of immediate demands, such as the need for basic food baskets, as well as referral to the job market. A little less than a year after its opening, however, that service had its activities terminated. During the period when the CRAI of Florianópolis worked, it served more than 5,000 refugees, of 85 different nationalities, the vast majority (72%) Haitians (BASTOS, 2019).

Consistent public policies aimed at placing and protecting migrant workers in the labor market, such as the creation of specialized services, are of indisputable importance. They are also combined with the performance of private actors in recruitment, which are gaining more and more space in the context of increased migration flows.

3.2. Private employment agencies

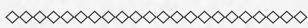
As noted in a previous topic, the ILO recognized the importance of regulating the activity of private employment agencies, a topic that was the subject of Convention No. 181. Brazil, however, has not yet ratified it and does not have a specific statute to deal with the issue, facts that result in legal



services from hiring foreigners with a temporary stay visa in the country.⁵

The registration requirement of temporary work companies, provided for in art. 6 of Law No. 6,019/74, also comes close to the precepts of Convention No. 181, which provides for the need for a system of licenses and certifications for private employment agencies. In Brazil, as established by Decree No. 10,060/2019, such companies must be registered with the Ministry of Economy, proving the constitution of the legal entity and its registration with the Commercial Registry, as well as registration in the National Register of Legal Entities, in addition to share capital compatible with the number of employees.

Notwithstanding these legal parameters, temporary employment companies are only one of the types of employment agencies provided for in Convention No. 181 and, due to the prohibition on hiring workers on a provisional visa, these companies contribute little to the placement of migrant workers in Brazil. This role is assumed especially by the agencies, which only bring employers and workers together, without assuming the position of employer (art. 1, §



5 This prohibition is liable to criticism, if the situation of the refugees is considered, that until the granting of the refuge has provisional residence authorization, which is granted for an indefinite period only after the granting of the request for refuge (art. 156, §§ 2 and 3 of Decree No. 9.199/2017). Also to migrants for humanitarian reception (art. 30, I, c, Law No. 13,445/2017) the visa or residence permit is initially granted for a fixed and temporary period – in the case of Syrian migrants, the visa has an initial period of 90 days and temporary residence for 2 years (according to Interministerial Ordinance No. 9/2019). Thus, these immigrants, in a situation of clear vulnerability, are prevented from accessing the temporary work of Law No. 6,019/74, contrary to the provisions of art. 3rd, X, of the Migration Law.



1, of Convention No. 181). As for the specific performance of these agents, however, Brazil does not have any legislation.

In the current legislative scenario, only Law Project No. 8.772/2017 was located, which is pending in the Chamber of Deputies (currently awaiting the opinion of the rapporteur in the Labor, Administration and Public Service Commission – CTASP), which “has on the charging of fees to candidates by employment agencies, human resources consultants and similar entities”. The objective of the project is to prevent the charging of amounts to jobseekers, a prohibition that would apply to job vacancies directly by the employer or through recruitment and selection service providers.

Finally, the ratification of ILO Convention No. 189 on domestic workers can be identified as an advance in the treatment of the matter, as, as already noted, this Convention has specific provisions on private employment agencies that mediate the hiring of workers. domestic: highlights the need for the operating conditions of agencies to be regulated and to establish appropriate mechanisms and procedures for investigating complaints. All of this together with several guarantees regarding the employment contract to be signed.

As can be seen, the legislative treatment given to the matter by the Brazilian legal system is extremely limited, which ends up resulting in delicate situations, such as those that will be seen in a later topic.



3.3. Other initiatives to promote fair hiring in the Brazilian legal system

In addition to the lack of regulation by private employment agencies, Brazil has other initiatives related to the promotion of fair hiring of migrant workers.

The Brazilian Penal Code, in its arts. 206 and 207, establishes typical figures related respectively to solicitation for the purpose of emigration and the solicitation of workers from one place to another in the national territory, punishing such conduct with sentences of up to 3 years of detention. Although these types of penalties are not directly related to employment agencies, they demonstrate the national legislator's concern with the issue of unscrupulous means of recruiting and recruiting labor.

Another important initiative is the Residency Agreement for Nationals of the States Parties to the Southern Common Market – Mercosur, Bolivia and Chile (promulgated by Decree No. 6,975/2009). Among the provisions of the agreement, we highlight the possibility of granting temporary residence for up to two years to nationals of the countries concerned and their conversion into permanent residence; the provision for the exchange of information pertaining to migration by the States party to the agreement; and the guarantee of equal treatment of migrant workers with nationals of the countries that are signatories to the agreement.

In addition, the States committed to establish permanent cooperation mechanisms to prevent the illegal employment of immigrants in their territory, by adopting measures such as cooperation between migration and labor inspection agencies, the application of effective sanctions to individuals



or legal entities that employ nationals under illegal conditions, the implementation of mechanisms for the detection and punishment of individuals or organizations that profit from the illegal or clandestine movement of immigrant workers, and the implementation of public information campaigns so that potential migrants are aware of their rights.

In the scope of immigration policies, Normative Resolutions No. 1 and 2 of the National Immigration Council are relevant. Before going into the critical analysis of these standards (which will be done in the next topic), your main predictions will be highlighted. The first Resolution, when disciplining procedures for granting a residence permit for immigrants, establishes the need for the immigrant interested in the application to indicate several of the data of the company interested in employing it (art. 1, IV and Annex I). It provides that the employer declares itself responsible for all and any medical and hospital expenses of the immigrant, as well as for the immigrant's repatriation to the country of origin, in the case of a residence permit prior to entering the national territory (Annex I).

The Resolution also provides that, in the case of a domestic worker or other situation provided for in a specific law, the residency application must indicate the data of the labor intermediary (name, CNPJ and electronic mail, according to Annex I).

Normative Resolution No. 2, in turn, establishes that, for the domestic employee, the contracting employer must declare that there was no charge to the worker for the cost of the ticket, food during the trip and employment intermediation, if any (art. 3º, § 1º). In addition, Annex II provides a specific model employment contract for domestic employees,



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which must include identification of the employer, the place and hours of work, the amount of the salary, the prohibition of deductions from the salary for providing food, clothing, hygiene or housing, employment intermediation, as well as for transportation, lodging and food expenses in the case of travel, and for the cost of travel tickets, meals during the trip, and labor intermediation, if any. The contract must also expressly state that the worker may only work for the company or individual who hired him or her at the time the visa was granted.

Finally, it is worth considering the existence of the National Immigration and Worker Protection Policy, approved by the National Immigration Council in 2010. One of the specific guidelines of this Policy is the following:

The performance of private agencies for recruiting and sending Brazilian workers abroad must be regulated, in order to prevent the occurrence of irregular or degrading work. (BRAZIL, 2010)

However, as has been seen so far, this guideline has not been implemented. In addition, it limited its focus of concern on employment agencies that send Brazilians abroad, without covering the need to take measures to prevent irregular or degrading work from reaching workers arriving in Brazil through this type of employment agency.

4. Prospects and challenges for promoting equitable hiring

As we have seen, Brazil has specific legislative rules on public employment agencies: the country ratified ILO Convention No. 88 and instituted the National Employment



System (SINE) as early as 1975; but, in relation to private employment agencies, they can act freely, without having to submit to specific legislation. The only legislation that establishes some parameters is that of temporary work companies (Law No. 6,019), which, in practice, contribute little to the placement of foreigners in the labor market, as they cannot hire workers on temporary visas.

In addition, the other measures listed in the previous topic, which indirectly relate to equitable hiring policies, are disjointed and insufficient to tackle the problem of fraudulent recruitment of migrant workers.

Illustratively, a specific case of fraudulent labor intermediation involving the hiring of workers of Philippine origin to provide domestic services is analyzed. According to the Labor Prosecution Service in the state of São Paulo, these workers went to Brazil with the false promise of decent domestic work in high-end residences in the capital of São Paulo, practically subjecting themselves to mistreatment, lower payments than promised., retention of personal documents and threats of deportation.

The MPT found that the recruitment of female workers occurred as follows: the Brazilian company Global Talent, through its owner, maintained a partnership with an employment agency in the Philippines, which recruited female workers at the place of origin. In that country, women signed a contract with the agency, upon payment of a fee. In Brazil, Global Talent acted as a proxy for female workers for the granting of a work visa and charged interested employers a high fee for the recruitment service, in addition to expenses with airline tickets.

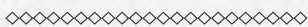


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To comply with the terms of CNlg Normative Resolution No. 99/2012⁶, which requires that hiring foreigners does not replace national labor, companies published job offers with highly qualified requirements (for positions such as housekeepers, bilingual receptionists, butlers, fluent in English and experience abroad) and low wages. In these terms, no Brazilian worker showed interest in occupying them. On the other hand, they declared that immigrant workers had the minimum education and professional experience required. In practice, however, the vacancies were for low-skilled jobs.

In addition, job openings were unclear about visa terms and the right to repatriation, making workers believe they could change employers and get a permanent visa after two years of work in the country. In reality, the dynamics of the temporary work visa prevented such a change, since it is granted in a manner linked to the employer. In addition, Global Talent considered that there is no employer's responsibility for the repatriation of the worker in the event of a breach of the bond, contrary to the aforementioned Normative Resolution No. 99/2012.

Such facts motivated the filing of Public Civil Action No. 1001643-32.2017.5.02.0605, with the objective that the defendants were condemned to fulfill a series of obligations aimed at avoiding their criminal recidivism and, at the same time, promoting fair contracting. The sentence handed down in the process partially accepted MPT's requests, failing to impose on defendants the obligation to abstain from acting in the intermediation of work visas in domestic service.



6 Currently revoked by Normative Resolution No. 2 of the National Immigration Council.



This case reveals the negative effects of the failure to ratify ILO Convention No. 181 and regulations on private employment agencies. Global Talent acted with complete freedom, mingling in practice with its owner, who coordinated all the work intermediation activity. The legal entity did not have to comply with any specific legal requirement, nor did it undergo inspections. Such facts contributed for wealthy families to prefer to hire immigrant domestic workers, who would not demand the new rights achieved by domestic workers with Constitutional Amendment No. 72/2013 and Complementary Law No. 150/2015 and who could work as slaves at a very low cost.

So far, Brazil has paid little attention to the role of private employment agencies: as seen, in addition to a quick mention in the text of the aforementioned National Immigration and Worker Protection Policy, approved by the CNIg in 2010, the regulation of agencies is dealt with in Bill 8.772/2017, but only under the aspect of prohibiting the collection of fees.

The imposition of fees and expenses on migrant workers is, indeed, a problem that must be tackled – Convention No. 181 and all ILO documents mentioned in this work point to this. However, this is only one of the aspects to be dealt with in the legislation, whose focus should be the implementation of a public licensing regime for private employment agencies, accompanied by an effective inspection instrument.

An exemplary case of how the state can act in the field of private employment agencies is Canada, more specifically the province of Manitoba. In a study published by the ILO, Gordon (2015) highlights that the province created a policy of public licenses for recruiters of foreign workers and



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requirements for companies interested in hiring migrants. The procedure requires an investigation by the Employment Standards Branch, which analyzes the company's history and business relationships and requires the display of financial information and the payment of a cash guarantee to reimburse workers for any fees charged during recruitment and placement. An information system was also created that allows the public to verify the compliance with the licensing requirements of each company. The registration of companies is integrated with strict inspections regarding compliance with labor standards.

In addition, employers who want to hire immigrant employees must register with the Manitoba Director of Employment Standards, which allows the worker to be hired directly or through an employment agency. If the registered employer uses a regularly licensed employment agency, he is released from liability in the event of any recruitment problems, unless he tries to pass on the costs of the procedure to workers.

In addition to this lack of regulation of the matter, the case of Philippine workers demonstrates how the CNIG regulations on the granting of work visas are precarious and ineffective, if there is no effective inspection. The requirement that the domestic worker indicate the data of the labor intermediary in the application for temporary residence – according to Normative Resolution No. 1 – is quite simple, as it covers only name, CNPJ and electronic mail. Such data can be omitted or manipulated, especially in cases such as Global Talent, where the employment agency itself was responsible for forwarding visa applications.



In the same way, although Normative Resolution No. 2 requires the domestic employer to declare that he did not charge for travel, meals and intermediation, this requirement is purely formal. In addition to this declaration, it would be essential to have effective supervision of the signed labor contracts, which could include the interview of the domestic worker as soon as he arrives in the national territory, as well as throughout the provision of services.

This interviewing system is also part of the model adopted in the province of Manitoba, Canada. In that location, the responsible agency (ESB) interviews workers (domestic or not) at the time of their arrival in the country, as well as when they convert their status into permanent immigrants, to check if the information given at the entrance (when workers face greater fear) to tell the truth) correspond to reality (GORDON, 2015, p. 24-25).

In addition, ILO Recommendation No. 201 on Decent Domestic Work suggests to States that they adopt a system of home visits that will receive migrant domestic workers, prior to placement in the workplace. It also highlights the need for a public assistance service to guide workers about their rights and the availability of a national telephone line, with translation services, and an emergency accommodation network (art. 21).

Still on CNIg Normative Resolution No. 2, the basic model of employment contract for domestic workers established there could be improved in the light of ILO Convention No. 189, to include specific clause on working hours, guarantee of paid annual vacations and of daily and weekly rests, as well as to expressly provide for the application of Complementary Law No. 150/2015 to the employment relationship,



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under conditions of equality to national workers. Specifically with regard to repatriation expenses, a clause could be established providing for joint and several liability between the employer and the company that intermediated the hiring and not just the first, as currently provided for in the contract model.

This model also establishes that the domestic immigrant can provide services only to the company or the individual who hired him. On the subject, it is worth clarifying that arts. 38, § 7 and 147, § 6, of Decree No. 9.199/2017, provide that immigrants with temporary work visas or residence permits for work purposes may only modify their place of work within the same company or in the same company. economic group, communicating to the Ministry of Labor. In addition, for the holder of a residence permit for work purposes, § 7 of art. 147 provides that the provision of services to an employer other than the one that initially hired you depends on authorization from the Ministry of Labor, whose application must be accompanied by justification and the new employment contract signed, for the organ's appreciation.

Such rules, according to Normative Resolution No. 2 of the CNlg, do not apply to domestic employees, who do not provide services in the business environment.

It should be borne in mind, however, that in domestic work, where there is a link to an individual employer and a greater risk of exposure to precarious working conditions (which occur within the inviolability of the home), the impossibility of changing employers can result in a violation of human labor rights. The ILO recognizes that the attachment of workers to the domestic employer, as in the system known



employer, both in case of dismissal and resignation, or other hypotheses of breach of contract.

The same procedure could be applied to other workers. The authorization requirement of the Ministry of Labor to change the employer (art. 147, § 7, Decree No. 9.199/2017) is very strict, since it assumes that the employee presents a justification and the new employment contract already signed. This rule prevents the worker from separating from the former employer and remaining in the national territory, for the authorized period, looking for a job, under the risk of losing the residence permit (art. 135, I, of Decree No. 9.199/2017).

Thus, in order to align with the guidelines of Law No. 13,445/2017, Brazilian legislation could grant international migrant workers the right to work for the entire term of their visa or temporary residence permit for work purposes, without binding permanence in the country to an existing employment contract. Thus, a migratory policy based on human rights, the migrant's labor and productive inclusion and his equal access to work would be concretized (art. 1 of the Migration Law).

Another aspect of great relevance to be dealt with by the Brazilian legislation refers to the legal co-responsibility between employees and labor intermediaries. This is an issue highlighted by the ILO in its principles on equitable hiring (ILO, 2019, p. 16) and which, according to Gordon (2015), can contribute not only to ensure the repair of damages caused to workers, but to bring about a change in the behavior of employers and employment agencies that hire immigrants. This model is adopted, for example, in the Netherlands (GORDON, 2015).



It is also necessary to strengthen agreements related to international immigration, which are encouraged by the ILO as a way of making labor migration processes more equitable (ILO, 2016b, p. 81). Brazil, as seen, is a signatory to the Residency Agreement for Nationals of the States Parties to the Southern Common Market – Mercosur, Bolivia and Chile, whose art. 10 is very promising in providing for cooperation between states to identify and punish those who profit from labor migration under abusive conditions, which covers employers and intermediaries.

Finally, all the measures highlighted here only have the potential to contribute to equitable hiring if there are strong and active supervisory bodies at all stages of the recruitment process. Therefore, in parallel with the strengthening of the national legislative set, through the ratification of ILO Conventions, the covenant of international bilateral agreements and the internal legislating activity itself, efforts should be made to centralize the issue of labor migration within the scope of public policies. carried out by the Brazilian State.

CONCLUSION

The national legal order demands improvements so that it can offer better responses to the significant increase in the flow of migrants entering the national territory. The presence of legislative gaps and the absence (or the deficiency) of effective public policies have brought difficulties and serious problems, as in the case of the Philippine workers that were examined.



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This scenario first demonstrates the need for Brazil to ratify ILO Convention No. 181, in order to establish a public licensing and inspection regime to be applied to labor intermediaries. Such measure additionally demands the elaboration of new legislative diplomas and the revision of the normative texts in force, which are oriented in order to guarantee equitable hiring processes.

It should be noted, in this regard, that the current Brazilian migration policy itself includes a review, as it has been an obstacle to the promotion of equitable hiring of migrant workers. In this regard, the current rules related to the granting of temporary work visas and the possibility of changing employers, which are currently quite restrictive, are highlighted, as shown.

Furthermore, the State is required to implement appropriate public policies to give effect to the positive legal commands, which should be done in the light of local peculiarities, without ignoring, however, the multiple examples of successful practices abroad, the which will lead to the construction of a satisfactory Brazilian solution.

As can be seen, the solution to the problem presented is through regulation and the ostensible inspection of the activity of labor intermediaries, with no reasonableness in its mere prohibition, because, strictly what was demonstrated in the present study, the performance of such agents is a factual reality, whose contour and effect variables (positive and negative) require strong modulation through state action.



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to establish flexible accumulation and fulfill the neoliberal agenda (ANTUNES, 2001; HARVEY, 2002). Since then, worsening inequalities, unemployment, vulnerabilities and impoverishment have been accompanied to a large extent (ANTUNES, 2013, 2014; CHOSSUDOVSKY, 2003).

In the context of structural precariousness and new social morphology of work, together, these dynamics affect large displacements, in which socio-environmental disasters and armed conflicts operate at levels of social expulsion (SASSEN, 2016). The use of emigration can be explained by a number of factors, from inequalities in development between States and the search for better living conditions; the circumstances of civil wars, persecutions, systematic violations of rights, including socio-environmental disasters. All of this at a time permeated by the popularization of the internet, easy access to the means of communication, improvement and reduction in the costs of global transport (COGO, 2015).

Whether it is the origin, destination or passage of these displacements, all regions of the world are impacted by migration. In the case of Brazil, this can be observed in a significant way because the country fits into the three modalities at the same time. As a place of origin, there is a contingent of about 1.6 million Brazilians living abroad; as destination, 735.6 million immigrants in the country, in addition to the countless population flows that allowed the constitution of Brazilian society, especially between the 19th and 20th centuries; finally, as a transit country, the country has increasingly served as a point of support for migrants who wish to reach other locations (UN, 2017).



In the global north, most destination countries adopt restrictive stances in their migration policy in response, especially with regard to those seen as undesirable. To this end, they work to strengthen national borders and criminalize undocumented immigration, to the detriment of policies to integrate this population, a measure that would be more in line with the Human Rights Declarations ratified by many of them after 1945. Thus, when migratory flows take on proportions, not without purpose, the term “crisis” is often used to describe them.

In view of the phenomenon, Brazil’s action is emblematic for understanding the challenges concerning the reception of immigrants, especially in a context permeated by the prevalence of restrictive policies in former destinations and the country’s position as a destination for immigrants. In this sense, the purpose of this text is to locate the migratory question in the Brazilian scenario of the last decade and thus analyze its responses in terms of reception policies for immigrants. This exercise is based on the recent “crisis” of Haitian immigrants in the country, considering that this particular experience has sparked debates and challenged the application of significant, albeit embryonic, measures in the light of the protection of human rights.

Since the arrival of the first Haitian groups in Brazil, in December 2010, the reality imposed by this flow has crossed distant borders and reactivated the discussion on Brazilian migration policy. When they entered the Amazon, especially through the triple border area Brazil-Bolivia-Peru, via the state of Acre, they explored a new international migration route and demarcated an unprecedented experience. In view of the conditions of this flow, activated by illegal entry networks,



and the profoundly vulnerable profile of Haitians, received in great volume and in a small scale of time, different segments of the public power and civil society were mobilized, as well as economic and political actions were taken. defendants.

Until February 2020, the government of Acre registered the passage of almost 45 thousand immigrants, from 37 different nationalities, the majority of whom were represented by Haitians, followed by Senegalese and Venezuelans. These numbers refer only to those served at the public immigrant shelter existing in the state, so that they correspond only to a portion of the total that has actually used the Acre route (SEASDHM-AC, 2020). When the pandemic of the new coronavirus broke out in the first quarter of 2020, measures to restrict human mobility were implemented in the Acre borders, however this did not prevent approximately 1,500 immigrants from passing through the region until August this year (CÁRITAS, 2020).

The different political, media and academic speeches that accompanied Haitian immigration in Brazil, associated with official statistics, attest that it took on a unique role on the national scene. By highlighting the country's position as a recipient of immigrants, and increasingly from a profile originating from peripheral and undocumented contexts in the global south, the Haitian presence challenged the Brazilian State to rethink its legislation and model of migratory management (BAENINGER et al., 2016). This scenario demanded that the migratory issue return to the heart of the political debate, as numerous inconsistencies between reality and the way in which the topic was treated were attested. The first to be noticed was the current immigration law, in disagreement with the Federal Constitution, in which



different points of the Amazon, with Tabatinga, in the state of Amazonas, and Assis Brasil, Brasileia or Eitaciolândia, in Acre, the most used (MAMED; OLIVEIRA, 2016).

The choice of the route depended on the facilities for entering the country and obtaining the necessary documentation, as well as the possibility of receiving some support in Brazilian territory. Thus, a significant portion of those who joined in the last decade did so through the Interoceanic Highway, which breaks through the South Western Amazon region, passes through the triple border area between Brazil, Bolivia and Peru and crosses the state of Acre. This road connection became fully trafficable, starting in December 2010, and through it the Haitians explored a new migratory route, reaching the territory of Acre in the same month and year.

In addition to inaugurating what would later be recognized as one of the main doors of access for international immigrants in Brazil, at that time they represented a non-traditional immigrant profile in the country. The conditions, the vulnerability and the magnitude of the flows carried out by the Haitians demanded the local organization of a structure of reception, documentation and (re) orientation for the continuity of the trip through the country.

Throughout this process, demarcated by several phases in the last decade, their circulation through Brazilian regions has evidenced the mismatch between the existing norms on the subject and the international migratory conjuncture. Although the Brazilian government made a speech that it would have its doors open to receive them, the Brazilian government attested the structural insufficiency to shelter this migrant contingent and then ensure its insertion in the



country, both from a normative and institutional point of view, as well as a sociocultural one.

Proof of this were the different institutional responses to the arrival of the first groups, considering the state and municipal spheres, which, as a rule, are not involved with the issue, considered a primarily federal agenda. The government of Amazonas, in the cities of Manaus and Tabatinga, initially disregarded the problem, however, later on, it supported the actions of civil society, mainly from the Catholic and evangelical religious segments, which endeavored to serve the newcomers (SILVA, 2016; VÉRAN et al., 2014). In view of the difficulties faced by immigrants, the use of the route through the Amazon has become fickle and today it is practically unusable. The opposite posture was that of the government of Acre, which took over the management of the problem and guaranteed a minimum infrastructure to welcome new immigrants, even if in an improvised way (MAMED, 2016).

Acre, from the first moment, was unable to promote the incorporation of these immigrants, in view of its socio-economic context of preponderance of the public service, associated with agricultural and forestry activities of reduced jobs, trade marked by high informality and inexpressive sector industrial (LIMA; MAMED, 2013; CASTELO, 2020). But, while there were no local opportunities for their insertion, there was an open demand for this workforce profile in the south-central part of the country. Therefore, the Acre government was asked to manage the situation according to the guidelines of federal bodies aligned with the interests of heated sectors of the national economy (MAMED, 2016).



Thus, although it was only a transit region, Acre assumed a strategic position in the process of regularization and preparation of these immigrants, served basically as a workforce. The first measure announced was the establishment of an emergency reception space, called “public shelter for immigrants”, which quickly became a point of reference for all newcomers on the Acre border. Although announced as an urgent response to the exceptional situation, the assembly of the shelter agreed with the perspective that many would arrive in Brazil by the same route, with Acre being an itinerary to access other Brazilian states and where a flow management process should begin.

In this regard, it is important to note that the “gateway” to Brazil for this category of undocumented immigrants is “formally” closed. This percentage of immigrants, coming from peripheral countries and who today are the main base of immigration in Brazil, is presented with the possibility of the “emergency door”, which opens up circumstantially, underground, aimed at meeting the demand for strength of work in specific economic sectors, highly marked by precarious work, such as the meat agribusiness (slaughterhouses), the largest employer of Haitian immigrants in the country (VILLEN, 2018; MAMED, 2020).

Upon arriving in Acre, debilitated after a long and dangerous journey, which lasted, on average, 10 to 20 days from Haiti, interspersing air and road journeys, including swimming and walking routes, immigrants were received in that space. Without documents, the prospect of local occupation and the resources to continue to the great centers of the country, they were welcomed by an improvised grouping of State services, organized in partnership by the



state and federal governments. The core of this was precisely the shelter, which passed through nine addresses in the Acre territory, as it had to be increasingly larger due to the demand from foreigners received.

In the border area of Acre, where the adjacent cities of Assis Brasil (342 km from the capital), Brasileia and Epitaciolândia (230 km) are located, there were eight shelter configurations. In April 2014, this service structure was transferred to Rio Branco, the capital of Acre, where it operated in two other spaces, until its closure in March 2016. From the moment that the flow through Acre showed its permanent and growing character, there was a demand for a specific structure for the reception and documentation of immigrants, which is why the shelter was conceived as a core part of government policy.

In view of the gaps in the Brazilian immigration policy, the setting up of this shelter structure certainly meant an advance, as it provided welcome, guidance, food and even transport to continue the journey for immigrants. At the local level, the Acre government conducted the installation of the space, providing employees to assist migrants (receiving, registering and controlling) and articulating the services necessary for their documentation process in the country. At the national level, the Ministry of Labor and Employment and the General Secretariat of the Presidency of the Republic established networks of contacts with businessmen to publicize the availability of newly arrived immigrants to the Acre shelter, according to their registered profile and encouraging their hiring. Consequently, the interested companies started to look for the state departments of Acre responsible for the management of the camp, to obtain information and schedule visits to recruit workers (SEJUDH, 2013; TERRA, 2013).



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In the recruitment process carried out at the shelter, in general, the profile of the chosen immigrant was very specific: male, young, healthy, single, without children, with some kind of work experience. Those who did not fit this profile had more difficulties in recruiting, as was the case of the elderly, the sick, and women. In the movement of Haitians through Acre, aspects related to their preparation as a workforce and their hiring have always revealed important characteristics about the selection of this new immigrant worker in Brazil. The business community, for example, preferred to carry out recruitment when there were large numbers of immigrants held in the shelter, as this increased their bargaining power vis-à-vis foreigners in dispute for an opportunity. Thus, entrepreneurs and public authorities previously agreed on the best conditions, the week and the days the company visited the site (MAMED, 2020).

The screening process was carried out in the shelter's own physical space. The business representative checked, for example, the immigrant's physical size, trying to assess the thickness of his hands and shins, which indicated, according to him, whether or not the person was used to heavy work. The condition of the skin was also observed and, in some cases, even the genitalia of the worker, to identify the presence or not of hernias that, according to the evaluators, manifested a greater or lesser physical disposition for arm and heavy activity, and even made the execution of this type of activity unfeasible. These procedures recalled, for example, the practices used in the choice of slaves in American ports until the middle of the 19th century, when the physical constitution, teeth, body marks, in addition to age and sex were evaluated.



After the selection was completed and the trip organized, they left on buses chartered by the companies bound for their future workplaces. It is also important to note that in many cases, in the city where they were going to settle, migrants were housed in a residence managed by the company itself, so that the work routine and the life of the new worker started to be directly ordered and controlled. Business agents who went to Acre to hire foreigners did so in accordance with labor law, as the comfort zone established by the circumstances was largely favorable to the employer. Granting employment to a migrant, in that context, contributed to the humanitarian image of the business community, in addition to ensuring that there would be no struggles or labor claims. In this, capital found a great opportunity to cool the class contradiction in the midst of a crisis situation, because, in this context, workers “grateful” for the job opportunity, in the midst of the circumstances in which they were kept in the shelter and, therefore, desperate for a chance, they would tend not to oppose the boss (MAMED, 2020).

The practice of visiting the business community predominated until April 2014, when the Brasileia shelter was transferred to Rio Branco. From that point on, the trend started to shift immigrants to companies. As part of the package of changes introduced in the management of the shelter at that time, which defined the maximum capacity of 200 people in the space, the state government, following the federal government’s orders, started to finance and organize the travel of immigrants, in chartered buses, for some of the main capitals of the country, such as Cuiabá (MT), São Paulo (SP), Curitiba (PR), Florianópolis (SC) and Porto Alegre (RS). These locations corresponded exactly to the poles of origin



and performance of the main companies interested in hiring them, among which stand out those in the agribusiness production chain, especially slaughterhouses.

Thus, if until then there was a governmental articulation to ensure the reception, registration, documentation and feeding of immigrants in the shelter, so that they could wait for the day of the visit of companies, the service performed by the unit was further expanded. The Brazilian State assumed the burden of transporting these immigrants and began to operate their internal displacement throughout the country, ensuring the systematic distribution of workers at the doors of the business community. The impact of this measure was immense, although it had already been experienced by the government in a more subtle way at other times.

From the configuration of the pioneering route between Haiti and Brazil, through Acre, the arrival of undocumented Haitians, in conditions of profound vulnerability, large volume and short time, impacted local society and challenged the government's capacity for their assistance, in a context of widespread competition for public resources. If, on the one hand, this compromised the protection of rights and the safe insertion of these immigrants in the country, on the other hand, this situation also overburdened the small cities that accompanied the development of this process.

With modest economies, dependent on the transfer of federal resources, Brasileia and Epitaciolândia, with just over 20 thousand and 15 thousand inhabitants, respectively, were the shelter's headquarters for years. In view of the limited structure of local services to serve its residents, over that time, this same structure had to supply the demand of immigrants. Thus, the community felt resentful of the



historic lack of attention by the public authorities to the region's problems, especially when it noticed the institutional and financial efforts to manage the flow of foreigners (MAMED; LIMA, 2014).

In the initial moment of Haitian immigration, the humanitarian aspect of welcoming them into the community was different. But, in the face of years of poor shelter functioning, the population changed their perception of the situation. In the phases of intensification of flows and overcrowding of the shelter, with an increase in the concentration of immigrants in the border cities, there was a dispute between them and the residents for vacancies in the queues of health posts, hospitals, bank and postal agencies. Gradually, this situation stimulated adverse reactions of hostility, permeated by racial and social prejudice. In these cities, although on a triple frontier and constant stage of flows, there is a collective memory referring to the first cultural shocks and political conflicts generated from living with Haitians, circumstances always permeated by socio-cultural differences, associated with linguistic and financial difficulties.

The conditions of the shelter and the problems of welcoming immigrants in Acre were the subject of a public complaint made by the non-governmental organization Conectas Human Rights, in August 2013. At the same time, the NGO also held bilateral meetings on the topic with the Ministries of Foreign Affairs, Justice and Labor. In October of that year, the complaint was lodged with the Organization of American States (OAS) and made official to the United Nations. Within the scope of judicial management, between 2013 and 2014, the Attorney General's Office in Acre/Federal



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Prosecution Service (MPF-AC), responsible for monitoring humanitarian assistance to immigrants, acted on several fronts to convince the federal and state governments to transfer the shelter for the city of Rio Branco, where the assistance service could be improved.

As the problems related to the management of the shelter and the intermediation service of the immigrant workforce accumulated, the Labor Prosecution Service in Acre (MPT-AC) also tried to submit proposals for out-of-court solutions on the situation. However, without a decisive response from the federal government, the crisis worsened. In May 2015, the MTP-AC decided to initiate an unprecedented public civil action due to the configured humanitarian calamity, requiring the Union to adopt public policies aimed at immigrants arriving in the country through the Acre border. Guided by several international conventions to which Brazil is a signatory, the action requested that the federal government be responsible for the financial management of the shelter, medical care for sick foreigners and adopt effective actions to curb the performance of coyotes on the Interoceanic highway.

The policy implemented in Acre was questioned in a forceful way, because, although planned to contain an emergency situation, it had been maintained for years, increasingly improvised and insecure. In his presentation, the action emphasized that it was the responsibility of the Union and not of the states to promote public policies to assist immigrant workers. In this way, the deficient financial contributions made by the federal government to Acre reflected in a precarious policy, whose flawed results revealed the State's failure to assume its obligations foreseen by the



Constitution and imposed by international law regarding the immigration of workers. For example, since Brazil is a signatory to Convention No. 97 of the International Labor Organization (ILO), the State should obey the guidelines for employment policies aimed at immigrant workers. Thus, the central objective of the action was to order the migratory flow and the reception process in Acre, making it consistent with the international policy for the protection of human rights.

As a justification for its request, the lawsuit reported that an investigation by the agency on the access route to Brazil, via Acre, concluded that it fed a profitable network of international human trafficking, as well as the illicit regimentation of immigrants, established in the countries of Brazil. origin, transit and destination. He also announced that he had been investigating, since 2013, the work situation to which immigrants were subjected while passing through Acre, with monitoring of the companies that hired them at the shelter. At the time, at least 75 inquiries were being processed at the MPT on the topic and 150 Haitians had been rescued from working conditions analogous to slavery in Minas Gerais and São Paulo, many of whom were recruited from the Acre shelter⁴.



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Immigrants in the small Hotel Brasileira, in the central area of the city of the same name, the second place to serve as a public shelter in Acre (Photo: Altino Machado/Portal Terra/Blog da Amazônia, 26 Dec. 2011).



Immigrants clustered in the central area of the sixth shelter, set up in Brasileia and administered by the government of Acre (Photo: Altino Machado/Terra Portal/Blog da Amazônia, Jan. 30 2014)



Immigrants await the distribution of hot meals for lunch, in the sixth shelter, in Brasileia (Photo: Altino Machado/Terra Portal/Blog da Amazônia, Jan. 30 2014).



Common areas where the dormitories of the ninth public shelter were improvised, in Rio Branco, capital of Acre (Photos: Altino Machado for GPMTA, May 2015).

Changes in migration policy: the humanitarian visa as different protection for Haitians

Immigration in Brazil, which originated from the colonization process and advanced with industrialization, shows different meanings over time. According to the interests conditioned by the historical period experienced, different migrations were outlined. This is the case with the arrival of the first Europeans, the displacement of African



slaves, the subsequent reception of new Europeans, until the period that begins after the Second World War and extends to the present day, when migratory flows diversify and intensify.

Although Brazil tries to sustain an image of a welcoming and hospitable country, which does not discriminate against immigrants by any criterion, whether of race, nationality, religion, culture or political opinion, this representation does not stand up to an examination of its migratory practices. This exercise would certainly deny the emblematic national myth of racial democracy (SEYFERTH, 2002). The country's slave heritage is structural and constitutes a kind of obstacle to its democratic organization, in political and socioeconomic terms. The reflexes of this heritage can be seen especially in the migratory issue (FERNANDES, 2008).

Currently, migration policies in Brazil do not obey explicit racial criteria, but economic requirements. Priority is given to immigrants who have financial resources and intent to invest in the country, in addition to qualified professionals, who meet the specific demands of the national labor market. It is also worth noting that Brazil never had a policy that favored the entry of black immigrants, only when included in the condition of slaves. If today it is not directly vetoed, it is also not encouraged. In this sense, the situation imposed by the arrival of Haitians – mostly black, poor and with little schooling – demanded the creation of a specific process for their documentation and subsequent employment insertion.

In 2010, before the first records of Haitians in Brazilian cities on the Amazon frontier, the National Committee for Refugees (Conare), a collegiate body linked to the Ministry of Justice and Public Security, was initially communicated.



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Among the Committee's powers is the assessment of asylum applications in Brazil and declaration of refugee status, in line with the legal frameworks of international law relating to the matter, especially the Convention on the Status of Refugees of 1951; the 1967 Protocol on the Status of Refugees; and the 1984 Cartagena Declaration. In the case of Haitians, Conare's understanding was not immediate.

In fact, the situation unveiled by these immigrants demanded numerous discussions in order to propose a legal path capable of giving them different protection. Recognizing itself as a non-competent body for deciding on the topic, Conare passed it on for discussion at the National Immigration Council (CNIg), another collegiate body, today linked to the Ministry of Justice and Public Security, whose main task is to formulate the migration policy country's labor force. From that moment on, the Council created its own working group to deal with Haitian immigration (CNIg, 2010).

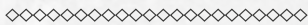
As requests for refuge made by Haitians did not meet the eligibility requirements set out in the refugee law (UNHCR, 2014), but were still considered to be in need of humanitarian protection by Conare, the agency understood that the CNIg could appreciate the case as special and incomplete situation in view of the legislation in force in the country. At that time, the legal reference for the treatment of immigrants was Law 6.815/1980, better known as the Foreigner's Statute. Formulated during the military dictatorship period and approved by Congress for a term, it was guided by the national security precepts, which understood the international migrant as a potential threat to the country's sovereignty, and should therefore be avoided (SPRANDEL, 2015).



In view of being a legal instrument created before 1988, several of its articles were not included in the Constitutional Charter. Even so, this past legislation was commonly used by conservative sectors of society to justify xenophobic actions against immigrants⁵. The prioritization of national security, supposedly threatened by their presence, corroborated racist and nationalist speeches, which encourage the condition of “irregularity” of foreigners, making access to documentation difficult, while criminalizing this category. Despite all its inadequacies, the Statute lasted for three decades, during which the country faced profound changes in its migratory context.

Its repeal took place through the approval of Law No. 13,445/2017, which became known as the new Law on Migration. In a way, the Statute has endured long years due to the lack of consensus on its replacement. Several antagonistic interests disputed the debate, including the market, which defends selective labor force immigration; conservative sectors, which aim to attract capital investors; police sectors, which tend to confuse foreigners with criminals; and certain sectors of the federal government, who had a preference for maintaining this rule over an eventual loss of power, resources or prestige (VENTURA, 2014).

During the growth of the Haitian flow in the country, the current migratory rule was the Statute, which is why



5 On several occasions, the media approach mobilized an interpretation of the phenomenon as a “Haitian invasion” of Brazil, which aroused and supported a nationalist discourse, indicating the need for ticket control and border protection. About this, see, for example, the report: CARVALHO, Cleide. Acre sofre com invasão de imigrantes do Haiti. *O Globo*, São Paulo, Jan. 1, 2012, seção País. Available at: <https://oglobo.globo.com/brasil/acre-sofre-com-invasao-de-imigrantes-do-haiti-3549381>. Access in: Sept. 2, 2020.



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the government's mobilization in search of an exceptional legal-administrative interpretation for the case, which was later conducted as a migratory policy, was significant. Thus, through the CNlg, the State issued Normative Resolution No. 97/2012, which instituted the "permanent visa for humanitarian reasons" to Haitians, by recognizing "humanitarian reasons" as "those resulting from the worsening of the living conditions of the Haitian population due to the earthquake that occurred in that country on January 12, 2010" (BRASIL, 2012).

It is important to understand that Brazil has decided not to welcome Haitians as refugees, because, from a political point of view, this would be deeply contradictory. On the one hand, the recognition of the environmental refuge had not been defined, which limited the understanding of the Haitian situation from this perspective; second, due to the fact that, since 2004, Brazil has led the military forces that, through the United Nations Stabilization Mission in Haiti (Minustah, acronym derived from the French), occupied Haitian territory under the pretext of peacekeeping and country reconstruction. Therefore, to recognize that, even after so long of Brazilian activity in their land, Haitians experienced a serious and widespread violation of human rights, capable of assuring them the granting of refuge, would be to question the validity and effectiveness of the action promoted by Brazil in the Haiti (SEGUY, 2014).

Unlike the Foreigner Statute, RN No. 97 expresses a perspective of welcoming migrants, in tune with the logic of protecting human rights, but its implementation has created ambiguities for the full legitimacy of the right of Haitians to enter Brazil. Regarding this, it is worth noting that, while



allowing the entry and regular stay of Haitians in Brazilian territory, the regulation defined an arbitrary limit on the number of visas granted: 1,200 a year, of which 100 each month, by the Brazilian consular service in Port-au-Prince. Due to the inconvenience caused, since the demand was always higher than the offer of visas, this limit was later excluded.

During the first CNlg meetings on the topic, its members perceived the Haitian flow as episodic and short-term. They understood that it had as its final destination French Guiana, with Brazil being only a crossing point on the route. However, contrary to this perception, the arrival of Haitians in the country has become constant and growing. In national terms, the Federal Police database indicates more than 4 thousand in 2011; more than 20 thousand in 2013; about 55 thousand in 2014; approximately 65 thousand in 2015. Until 2018, 492.7 thousand long-term immigrants were registered, that is, among those who stay for a period longer than one year in the country, Haitians (106.1 thousand) represent 21.5% of the total (CAVALCANTI, 2019).

In the first year of flow, the Haitians contacted by the GPMTA revealed that, due to the indebtedness contracted for travel to Brazil, the greatest fear was deportation, which would make them lose the invested resources, in addition to the complete unfeasibility of the migratory project. After the initial moment, when, despite the normative absence to manage the situation, the government did not apply the deportation expedient, they consolidated the understanding that the route through the Interoceanic was correct. Through this route, according to them, they were allowed to enter the country undocumented and then apply for refuge,



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in addition to having the guarantee of a public reception structure in Acre.

In general, as part of the policy implemented in Acre, after being received and registered at the shelter, immigrants were instructed on the procedure to regularize their situation, that is, on minimum documentation to transit and work in Brazil. Most entered without a regular entry document, such as a tourist or work visa. Thus, the only way to guarantee their permanence was via an asylum application, submitted to the migratory authority in the border cities and later forwarded to Conare.

The opening of this process led to the issuance of a protocol, known as a “provisional foreigner’s card”, valid for one year, renewable for an equal period successively until the final decision, which tended to be quite time-consuming in view of the large number of requests and the reduced structure of the organ. With the protocol, while the application was being analyzed, the foreigner had secured the rights provided for in the Brazilian Constitution, in the international conventions inherent to the refuge, as well as the same rights of those in a regular situation in the country, being able to register with the Individual Taxpayer Register), obtain the Unified Health System (SUS) card and the Work and Social Security Card (CTPS).

These are essential documents for the immigrant to enter the formal labor market, for sending remittances and all the demands of the new life in the country. However, the means available for processing these requests in border cities were meager, which is why the completion of the process took a few weeks and even months. As a result, small border towns received more and more immigrants,



who were held in them, waiting for the solution regarding the documentation process. Overcrowding of the immigrant shelter has become a frequent problem, generating great social repercussions, as the community complained about the precarious conditions of the place and the media denounced the crisis.

In March 2011, considering the lack of legal support on the issue of asylum seekers and the pressure from civil society that provides assistance to immigrants, the CNIg came up with an exceptional solution for the case of Haitians. For the first time, under Normative Resolution No. 27/1998, which authorizes the agency to discipline special situations, it decided to authorize a group of 199 Haitians to remain in national territory, whose demand had been rejected by Conare. The reasons given by the Council indicated that the proposed migration policy aimed to meet a pressing demand, presenting an extraordinary and individual character, referenced to that particular context (CNIg, 2011).

Throughout 2011, the number of requests forwarded to the CNIg was increasing and, in December, 632 permits of permanence had already been granted. For analysis, within the scope of Conare, there were more than 1,000 demands and approximately another 3,000 pending between the Federal Police and the Committee. Although it met the urgency of that first year, to some extent, the adoption of an unusual mechanism to try to regularize the Haitians' permanence also contributed to the expansion of the flow. In a global context of greater border control, especially in the countries of the global north, after the financial crisis of 2007-2008, the procedure implemented in Brazil guaranteed access to documentation to those who met the established requirements, without the risk of deportation.



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The fact is that the legal uncertainty regarding the situation of Haitians remained, while their arrival across borders grew, as did social pressure in the daily lives of Amazonian cities. Little by little, the government was convinced to use a differentiated migration mechanism that would allow Haitians to enter the country directly. And so, in January 2012, after an extraordinary meeting, the CNIG announced RN No. 97/2012, which had an immediate impact on the treatment of Haitian immigration. Since then, the policy of assisting Haitian nationals has changed: upon the request of refuge made by them at the Federal Police, this rule guaranteed them the granting of a special residence visa, valid for five years, which can be renewed if regular working conditions in the country have been proven (BRASIL, 2012).

Haitians began to rely more quickly on the processing of their documentation, because, with the protocol of the humanitarian visa application, they could accelerate the removal of other documents in up to a week. In turn, immigrants of other nationalities also applied for asylum, but, as they did not have the same support given to Haitians, who secured the automatic visa, their processes followed the conventional procedure, requiring more time for them to have access to the request protocol and could obtain the rest of the documentation. In addition to the well-demarcated economic, cultural and religious differences between the groups of immigrants received in Acre, this political factor distinguished Haitians from the others, contributing to the strengthening of relations between them.

The Brazilian government, in proposing the granting of visas by the Consulate of Brazil in Haiti, had as its objective not only to organize the migratory flow since its origin, but



also to combat the role of the illegal entry networks that promoted the displacement of Haitians to Brazil. However, the situation of those who would have started the migratory journey before the regulation was issued and reached the triple Brazil-Bolivia-Peru border, when it was already in force, remained unsolved. This group, composed of approximately 1,000 immigrants, remained stranded in the Peruvian municipality of Iñapari or in the Brazilians Assis Brasil, Brasileia and Epitaciolândia. On the Peruvian side, about 250 people were prevented from entering Brazilian territory, as they did not have the new visa. On the Brazilian side, those who were sheltered in the public shelter had to wait for a decision on the authorization of their stay (CNIG, 2012).

The uncertainty and insecurity of these groups aroused the manifestation of several social segments and sectors of the public power, including the Federal Prosecution Service, which filed a lawsuit against the Union. Although cornered, the immigrants also reacted and among them a group even started a hunger strike due to the lack of conclusive answers from the authorities to the problem. In April 2012, faced with a tense scenario, the Ministry of Justice decided, unilaterally, that it would once again receive requests for refuge from Haitians, allowing those detained in Peru the possibility of regularly entering Brazil.

The ministerial action had repercussions and intensified the discussions between the bodies involved with the international migration agenda. If, on the one hand, it is necessary to recognize that the Brazilian government has sought to regularize Haitian immigration, on the other, it is also necessary to assess the effectiveness of the instituted resolution. For most Haitian citizens, compliance with all



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stages of the visa process has always been difficult. Among the onerous requirements to apply for a visa are, for example, possession of an updated passport, residence in Haiti attested by a certificate, declaration of a good record and payment of a fee of US\$ 200.00 to issue the document.

According to data from the Brazilian consular service, of the 100 monthly visas allowed to be issued in Port-au-Prince in February 2012, only 30% of them were granted. Among the reasons for this, bureaucratic requirements were the biggest obstacle. Subsequently, with the greater dissemination of the measure established by the Brazilian government, the number of requests increased and the quota provided for in the resolution became insufficient to meet the demand. This limit became a new barrier for those who wished to emigrate to Brazil.

Although the application of RN No. 97 sought to solve the problem of the high concentration of immigrants, which became a matter of public calamity in the border cities of the Amazon, its effects were not exactly as expected. Just as the arrival of Haitian immigrants on the undocumented route continued to grow, the issuance of a monthly fee by the Consulate proved to be insufficient, with high demand for appointments, long lines formed in front of the agency and numerous waiting lists. To improve service, in 2013 the Brazilian government lifted the restriction on the maximum number of visas to be granted and also authorized the consular service of Ecuador and Peru to issue the visa, considering that these countries were part of the route used to Brazil. Even so, the situation has not improved significantly. In the Acre border cities, the dilemmas remained the same as before the norm was enacted. In the public shelter



in Brasileia, for example, aimed at the provisional reception of immigrants, the problem of overcrowding was constant, as was the threat of the collapse of services.

In field surveys carried out by the GPMTA, between 2010 and 2016, the records indicate that, even if already documented, most immigrants tended to stay there, awaiting the opportunity to travel on government chartered buses, or the arrival of companies that recruited them to work in the south-central part of the country. Eventually, when they were able to receive funds sent by the family that stayed in Haiti or by relatives and friends, residing in some part of the world, in networks of contacts, they organized the departure of Acre themselves.

In their interviews, the immigrants also explained that, although the trip with the co-monitoring networks through the Interoceanic region was costly, long and dangerous, this was the best strategy to be able to enter Brazil, with the certainty of being documented in Acre and without risks of deportation. According to them, the process for acquiring a visa at the Consulate of Port-au-Prince was bureaucratic and time-consuming, offering no guarantees that it would be positive, as it was required to present a series of documents that they were unable to comply with. In addition, they reported the existence of networks of corruption in the agency, with the sale of seats in the queues of services and high charges for facilitating the issuance of visas, which required them much more time and resources (MAMED, 2016; 2017).

In light of this, it is again possible to think that governmental actions may have stimulated Haitian immigration, which unfolded in a unique way in the country.



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The illegal entry networks have expanded their performance, establishing points of support throughout the route, including Ecuador and Peru. This increased the volume of Haitians arriving in the border cities, including via new routes, via Argentina, Bolivia and Venezuela. For immigrants, there were two possible ways to enter Brazilian territory: one on a regular basis, upon obtaining a humanitarian visa, according to the guidelines of RN No. 97; and another via asylum request, after undocumented entry across the country's northern borders. The attempt to establish a migratory policy, broad and standardized, proved to be somewhat contradictory.

In 2015, the Brazilian government undertook new actions to try to solve the visa issue problems at the Consulate in Port-au-Prince. Agreement signed between the Foreign Ministry and the International Organization for Migration (IOM) allowed the establishment of a visa processing center, in which the candidates' documentation was previously analyzed and then passed on to the consular team for final registration. This new procedure added speed to the procedure and the Consulate reached the mark of 500 visas issued per week, including permanent visas and family reunions.

During the deployment of Haitian immigration in Brazil, it is worth noting that, in 2010, four countries in South America (Ecuador, Peru, Chile and Argentina) did not require a visa for Haitians to enter their territory, making free entry possible for Tourism trip. However, despite this ease of access, only Brazil has become the final destination for Haitian immigration, presenting large numbers in the last decade. This situation may indicate that this flow was not only motivated by the relative ease of entry into the country,



as critics suggested to the government measures adopted, but also had a definite factor in a definite project to establish itself in Brazil.

Peru, starting in 2012, adding its efforts to those of the Brazilian government, began to demand a visa from Haitians who passed through its territory. Ecuador, in 2013, drafted a measure to restrict the entry of Haitians, which ended up not being implemented. After that, in 2015, the country's Ministry of Foreign Affairs and Human Mobility imposed new requirements for the entry of Haitians. Since then, Haitians who intend to enter Ecuadorian territory for a maximum period of 90 days, for tourist purposes and who do not have a valid visa, must register on the consulate's website and wait for authorization to travel to the country.

Associated with the public civil action brought by the MPT-AC in 2015, these measures had an effect on the arrival of immigrants across land borders, and their flow through the North region reduced. When the Acre government decided, in 2016, to deactivate the shelter it had maintained for six years, the number of immigrants received had the lowest levels. At that time, a scenario of economic and political crisis was advancing in the country, generating dramatic consequences for the immigrant community, whose income became increasingly insufficient for their maintenance. With the high devaluation of the real against the dollar, for example, Haitians began to face severe difficulties to regularly make remittances to their families in Haiti, considering that all the financial operations necessary for this are carried out and taxed in currency. American.

Since then, a new dimension of the flow has emerged and Acre, in addition to being a gateway for immigrants, has



also become a gateway for those who decided to return to Haiti or try other migratory destinations, such as Argentina, Chile, Colombia, Guyana and the United States (MACHADO, 2016). The first surveys on this process indicate that immigrants, since they already have knowledge of the route and it presents itself as a more economical option, decide to return to Acre, using new or old networks, renewing or not debt mechanisms (ANÍBAL; RIBEIRO; COVELLO, 2015; SANT'ANNA; PRADO, 2016).

Throughout the years of greatest arrival of Haitians (2010-2016), the shelter molded in Acre revealed a role by the State as a mediating agent in the mobility and organization of the workforce. When entering as asylum seekers, Haitians were documented, but provisionally, as they had access to a visa that allows them to enter the labor market and can only be renewed with proof that they are working. Upon receiving, sheltering, feeding and documenting them, thinking of their humanity in terms of survival, and partially, due to the provisionality and conditioning for access and renewal of the visa, Brazil confirmed the understanding that they only have meaning for work. In other words, they must be functional for the productive sectors, because in general this is the horizon of integration in the society that hosts (SAYAD, 1998).

The circumstances in which they arrived in Acre and the way in which it was managed politically by the government contributed to this flow representing a precarious pattern of insertion in the labor market (VILLEN, 2018). This means recognizing that the condition of poor, black, undocumented immigrant, without knowledge of the language and little schooling affected the division of labor itself. All these elements concern the social inclusion of the immigrant,



which in reality tends to be precarious, since, in the work trajectory built by him, the marks of discrimination and over-exploitation are evident, as they have the lowest wages and are busy in tasks more manual, manual, dangerous and unhealthy (BASSO, 2013).



Immigrants in line for entry and registration by the government at the ninth public shelter in Rio Branco (AC) (Photo: Altino Machado for GPMTA, abr. 2015).



The existence of water for drinking and bathing on the camp grounds was a source of great tension, given its constant scarcity, especially in circumstances of overcrowding. With few taps around the place, they huddled with plastic bottles in their hands (Photo: Altino Machado for GPMTA, May 2015).



Immigrants undergoing a screening process for an interview and medical examination carried out by a meatpacking company inside the ninth shelter, in Rio Branco (AC) (Photos: Altino Machado for GPMTA, May 2014).



In front of the entrance gate of the shelter, the immigrants board the buses chartered by the government, which took them to the cities of the center-south of the country (Photo: Altino Machado for GPMTA, Jun. 2015).



Not to conclude: the process of building a humanitarian migration policy

The episode of Haitian immigration in Brazil is part of a broader process of restoring the country to the contemporary migration ecosystem. Although its relevance in numerical terms can be highlighted, its importance is mainly related to the way in which the flow occurs and to the challenges posed to Brazilian society.

What happened with the Haitian case indicates that, although the attributions of the bodies that take care of migration are defined in the legal instruments, there is an imperative need for a broader coordination of actions, which also involves the constant evaluation of the applied measures. The use of the refuge mechanism to circumvent impediments to entry and stay in the country, for example, contributed to the generation of distortions, which overburden the structure of public agencies with demands that are not theirs.

The absence of planning, articulation and evaluation of the scope and consequences of the measures adopted can, as happened in the Haitian case, produce opposite effects. It is not enough to institute measures to resolve an emergency situation, without considering the impacts on the available structures, physical and human. Likewise, it is not satisfactory to treat migration as a theme of a single nationality, instead of understanding the complexity of migratory systems.

The Haitian experience showed the need to know the situation in depth, considering its multiple dimensions, looking at conflicts arising from implemented actions, under penalty of the government acting as a supporting agent



in migratory processes that increase vulnerabilities and disrespect for the immigrants' human rights. The production of "undocumented immigration" or "irregular immigration" does not necessarily occur through border surveillance; it can also occur due, for example, to state bureaucracy, when forwarding the analysis of each immigrant profile differently, resulting in humanitarian emergencies.

The advances proposed by regulations of the bodies related to the migration policy have shown to be consistent with the logic of protection of human rights, refuting the securitist doctrine. However, they are related to issues of permission to enter, stay and protect work, not considering other fundamental aspects of managing migratory flows, such as their safe and active insertion in Brazilian society. In these terms, the generosity invoked by the granting of the humanitarian visa does not replace what should be an effective migratory policy of the State, capable of minimizing deficiencies in assistance and protection.

The Haitian case, far beyond the resolutions of the CNlg, made it possible to resume the reflection on the Brazilian immigration law, which effectively entered the public agenda. It meant the historic opportunity for discussion around legislation that is more consistent with the constitutionally established principles and with the international commitments signed by the country. In view of this, the new legislation attests to the modernizing step of Brazil in relation to its legal instruments on the subject, but its implementation must consider a primordial process of sensitization of the various social segments about the reality of international migrations.



The issue of the immigrant's vote, for example, is a core element of this process, which, for the time being, has not evolved. This impediment restricts their social insertion, since it limits political action for rights. The exclusion of this participation endorses a framework of subordination, which affects the immigrant community from the point of view of citizenship. The debate on humanity, rights and citizenship for immigrants does not only boost the international migration agenda. More than that, it challenges the humanitarian discourse of those who receive, shelter and document immigrants so that they can enter the workforce, but it does not guarantee their permanent permanence and protection as workers and citizens in the country. Therefore, the construction of a humanitarian migration policy has advanced, but it is far from being completed; quite the contrary, it is an open and disputed process.

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CHAPTER 3. ACTORS OF THE BRAZILIAN IMMIGRATION POLICY



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generated countless popular demonstrations, which in turn have been suppressed with great violence. The population, without many options, has increasingly chosen to leave the country and move to a neighboring country, expanding the migratory movement.

In this sense, it is estimated that more than 4 million Venezuelans have left the country in recent months, in search of better conditions of safety and life. In the South American regional context, the destinations most sought after by migrants are Colombia, Peru and Ecuador. However, Brazil is among the major recipients (there are believed to be around 360,000 Venezuelans living here, according to data from the International Organization for Migration – IOM). In order to have an idea of the migratory impact, in 2019, 252 migrants per day expressed interest in staying in Brazil, either as temporary residents or as refugees. In other words, more than 90 thousand people requested support from Brazil. This uncontrolled influx of people, combined with the socioeconomic weaknesses of the state of Roraima, contributed to its collapse, mainly in the health, education and public security systems. In addition, urban chaos was installed in the cities of Boa Vista and Pacaraima (photos 1 and 2). Consequently, in March 2018, the Acolhida Operation was initiated.





Photo 1 – Tancredo Neves Gym
Fonte: Acolhida Operation



Photo 2 – Centro Cívico Square
Fonte: Acolhida Operation

2. Brazil's response

Faced with the chaotic situation faced by the state of Roraima, the federal government issued two initial decrees and a law, *in litteris*.

Decree No. 9,285, of February 15, 2018 – recognizes the situation of vulnerability resulting from the migratory flow caused by a humanitarian crisis in the Bolivarian Republic of Venezuela.

Decree No. 9,286, of February 15, 2018 – defines the composition, powers and operating rules of the Federal Committee for Emergency Assistance for welcoming people in situations of vulnerability resulting from the migratory flow caused by a humanitarian crisis.

Law No. 13684, of June 21, 2018 – Provides for emergency assistance measures for the reception of people in situations of vulnerability resulting from the migratory flow caused by a humanitarian crisis; and makes other arrangements.



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The work started in March 2018, guided by three essential tasks: Border Planning, Housing and Interiorization. In this sense, a new decree was issued in August 2019, aiming at restructuring and defining roles for ministries, as outlined in art. 6 of the aforementioned law.

Art. 6 The Federal Emergency Assistance Committee will have the following Federal Subcommittees:

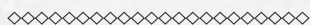
I – Federal Subcommittee on Reception, Identification and Screening of Immigrants; (coordination MJSP)

II – Federal Subcommittee on Reception of Immigrants in Vulnerable Situations; (Min Citizenship coordination)

III – Federal Subcommittee for Interiorization; (Min Citizenship coordination) and

IV – Federal Subcommittee on Health Actions for Immigrants. (coordination Min.of Health).³

Thus, the Federal Emergency Assistance Committee, chaired by the Casa Civil, was organized in subcommittees, to act in the emergency care of Venezuelan migratory flow in the three aspects already mentioned. The Casa Civil is also responsible for the operational coordination of the works, appointing the operational coordinator of the Acolhida Operation for the state of Roraima and the city of Manaus, also commander of the Humanitarian Logistics Task Force.



3 Decree No. 9,970, of August 14, 2019 – Deals with the Federal Emergency Assistance Committee.



According to art. 3 of Resolution no. 1, of January 16, 2020, of the Civil House of the Presidency of the Republic, will be the responsibility of the operational coordinator, in addition to the attributions provided for in § 2 of art. 2 of Decree No. 9,970, of August 14, 2019:

I – to establish the necessary coordination in conjunction with federal, state and municipal bodies in the State of Roraima and in the Municipality of Manaus, State of Amazonas, to meet the migratory flow caused by the humanitarian crisis in the Bolivarian Republic of Venezuela;

II – to request logistical support from the Executive Secretariat of the Federal Emergency Assistance Committee for the execution of the actions necessary to attend to that referred to in item I;

III – to forward to the Executive Secretariat of the Federal Emergency Assistance Committee the support needs for the performance of its duties; and

IV – to coordinate, within the attributions foreseen by the Federal Emergency Assistance Committee, the support to the activities developed by the other involved bodies.

For Border Management actions, it was necessary to deploy a series of administrative structures in order to speed up the service to immigrants, since the existing ones have completely collapsed. Thus, in Pacaraima, the border city, Boa Vista and finally Manaus, specific facilities were applied to deal with the flow of Venezuelans. In these facilities it



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is possible to obtain the protocols of refuge or temporary⁴ residence, CPF, vaccination, digital work card and start, in good conditions, the interiorization processes, which are dealt with further ahead.



Photo 3 and 4 – Facilities deployed in Pacaraima
Fonte: Acolhida Operation

Once the migratory flow was organized, it was necessary to give dignity to the people who were scattered on the streets and squares of the state of Roraima. In this sense, shelters were organized, in partnership with UNHCR⁵, to receive Venezuelan migrants. Today there are eleven official shelters in Boa Vista, where people have a roof, food and adequate medical and sanitary treatment. In addition to these facilities, others have also been organized to serve migrants who may not have had access to the shelter. This is the case of the structures organized on the Boa Vista bus station, one of the places most affected by urban chaos.





Photo 5 – Housing Facilities in Boa Vista
Fonte: Acolhida Operation



Photo 6 – Support facilities at the Rodoviária in Boa Vista
Fonte: Acolhida Operation

After the stabilization of the previous actions, the most important task today of the Acolhida Operation is the internalization of immigrants. This stage is of paramount importance, as the Venezuelan flow continues at a steady pace, but the state's social support systems do not absorb the demands, nor does the job market present this possibility. Therefore, the process of internalization is what is promoting the social insertion of refugees in other parts of Brazil.

3. The Interiorization Process as a factor of social insertion through work

Interiorization is one of the three basic activities of the Operation (the other two are Planning and Housing, as previously explored). It is an activity coordinated by the Ministry of Citizenship, through the Federal Subcommittee for Interiorization. This is the orderly movement of immigrants from Venezuela, stationed in the states of Roraima and Amazonas, towards other places in the country that have better conditions for the absorption of this population mass. As of this writing, more than 30,000 Venezuelan refugees



and migrants have already been interned in several Brazilian cities, **through the four existing modalities:** Institutional, Family Reunification, Social Meeting and Proposed Job Vacancy Proposed. In addition, given the prioritization of this activity, there is a significant increase in the number of people interned as of June 2019, as a result of greater integration between the actors involved, with emphasis on the launch of the Acolhedor Sistem.⁶

In this context, it appears that the planned displacement of Venezuelan migrants and refugees to other states in the country is the only solution for promoting “real conditions” for sustainable socio-economic integration, relieving the pressure on public services in Roraima.

After crossing the Venezuela-Brazil border, Venezuelans move to the Reception and Identification Post (PRI) of Pacaraima/RR and express their desire for “refuge” or “temporary residence”. Then, they go to the Interior and Screening Post (PITrig) of Pacaraima/RR, an opportunity in which the refugee and migrant are registered in the Acolhedor Sistem, starting the process of interiorization.

During registration, the internalization modalities are clarified, namely:

- 1) Family Reunification: the migrant and refugee has the opportunity to find a family member (as long as he/she has a documented bond), who is already in the destination city.



6 The Acolhedor Sistem is a software developed by the Brazilian Army's Land Operations Command to perform the registration of immigrants, qualifying them and preparing them to be interiorized.



- 2) Social Meeting: the migrant and refugee finds a friend in the destination city, or some other recipient who is able to receive him/her voluntarily.
- 3) Signaled Job Opening: through previous contact with companies and selection within the competence bank, the migrant and refugee has the opportunity to be interned with a job and a financial scholarship to maintain themselves until receiving their first salary.
- 4) Institutional: through the United Nations Refugee Agency, the United Nations High Commissioner for Refugees (UNHCR), the migrant and refugee leaves the shelters of Boa Vista or Pacaraima and settles in shelters in other cities.



Photo 7 – Interior Office in Boa Vista
 Fonte: Acolhida Operation



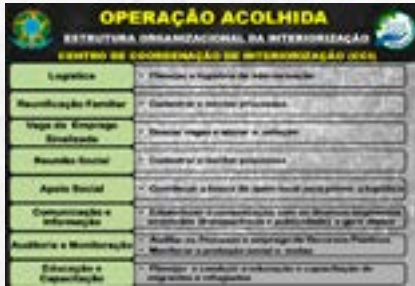
Photo 8 – General Balance of Interiorized until Jan. 2020
 Fonte: Acolhida Operation

In the course of this process, several improvements were implemented, aiming at the optimization and effectiveness of interiorization actions. In this sense, subordinated to the Subcommittee for Interiorization, located in Brasília, coordinated by the Ministry of Citizenship, the Interiorization



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Coordination Center (CCI) was organized in Boa Vista-RR, and the Regional Interiorization Centers, linked to the CCI and deployed spatially where the Military Regions are located, within the organizational structure of the Army. The following photos exemplify this development.⁷



OPERAÇÃO ACOLHIDA	
ESTRUTURA ORGANIZACIONAL DA INTERIORIZAÇÃO	
CENTRO DE COORDENAÇÃO DE INTERIORIZAÇÃO CCI	
Logística	Atividades de logística de administração
Recrutamento e Seleção	Selecionar e indicar profissionais
Vagas de Emprego	Realizar vagas e indicar a seleção
Recursos Humanos	Controlar e analisar processos
Assistência Social	Coordenar a entrega de bens sociais para pessoas e famílias
Comunicação e Informação	Estabelecer comunicação com os demais órgãos e instituições
Auditoria e Monitoramento	Analisar os processos e acompanhar os recursos financeiros e a prestação de serviços
Educação e Capacitação	Realizar o controle e acompanhar o desenvolvimento de programas e atividades

Photo 9 – Assignments of the JRC
Fonte: Acolhida Operation



Foto 10 – Núcleos Regionais de Interiorização
Fonte: Operação Acolhida

To carry out interiorization, some basic strategic principles need to be taken into account, as detailed below.

- 1) Joint and integrated action by the main actors.
- 2) Control of the constant migratory flow.
- 3) Updated and constant flow of information.
- 4) Standardization of the interiorization process.
- 5) Efficient logistics flow, particularly with regard to transportation, food and accommodation.
- 6) Educational and professional training of migrants and refugees for their local socioeconomic insertion.



- 7) Faithful observation of the legal principles of immigration in the Brazilian State.
- 8) Constant search for partnerships with civil society.
- 9) Wide dissemination of the Acolhida Operation at the national level.
- 10) Sensitization of the productive sectors of the country for the availability of signed job vacancies.

In order to respond to the principle highlighted in paragraph 6, O peração A colhida has devoted special attention, as well as coordinating some initiatives, which will be listed below.

4. The educational and professional training of migrants for local socioeconomic insertion – some initiatives

Among the various working groups (WG) that Acolhida coordinates, one in particular deals with the training of immigrants for their insertion in the labor market. The Roraima Work WG was created with the aim of ensuring coordination between the different local actors of government, civil society and international organizations, in relation to the implementation of actions related to promoting access to dignified work, actions against labor exploitation and the integration process socioeconomic status of the refugee, migrant and local population in the state of Roraima; paying attention to knowledge, synergy, complementarity and non-overlap of activities. Thus, since 2018, the group meets monthly to talk



about the activities that are being developed. The following is an overview of the tasks already carried out and scheduled by the organizations for the year 2020.

a. International Organization for Migration (IOM)

According to the record of researcher Tainá Aguiar (IOM), since 2018, in response to the Venezuelan migratory flow in Roraima and with the aim of facilitating the socio-economic integration of migrants in the state, IOM has been developing several projects in this theme.

Regarding vocational training, in partnership with the National Service for Commercial Learning (Senac), ten courses were offered between 2018 and 2019, nine of them in Boa Vista and one in the municipality of Pacaraima. They were: Female Haircut, Male Haircut, Child Caregiver, Elderly Caregiver, Basic Reception Techniques in Accommodation, Techniques for Waiter, Administrative Assistant in Commerce and Services, Depilation Techniques, Good Practices in Handling Food in Chocolates and Easter Eggs and Manicure and Pedicure. All training courses started with a Basic Portuguese Language Course lasting 20 hours. A total of 212 people participated.

On the subject of entrepreneurship and income generation, two projects were developed in partnership with World Vision. The first had 69 migrants, who learned how to prepare business plans, calculate costs, plan profit margins, understand the local market and the product's target audience, among other fundamental issues to start their business. The 30 entrepreneurs who had the most elaborate projects received financial assistance for the purchase of materials and equipment to start their businesses and were



supported to open MEI. In 2019, the project had a second round, covering 120 people, 10% of them Brazilian. The 50 best projects were financially supported and exhibited their products at a fair organized by World Vision, at Roraima Garden Shopping.

A “community savings and financial management” project was also carried out with World Vision, between the end of 2019 and the beginning of 2020. In it, 45 migrants had the opportunity to learn how to “save money in groups” to invest in their entrepreneurial businesses.

Between 2018 and 2019, IOM held private sector awareness workshops in 13 cities around the country. About 500 people participated in them and were able to better understand how the process of hiring migrants works in the country, in addition to hearing testimonies of good practices and successful experiences. In 2019, at the invitation of the Humanitarian Logistics Task Force, IOM also participated in events and caravans with the same purpose, especially in the South and Southeast regions.

Informative materials on labor exploitation were also produced in partnership with competent public bodies on the topic, with the aim of guiding those who suffered some form of exploitation and did not know where to seek support. Caravans were held in the municipalities of the interior of Roraima with public agents from local bodies and actors from Catholic communities, who serve the migrant public, on how to guide them in complaints of labor exploitation, in addition to guiding migrants themselves on how to proceed in such situations. Still on this topic, support was also provided in two inspection actions in Roraima, at the invitation of the Mobile Inspection Group, of the Ministry of Economy. On



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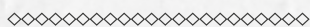
that occasion, rescued migrants received support in relation to migratory regularization, shelter and interiorization.

In partnership with other WG organizations, at the end of 2019 an exhibition of entrepreneurial migrants, Integrarte, was held at Garden Shopping, in which event 40 exhibitors, including migrants and Brazilians, had the opportunity to sell their products, as well as to have contact with potential customers.

According to Tainá, for 2020, IOM will continue to work with training on the themes of entrepreneurship, income generation and financial management, in addition to professional training with migrants in Roraima. Awareness raising with the private sector will also continue to be developed, as well as guidance on labor rights and labor exploitation. Outreach to the private sector will also continue, as well as guidance on labor rights and labor exploitation.

b. United Nations High Commissioner for Refugees (UNHCR)

According to reports from UNHCR researcher Marília Cintra Correa, the Durable Solutions, Livelihoods and Interiorization Units of the UNHCR office in Boa Vista have the mission to implement the UN Refugee Agency's National Livelihoods Strategy regarding the socio-economic integration of its persons of interest⁸ into Brazilian society, developed for the period 2019 to 2021.



8 Among the populations of interest to UNHCR are refugees, returnees, stateless persons, internally displaced persons, asylum seekers and other individuals in need of international protection, such as the current flow of Venezuelans, regardless of their legal status in Brazil.



Market Mapping in the Green Jobs area

Elaboration of research and labor insertion strategy for refugees and migrants in economic sectors related to the environment, the so-called “green jobs”, both via Interiorization (work modality) and via local integration, in the states of Amazonas and Roraima.

Embrapa System in Tarau Paru

Training in agricultural techniques and environmental management for the Tarau Paru indigenous community, in the region of Pacaraima, in partnership with Embrapa. The first objective is to promote food and nutritional security, but the project may have ramifications for commercial purposes, if it is the desire of the community itself.

c. World Vision

World Vision researcher Daniel Pereira reports that, among other activities, World Vision develops the following projects, aimed at training Venezuelan migrants:

- 1) Identify, register and refer migrants to subsistence services, through the establishment of work centers, where beneficiaries are registered and directed to each service offered by the project, for example labor market guidance, work permits and assistance with clothing curriculum vitae, language classes, professional training and entrepreneurship training.
- 2) Labor market and conduct orientation sessions being implemented as follows: after the registration process, orientation workshops are held to help participants understand the local labor market,



successfully participate in interviews, understand their rights and human resources/basic law regulations, understand prevention and assistance mechanisms, access information on education and social welfare services (such as childcare) for parents in order to prevent child labor and other forms of violence.

- 3) Provide technical assistance for issuing CTPS and developing curriculum vitae by supporting beneficiaries to deal with bureaucracy for issuing a Work and Social Security Card. Venezuelans also receive guidance and support for curricula and professional profile registrations by areas of experience and interests. All Venezuelan migrants/refugees identified and registered will be able to access this service.
- 4) Train Venezuelans with Portuguese language skills, offering Portuguese language classes to improve their chances of getting formal employment. The beneficiaries of this activity are chosen by self-interest and approved by the result of a language test (written and oral). The target audience for this activity is migrants with little or no ability to speak the language, so the course is offered at the basic/intermediate level.
- 5) Provide professional training for Venezuelan immigrants, that is, technical training in areas identified as market needs. These courses are selective in the number of participants and targeted at migrants with no previous professional qualification applicable in the Brazilian sectors. The priority



areas for training are: agriculture; hotels, bars and restaurants; repair, beauty and food services.

- 6) Provide job placement services. Together with the Ethos Institute, World Vision maps job opportunities and vacancies to the profiles of migrants in Roraima, São Paulo and Manaus. The correspondence process is done through a digital database, which crosses registered profiles and open opportunities.
- 7) Brazilian employers prepared to hire Venezuelans, with workshops for corporate partners, on the legal process for hiring migrants, as well as inclusive practices to promote the hiring of Venezuelans, especially women. With this, human resource managers are trained with the right information.
- 8) Train and capacitate Venezuelan refugees and migrants to start their own businesses through business training sessions on topics such as financial education, management, cash flow and marketing/distribution strategies, prioritizing migrants with previous or current business experience. In addition, there is the production of materials in the specific context of refugees and migrants of the World Vision Gold methodology.

There is the provision of initial investment for entrepreneurs (US\$ 139 per person) so that they can acquire the materials and services needed to develop their businesses and increase opportunities for income generation. It is important to note that 75 entrepreneurs per city receive this initial investment each year.



Finally, all activities are carried out during the two years of the project. The project started in October 2019 and runs through September 2021. In the first year, the objectives of the project aim to reach 50% of the total number of beneficiaries. However, for some specific activities, such as vocational training and entrepreneurship, this number of beneficiaries participating is less than 50% of the estimated capacity, since the first months of year 1, dedicated to the establishment of the necessary infrastructure and partnerships for the development of the proposed activities.

d. International Humanitarian Federation Fraternity (FFHI)

Researcher Larissa Ramos, from FFHI, reports that the Livelihoods sector emerged from the need to meet the growing demands of job insertion, through the offer of professional qualification and income generation in the Salas Meios de Vida, existing in Boa Vista and Pacaraima, to create paths of social emancipation for those assisted.

Its general objective is to provide means of professional qualification and income generation for those assisted in the shelters of Boa Vista and Pacaraima; and, as specific objectives, offer short-term professional courses that provide opportunities for improvement in the professional qualification of those assisted, provide means of social emancipation, financial autonomy and income generation to the shelter's assisted persons and establish partnerships with the public authorities, entities and institutions places to carry out preventive and informative activities on social and labor rights.



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The activities of the Meios de Vida sector started in December/2019, through the survey of possible potentials, which could become “partners”, and from this survey, the institutions in the city of Boa Vista and Pacaraima were identified, with which they would be possible to maintain the first contact, to check the possibility of supporting the offer of professional courses.

The Federal University of Roraima (UFRR), through Napri, offered with the Extension Project to host Portuguese language courses (40 hours workload), in addition to guidance on social and labor rights for those assisted. The certification of the project is recognized by the Sérgio Vieira de Mello Chair, which would benefit people who go to other Brazilian cities. Such validation is nationally recognized. Therefore, the referred person will carry out a survey of the students interested in participating in the project.

The mobile library of the Social Service of Commerce (SESC) is dedicated to reading and proximity to Brazilian culture, from that point onwards children have access to the play space and can share their knowledge with the monitor. The activities started at the Pintelândia shelter during the month of March.

The Labor Prosecution Service (MPT) held a lecture on labor rights at the Tancredo Neves shelter, where it was possible to address issues related to labor exploitation, access to state goods and services, issuing documents and registering the employment contract. The action was carried out in the shelter's Salasa Meios de Vida and was attended by 20 migrants and/or refugees. Actions like this are of paramount importance in establishing the guarantee of the



rights of this public and emancipating them from the search for their rights and the prevention of their violations.

She reports that they started the first professionalizing course of initiative of the FFHI, the same offered by the Union of Waiters of Roraima, directed to the shelters Tancredo Neves and Nova Canaã, being offered 20 vacancies in each, with workload of 40 hours, for 13 days. Professional training will enable access to the curriculum and enrollment in the union's talent bank. If vacancies arise in the profile, the graduates would be sent to the local job market.

The State University of Roraima (UNIVIRR) will offer the computer course, with a total workload of 40 hours, capacity to serve up to 40 people, and it can be offered at the Bairro Santa Tereza center, for 20 days, accounting for 2 hours.

The Secretariat of Labor and Social Welfare (Setrabes), through the Department of Employment, Labor and Income, made it possible to access handicraft trade fairs, with a focus on selling handicrafts produced by Venezuelan artisans from the shelters Nova Canaã and Pintolândia, in addition to support with the Clube de Mães de Pacaraima, through handicraft workshops for indigenous women.

The State University of Roraima (UERR) will offer preventive and educational actions to the sheltered population with the students of the course, in addition to thinking about offering internship fields.

The Company-School Integration Center (CIEE) carried out an action at the Tancredo Neves shelter, aimed at shelters who entered regular education and normally attend classes. On the occasion, they had the opportunity to clarify their



doubts about the employability of young people in Brazil, their challenges and possibilities, in addition to registering the desire to register on the CIEE platform.

e. Seventh-day Adventist Church Humanitarian Agency (ADRA)

According to Laurie Borreli, from ADRA, SWAN/AASH project - Settlement, Water, Sanitation, Hygiene and Non-Food Assistance for Venezuelan Immigrants in Brazil is an initiative of ADRA in partnership with OFDA/USAID aligned with the strategy of the Brazilian Government and the international community to alleviate the situation of Venezuelan migrants entering Brazil due to the condition of economic and social degradation experienced in their country of origin. SWAN responds to the urgent material need of vulnerable Venezuelan migrants who immigrate to the state of Amazonas, while helping to reduce the overpopulation and social challenges caused by this situation. SWAN aims to serve the latter by providing support for settlement and better adaptation in the destination city that correspond to at least five Brazilian states, coordinating closely (albeit independently) with the relevant UN agencies and in unison with the activity of another Food for Peace project/USAID.

SWAN's goal is to resettle and support the adaptation of 1,440 vulnerable Venezuelans, providing material assistance to 11,500 Venezuelan migrants in the state of Roraima who live outside public shelters. The project foresees a duration of 12 months and its scope of activities covers four sectors of the OFDA: 1. Economic Recovery and Market Systems; 2. Logistic Support; 3. Shelters and settlements; and 4. WASH. They include six subsectors: 1. Development of New Livelihoods; 2. Transport (Air/Land/Sea); 3. Settlements; 4.



Non-Food Shelters and Settlements; 5. Hygiene Promotion; and 6. WASH Non-Food Items.

SWAN does not only provide for the interiorization of families, but also a support at the beginning in a new location, providing support on arrival, such as credit for transportation, communication, purchase of items for home and kitchen, as well as assistance for the first 3 months. rental. In this way, families arriving in the new city have support to start their lives in the new location, minimizing the impact on the cities in which they arrive. ADRA believes that, through SWAN, many families can hope for a new beginning in Brazil and at the same time support the response to the migratory crisis in the state of Roraima.

Until February 2020, the project supported 311 families with 348 jobs in different cities in the states of Amazonas, Bahia, Minas Gerais, Mato Grosso, Paraná and Rio Grande do Sul.

f. Volunteer Association for International Service (AVSI)

According to reports by Christian Eduardo Meni, from AVSI, in Brazil, the association has been operating since June 2018 in the management of reception centers and assistance to the Venezuelan population in Roraima, in support of the Federal Government's Operation Operation, and in partnership with UNHCR. The organization aims to contribute to access basic services and guarantee respect for the human rights of the Venezuelan population sheltered in 8 reception centers, out of the 13 existing in Roraima.

Due to the strong presence of Venezuelans in the state, the Federal Government launched a voluntary internment



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program aimed at facilitating the socioeconomic insertion of Venezuelan migrants and refugees, in addition to relieving migratory pressure at the border. AVSI understood that it should also work with this aspect and created the project Welcomed through Work, financed by the United States Government, with a focus on interning with job openings.

Its execution occurs with the prospecting by AVSI of job openings for companies from all parts of Brazil, or by the analysis of openings received by civil society partners and by the Task Force. Based on this, the organization uses its shelter management project and its proximity to sheltered beneficiary profiles to facilitate their recruitment and selection in the designated spaces, in addition to offering up to three months of housing and social assistance, with food aid. In February 2020, in partnership with the Jesuit Service for Migrants and Refugees, AVSI supported the interiorization of 86 Venezuelans to work in a slaughterhouse in the city of Seara, SC, in 2020.

The initiative also involves professional training courses in the area of service and industry, in addition to Portuguese classes, in order to support local adaptation and expand the chances of employability of this group.

Although interiorization takes place from all shelters, the Rondon 2 Interiorization Center, managed by AVSI Brasil, stands out for also functioning as a shelter destination within a flow with the specific purpose of interiorization in all its modalities, a passage shelter. From it, thousands of Venezuelans left for other places in Brazil. The shelter also carries out a work of adaptation to Brazil and preparation for an internship with psychological independence and conditions for insertion in the labor market.



Among several initiatives carried out so far, the Empoderando Refugiadas project can be mentioned, which was conceived by UNHCR, UN Women and the Global Compact and supported by AVSI teams from the Rondon 2 and São Vicente 1 shelters, which prepared 20 women to work in a department store chain. Women took several courses, in addition to complementary activities offered by AVSI teams to restore self-esteem and awaken the desire to work. At the end of the project, all participants were hired by the company and interned with their families.

After the positive results of this and other projects, the Center maintained this type of activity periodically for its shelters, in order to encourage them to get work. As a result, there is a change in behavior among the sheltered people in Rondon 2 today, and there is a strong search for interiorization due to a vacancy. It is expected to increase the number of internships due to a vacancy at Rondon 2 Center, which today represents 10.7%, compared to 17.1% of social and family meetings and 72.2% of the Shelter-Shelter modality, since its opening.

g. Migration and Human Rights Institute (IMDH)

Researcher Beatriz Patrícia de Lima Level reports that the Migrations and Human Rights Institute, in its activities in Roraima, carries out various activities to support migrants. Among these activities, the IMDH team provides assistance to migrants with information and support on labor insertion in the labor market. Among the activities developed, are the preparation and translation of résumés, referral to the National Employment System (SINE), referral to the Regional Labor Attorney's Office for information on how to file a complaint in case the migrant worker is being harmed,



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distribution of booklets with information about labor rights, help for migrants to enroll in qualification courses at the most diverse institutions present in the city, Portuguese courses for migrant women, and distribution of Portuguese booklets. For 2020, IMDH also has a project for income generation, in which it will provide financial assistance and support for starting a small business, always aiming to provide the beneficiary with training in the area of interest.

h. Jesuit Service for Migrants and Refugees – Boa Vista (SJMR)

The Jesuit Service for Migrants and Refugees – Boa Vista (SJMR), according to Laura Mendes Souza, works with the care of migrants and refugees, with the mission of promoting and protecting the dignity of these people in Brazil. It operates in five main areas: protection, livelihoods, integration, advocacy and pastoral care. The protection front is based on document protection, legal protection and also social protection. The first is related to promoting access to information and support for migratory regularization and obtaining documents. In addition, it assists in the process of requesting asylum and authorization for temporary residence. Legal advice, on the other hand, promotes the entry and follow-up of judicial and extrajudicial demands.

As for social protection, it occurs through the provision of social and family assistance and psychological assistance, making referrals to social assistance, health and education services and handling more vulnerable cases. Our focus is on conducting advocacy practices so that norms and public policies favorable to migrants, asylum seekers and refugees are not only maintained, but also expanded.



On the pastoral front, the focus is on solidarity visits, celebrations, sensitization of communities and parishes, in addition to various campaigns. The integration branch, on the other hand, delves into the issue of language and culture, offering Portuguese courses and promoting socio-cultural integration to those assisted, in addition to projects and strategies to promote peaceful coexistence and the culture of hospitality.

Finally, we have the livelihood sector, responsible for offering the preparation of professional curricula in Portuguese, informational awareness sessions so that migrants, asylum seekers and refugees know their labor rights and duties, in addition to prospecting for formal vacancies. employment in the local market and in other cities in Brazil, as well as guidance to contracting companies and professional training courses.

In 2019, 19 courses were offered, with limited classes of 20 to 30 people, in several areas, such as: cooking, beauty, professional development, customer service, sales, elderly caregiver, among others. Through these courses, 423 vacancies were made available. In a transversal way to the five axes of action, we have collaborated with the strategy of interiorization along with the Acolhida Operation. It works directly in three types of interiorization: via work, via foster homes and through family reunions. When interning via work, the entire process of integrating migrants into the company and in the destination city is followed. The interiorization via reception houses, happens in partnership with entities, mainly of the catholic church, thus providing houses in different cities of the country.



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Each house has a profile and, in order to select the group to be interiorized, it considers several factors, such as the house's own profile, socioeconomic issues and the job market of the destination city, the professional and social profile of the migrant, among others. After this analysis, it articulates with the Humanitarian Logistics Task Force and reinforces the orientations and the contact with the host community until the trip is made, then there is a monitoring stage in which the beneficiaries are supported, with housing, food, and job search. The objective is for the group to be able to enter the labor market, achieving stability and autonomy. The other modality is interiorization. It is through the family reunion, through which we register the families whose receiver has already been internalized by the SJMR, checking the documentation of the beneficiary and the receiver. This type of interiorization is offered following the procedures established by the Federal Subcommittee and with support from the International Organization for Migration (IOM).

In 2019, the SJMR benefited 765 migrants through these three types of internment. For the year 2020, it continues its work with new partnerships, always seeking to protect and promote the dignity and rights of migrants and refugees, following its inclusion and autonomy process.





Flagrant of the training carried out by the aforementioned entities.

5. Final considerations

The Acolhida Operation has been considered a model of success in terms of a country's response to a major migratory crisis, such as that of Venezuela. This is unanimous among the various international entities that visit it, whether they are state authorities (ambassadors from different countries, representatives of the European Union) and non-state authorities (representatives of the ICRC, Unicef, war correspondents of the major international media, among others).

The concern not only with the survival of the people, but also with their professional preparation for the beginning of a new life in Brazil, has been a constant effort of the Working Group, yielding considerable fruits for immigrants in vulnerable situations.



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In this case, the political, social and economic crisis that has hit Venezuela in the last five years has transformed the reality of countries in the region as recipients of displaced populations, by welcoming more than 80% of the more than 5 million Venezuelans who have already left Venezuela³.

Within the United Nations, UNHCR and IOM were appointed by the Secretary General, Mr. Antonio Guterres, to coordinate the interagency response to the flow of Venezuelans in support of government responses. Under the leadership of these two agencies, but with enormous commitment and participation by dozens of other agencies, funds and programs from the United Nations and civil society organizations, the Regional Interagency Coordination Platform, called R4V, was outlined, which, through a collective effort, established annual response plans for refugees and migrants.

In Brazil, the arrival of Venezuelans from 2017 implied a transformation in the work of UNHCR, which from the first moments engaged in the emergency response established on the northern border, especially in the state of Roraima. Until that moment, Brazil had been receiving refugee flows on a small scale, especially from Syria and African countries, since the arrival of Colombian refugees had reduced with the peace process in Colombia.

The displacement of Venezuelans has radically changed this scenario.





*Refuge Requests in Brazil

*Venezuelans

*Other nationalities

According to data from CONARE (see graph above), in 2019 alone, 80,000 more refugee requests were made, which corresponds to eight times the total number of requests in 2016 and almost three times more than in 2015. Two-thirds of requests in 2019 were made by Venezuelan people. In total, nearly 300,000 people are asylum seekers in Brazil, of which half are Venezuelan people.

In addition, the number of refugees recognized in Brazil today is 4 times greater than in 2018, totaling 43,000 people, including 90% Venezuelans. In the Brazilian case, CONARE adopted the extended definition for the recognition as



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interviewees who reported their monthly income, 79.5% had an income below R\$ 3,000, of which 24% had an income below R\$ 1,000. The remaining 20.5% had household income above R\$ 3,000. Among them, only less than 4% declared household income above R\$ 5,000.

The precarious socioeconomic insertion, however, contrasts with the educational level of this population. According to the survey:

Refugees demonstrate high linguistic and school capital above the Brazilian average [...]. In fact, only 2.7% had not completed elementary school and 0.6% declared themselves illiterate, with a total of 3.3%, which contrasts with the 41% of the Brazilian population who are in this situation. On the other hand, 34.4% of the informing refugees completed higher education, in contrast to 15.7% of the Brazilian population who completed the same level of education.

What these data reveal is that, although more educated, the refugee population has less access to employment and income than the Brazilian population.

Several factors may be behind this situation, such as insufficient knowledge of the Portuguese language, for example, especially for some nationalities, and difficulties in the process of recognizing professional certificates and revalidating diplomas. For example, more than 68% of the interviewed refugees who were working did not use their professional knowledge in their current job.

According to the survey, the “job market” was identified as the main obstacle in getting a job by 46.1% of the interviewees. However, there are other obstacles that add



up, such as the lack of mastery of the language and the fact of being a foreigner, remembered by more than 20% of the interviewees. Then there is a lack of resources to look for work, lack of documents and racial prejudice. Deficiency in school education and “having no one to leave children with” complete the list.

On the other hand, there is little knowledge by employers of the refugee population and unfortunately there is still a lot of prejudice against that population.

The survey report found that 41% had reported having suffered some form of discrimination. The fact of being a foreigner was the most cited reason for 73.5%. The fact of being black (racist acts) appears in second place with 52%. Finally, 12.5% of those who reported experiencing discrimination link the act to their sexual orientation, thus configuring the situation of advanced vulnerability of this portion of the refugee population.

The 2017 survey in Roraima had already pointed out a similar problem to that detected in 2019: a significant portion of the Venezuelans interviewed highlighted having suffered prejudice practiced by ordinary citizens whose main reason was the fact of being a foreigner.

The speech that Venezuelans overburden public services and take jobs from Brazilians in Roraima has unfortunately been a constant, and xenophobic demonstrations have eventually occurred, as on 8/19/2018, when a group of Venezuelans had their belongings burned and were forced to cross the border into Venezuela or be protected by security forces. Fortunately, expressions of solidarity and welcome are those that characterize the Brazilian population in Roraima.



[...] The average wages of Brazilians (including naturalized) in Roraima do not change significantly in the period when the Venezuelan flow increases. In fact, between 2017 and 2018, the trend is for an increase in the average wage. In this sense, there seems to be no evidence, at first, that the migratory phenomenon has negatively affected the wages of Brazilians in Roraima”.

In the end, the report takes stock of the presence of Venezuelans in Roraima:

Finally, in a medium/long-term perspective, an exercise to estimate current government revenues and expenses in Brazil in 2018 was carried out with Venezuelan refugees and immigrants. The collection of taxes on income and consumption, social security contributions and investment taxation on the revenue side was considered. On the expenditure side, spending on health, education, social assistance and the prison system was considered. The result indicates that the tax contribution of Venezuelan immigrants to Brazil in 2018 is of the same order as the additional current expenses of the Brazilian State (both in the order of R\$ 100 million). The trend over time is that revenues will increase (with the integration of Venezuelans into the labor market) and expenses will not grow in the same proportion.

The strengthening of the information process for employers and the population in general is fundamental so that the stereotypes and processes that lead to discrimination against refugees and migrants are faced, since, contrary to what these views defend, this population has positive impacts for the country. The theme of racial discrimi-



mination, however, seems to be the same as that existing for the Brazilian population and overlaps discrimination against refugees and migrants because they are nationals of another country.

In the case of Venezuelans in Roraima, the establishment of a voluntary interiorization strategy to access job and income opportunities in other states was a wise move, as, as seen, Roraima (and then Manaus) did not offer enough opportunities to generate self-sufficiency for the entire population that ended, due to difficulties in locomotion to the south-central part of the country, remaining in these locations in increasing numbers. The interiorization strategy implemented by the Federal Government within the Acolhida Operation, according to the guidelines of the Federal Emergency Assistance Committee⁸ and the Interiorization Subcommittee, had the merit of organizing the voluntary displacement of Venezuelans from the North to other regions of the country and, as we will see, to boost the process of integration of relocated Venezuelans, especially access to work and education, in the destination cities.

The survey *A Resposta Humanitária no Brasil: uma análise sobre a Estratégia de Interiorização*⁹, carried out in 2019 by the REACH organization, supported by UNHCR and the European Union, showed positive results of the voluntary interiorization of Venezuelans in access to work and income. In terms of monthly income, the average that families received before



8 Committee instituted by art. 6 of Law No. 13,684, of June 21, 2018, and regulated by Decree No. 9,970, of August 14, 2019.

9 Available at: www.acnur.org/portugues/wp-content/uploads/2020/07/REACH_Relat%C3%B3rio-de-Interioriza%C3%A7%C3%A3o_-FINAL_PORTUGUESE.pdf.



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deficit of insertion when compared to the average insertion of the Brazilian population, which demands specific policies to support this population, as well as the population. refugee in general, as we saw earlier.

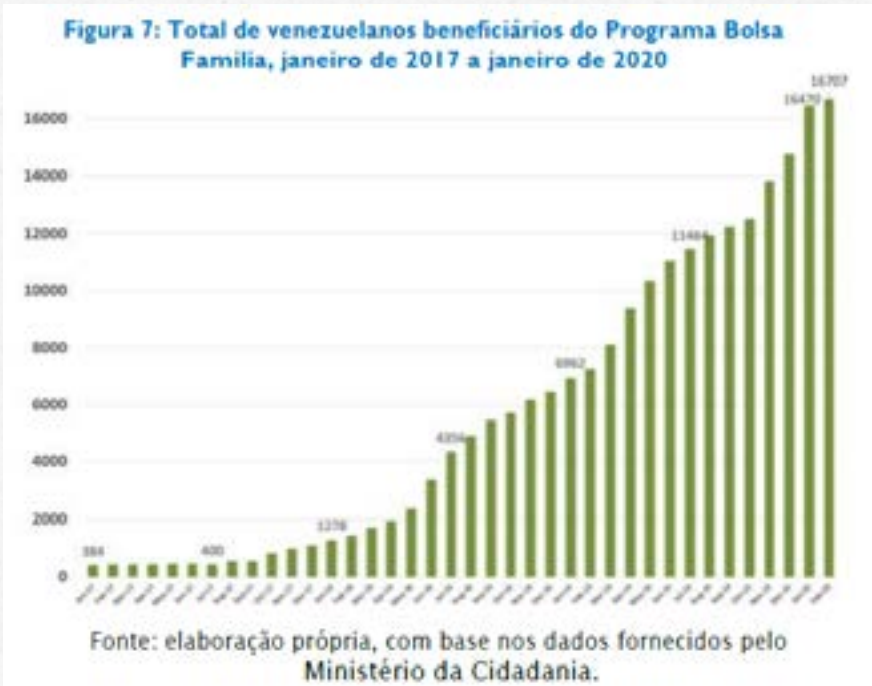


*Figure 4. Number of Venezuelans hired in the formal industry, 2018 (left) and amount for the year of 2019 (right).

*Source: RAIS (2018), OBMigra/CAGED (2020)

Access by the Venezuelan population to social assistance, especially to CadÚnico, has also increased, especially access to the Bolsa Família Program. Registration records in the Cadastro Único show that the Brazilian population and the Venezuelan population in Brazil have similar proportions of poor and extremely poor families. However, approximately 21% of Brazilians access Bolsa Família, while only 6.5% of Venezuelans do so.





*Figure 7: Total of Venezuelans benefiting from Bolsa Familia Program, January 2017 to January 2020.
 *Source: own elaboration, based on data provided by Citizens' Ministry.

Another survey carried out between UNHCR and the ILO in 2019 points to some conclusions similar to the research carried out on the socioeconomic profile of refugees, but brings the focus to the need for better qualification of public services in the labor market:¹²

Migrants are prevented from finding work due to the fragile conditions of the labor market as a result of the recent economic recession in Brazil, on the demand side, and due to the lack of information and support services, on the supply side. Information and support services are needed to inform migrants of their rights, to



provide updates on labor market conditions in specific sectors, to connect job seekers with job openings that fit their profiles, to provide day care services for women job seekers, and to adapt migrants' qualifications to the Brazilian context. Qualified workers, however, are not able to have their skills and knowledge recognized due to the cost and complexity of the Brazilian certification process. In this way, migrants are prevented from finding dignified work, even though most have the necessary documents to access formal jobs.

And he continues:

The demand for migrant work exists due to their positive qualifications, including loyalty and dedication, good sense of customer service and ethical work. Most of this demand is not realized due to companies' unfamiliarity with the formalities that apply when hiring migrant workers and the fear of not complying with regulatory requirements [...]. Demand for migrant work is currently not met due to the absence of tailored recruitment services, which forces migrants to resort to informal job search methods. The recruitment services currently available to migrants are inadequate for a number of reasons: the public sector recruitment platform (SINE) is not a geographically unified system and those seeking employment are limited by the rigidity of the computerized system; NGOs offer a decent service but are impacted by a lack of resources and insufficient coordination; the private sector prefers to focus its efforts on Brazilian workers, who are more easily inserted.

In view of this scenario, UNHCR has been acting in a complementary manner to the actions established by the



capacitação dos atores envolvidos no acolhimento, integração e interiorização de refugiados e migrantes no Brasil project, implemented in 2018/2019 by ESMPU in partnership with UNHCR, other UN agencies and civil society organizations. The Sergio Vieira de Melo Chair¹⁵, which since 2003 has been implemented by UNHCR in cooperation with CONARE, has been instrumental in ensuring that refugees and asylum seekers have access to rights and services in Brazil, offering valuable support to the integration process local.

UNHCR also provides a series of services to support the cultural and socioeconomic insertion of the refugee population in Brazil through its implementing partners, such as Portuguese courses, professional training, support for revalidation of diplomas, training, and support for entrepreneurship, preparation professional curricula, preparation for job interviews, referral to employers, financial education, among others.

Finally, the engagement of the private sector and development actors is noteworthy. Projects such as the Refugee Relocation Support Program (PARR)¹⁶, Empoderando Refugiadas, and the Empresas com Refugiados¹⁷ platform have been supporting the insertion of refugee people in formal work. More recently, UNHCR has partnered with the International Finance Corporation (IFC), the World Bank Group's private sector arm, to support the financial insertion of the refugee population.



15 Available at: www.acnur.org/portugues/catedra-sergio-vieira-de-mello.

16 Available at: www.refugiadosnobrasil.org.

17 Available at: www.empresascomrefugiados.com.br.



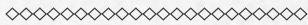
Today we have a better understanding of how refugee people live in Brazil and their challenges, and with that there are better possibilities for structuring public policies aimed at supporting the cultural, social and economic insertion of this population, which, as we have seen, is not only important for refugees, but also for the Brazilian population, since it will benefit from the contributions of refugee people in multiple dimensions. The role of UN Agencies has been relevant to complement the efforts of public authorities, civil society and academia; and as a mobilizing force for the private sector and development agents.



The labor integration of migrants in Brazil and the role of the International Organization for Migration

Stéphane Pierre Rostiaux¹ and Carla de Lello Lorenzi²

Migration has historically been a fundamental part of Brazilian society, being recognized as such by the Federal Constitution and, more recently, by the New Migration Law (Law No. 13,445/2017). In recent years, with the significant increase in the flow of people from countries such as Venezuela, Haiti and Bolivia, the migratory theme has been gaining more space in the national public debate, and



1 Stéphane Pierre Rostiaux was born in Antananarivo, Madagascar, in 1970, and was raised in Djibouti and Morocco. He is a French citizen. After completing his studies in Agricultural Engineering in France, Mr. Rostiaux started working for French Cooperation in Mozambique before joining the International Organization for Migration (IOM) in 1994, having worked for the Organization in several countries. His work in the field of migration, humanitarian attention and development spans 25 years.

His career at IOM led him to field operations in Mozambique, Mali and Congo, including the management of ex-combatant reintegration programs. In 2003, he was appointed to his first representative post in Morocco. He then became deputy director of the IOM Regional Office for West and Central Africa in Dakar and, in July 2017, was appointed Head of Mission in Brazil.

2 Carla de Lello Lorenzi leads projects on economic integration of migrants and refugees at IOM in São Paulo. Previously, he led the IOM team in Pacaraima, RR, on the Brazil-Venezuela border, as part of the humanitarian response of the Acolhida Operation. With a degree in International Relations from the University of São Paulo and a master's degree in Human Rights from the London School of Economics and Political Science, Carla has worked in the field of migration, human rights and development for almost 10 years, having worked in Israel, the United Kingdom and the United States.

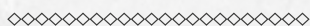


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initiatives aimed at the integration of these populations have become even more relevant.

For the International Organization for Migration (IOM),³ the United Nations Agency for Migration, of which Brazil has been a Member State since 2004, the migratory phenomenon is inevitable and, when it occurs in a safe, orderly and dignified manner, it is beneficial both for migrants and for the communities of origin, transit and reception. Considering this reality, IOM works with partners in more than 100 countries to help them face and understand the challenges of migration, to encourage economic and social development catalyzed by migration and to preserve the human dignity and well-being of migrants and refugees.

The integration of the migrant and refugee population is essential to guarantee the well-being, stability, social harmony and prosperity of society and, for that, requires governance policies and coordinated and effective actions. This integration includes all dimensions of social life, and the economic scope is crucial for the well-being and dignity of migrants, given its primary role in the achievement of autonomy, economic security, and full inclusion in society and contribution to the development of society. Therefore, it is essential to guarantee full access to dignified work and to strengthen mechanisms of continuous protection for vulnerable migrant people who may be the target of discrimination and abusive and exploitative practices, in addition to being one of the most affected populations in crisis situations.



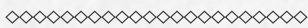
3 International Organization for Migration. For more information: <https://brazil.iom.int>.



Migrants and refugees, in Brazil and in the world, face several challenges for their sustainable insertion in host societies and, in this scenario, the IOM is at the forefront of initiatives to strengthen migration management and governance. Through the Migration Governance Framework (MiGOF)⁴, IOM develops activities centered on principles and objectives that, if respected and fulfilled, can ensure a safe, orderly and dignified migration. In Brazil, IOM acts in a coordinated manner with the main actors of national society in strengthening policies for economic insertion and combating labor exploitation, in order to promote access to sustainable livelihoods, protection and autonomy for the migrant and refugee population.

WORK AS A MEANS FOR ECONOMIC DEVELOPMENT AND SOCIAL INTEGRATION

The 2030 Agenda recognizes international migration as a mechanism that can contribute to the Sustainable Development Goals, strengthening cooperation between countries and institutions at different levels. Considering this phenomenon, it is essential to promote the sustainable development and social cohesion of the migrant population in order to mitigate potential costs and socioeconomic impacts

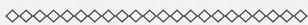


4 The MiGOF principles consist of: (1) adherence to international migrants' rights standards; (2) formulation of policies based on evidence and an integrated government approach; and (3) building partnerships to deal with issues related to migration. Its objectives are: (1) promoting the socioeconomic well-being of migrants and society; (2) responding effectively to dimensions related to mobility in contexts of crisis; and (3) ensure that migration takes place in a safe, orderly and dignified manner. In: INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM). Migration governance framework. 2016. Available at: https://publications.iom.int/system/files/migof_brochure_en.pdf



In the host communities, migrants can contribute by filling job openings, minimizing demographic impacts such as an aging population, adding new skills and knowledge and fostering the economy through entrepreneurial measures and with tax contributions. In Brazil, for example, a study conducted by the Public Policy Analysis Directorate of the Getulio Vargas Foundation (FGV DAPP), the International Migration Observatory (OBMigra) and the Federal University of Roraima (UFRR) revealed⁷ that from 2016 to 2017, when the increase in the Venezuelan flow in the state of Roraima was already a reality, the GDP of the state grew 2.3%, while in the average of the Brazilian states the growth was 1.4%. The study also revealed that the tax contribution of Venezuelan immigrants to Brazil, in 2018, matched the additional expenses of the Brazilian State with the response to the flow. Thus, it is clear that in the long term and with the sustainable and continuous integration of migrants, the tendency is for their tax contribution to exceed government expenditure.⁸

Therefore, in order to ensure that the potential of the migratory phenomenon is reached, it is necessary to promote economic self-sufficiency and autonomy for the migrant population through innovative and coordinated solutions. In this context, IOM works in a network with different levels of public management, civil society, the private sector, strengthening its capacities and promoting the participation and inclusion of migrants as subjects in the definition of public



7 GETULIO VARGAS FOUNDATION (FGV). A economia de Roraima e o fluxo venezuelano: evidências e subsídios para políticas públicas. 2020. Available at: <https://data2.unhcr.org/en/documents/download/73853>.

8 Idem, *ibid*.



policies⁹ for access to sustainable livelihoods and that strengthen the access to dignified work, social inclusion and combating discrimination and xenophobia.

ACCESS TO THE LABOR MARKET

The challenge of effectively integrating the migrant population into the labor market is seen in the high unemployment rates of this population. In the European Union, for example, in 2017 it was observed that unemployment among migrants was double that of nationals¹⁰. In Brazil, in Roraima, according to data from the Flow monitoring of Venezuelan migration report, made by IOM¹¹, the majority of Venezuelan nationals of working age (average of 33 years), having completed at least secondary education, are unemployed. The unemployment situation reaches the majority even among Venezuelans who have been in Roraima for over a year (52%), although with a lower rate than among those who arrived less recently



- 9 It is worth mentioning IOM's direct support for the evaluation and development of public policies aimed at the migrant population, such as through the 2nd Municipal Conference on Policies for Immigrants in São Paulo and the launch of the Migration Governance Indicators Profile (MGI, in English) of São Paulo, in addition to the continuous monitoring of collegiate bodies related to the theme in São Paulo, Paraná, Rio de Janeiro and Minas Gerais.
- 10 INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM). World migration report 2020. 2020. Available at: https://publications.iom.int/system/files/pdf/wmr_2020.pdf
- 11 INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM). Monitoramento de Fluxo populacional venezuelano no Brasil DTM Rodada 5. Nov. 2019. Available at: <https://displacement.iom.int/system/tdf/reports/27.01.2020%20IOM%20Brasil-%20DTM%20Rodada%205.pdf?file=1&type=node&id=7750>



(64%), representing more than four and even five times, respectively, the national average.

In this scenario, the private sector is an increasingly important partner, acting on several fronts, such as fostering the exchange of skills and the promotion of diversity, social inclusion and cohesion and the fight against labor exploitation. These actions bring greater transparency to supply chains and the protection of the human rights of migrants and ensure that this population can contribute more effectively and sustainably to the 2030 Agenda. In this sense, IOM works with various entities in society to engage the private sector in a more coherent and effective way in the management and promotion of the economic integration of the migrant population.

When identifying the main challenges that migrants face in their economic integration, it is observed that the difficulty of accessing the labor market in dignified conditions is still a crucial point for the sustainable inclusion of this population in the host society. Many migrants face difficulties in accessing the necessary documentation – even with the improvements brought by the New Migration Law – to prove previous experience and education, knowledge and access to training on available selection processes, in addition to language barriers, discrimination and vulnerability in the face of exploration. In the case of groups of migrants in a situation of greater vulnerability or difficulty in job insertion, such as women, youth, LGBTI and indigenous populations, these barriers are aggravated. According to a study prepared by IOM – International Migrants' access to Brazilian labor market: challenges and opportunities for



companies¹² (2018) – 76.4% of the companies believe that there are more critical issues in hiring women than migrant men, possibly due to prejudice and often the absence or insufficiency of childcare services. Therefore, it is essential to take into account the need to develop activities and policies for employability and income generation that prioritize these groups of migrants.

The difficulty in revalidating diplomas issued abroad, as well as other documents from migrants' countries of origin that prove their formal qualifications, can lead to "occupational disqualification"¹³, that is, their skills and powers may have not been used to their full potential. Understanding that migrants have varied skills and a potential to fill gaps in some professional profiles and labor deficits in some areas, work has been done with entities from the private sector to better understand market demands and subsequently invest in professional training corresponding to the migrant population.

The command of the Portuguese language is also often considered the entry point for this population in the labor market. The offer of these courses is considerably wide in territories with a history of welcoming the migrant population, such as the municipalities of São Paulo and Curitiba, but it is still somewhat incipient in more isolated places. Thus,



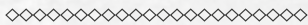
12 INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM). Acesso dos migrantes internacionais do mercado de trabalho brasileiro: desafios e oportunidades para as empresas. 2018. Available at: <https://brazil.iom.int/sites/default/files/Publications/BRL-OIM%20009.pdf>

13 ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD). From Immigration to Integration: Local Solutions to a Global Challenge. 2006. Available at: www.oecd.org/cfe/lead/fromimmigrationtointegrationlocalsolutionstoaglobalchallenge.htm



IOM works with partners in the development of innovative solutions such as distance and online courses to ensure greater inclusion of this population. In addition, it is essential to train and qualify migrants and refugees on issues related to their labor rights and duties¹⁴, legal and cultural aspects of the labor market and the recruitment process. Therefore, a coordinated and articulated action is essential to ensure alignment with the other actors working in the sectors of social assistance, education, labor intermediation so that they consider this population in their policies and practices, with a sensitive view of their vulnerabilities and specificities.

In addition to actions to develop the human capital of migrants, it is essential to guarantee effective integration of this population. In this sense, regarding self-employment, IOM acts globally to strengthen¹⁵ national strategies that encourage entrepreneurial activities, encourage exchanges in technology and innovation and expand access to financial services such as microcredit. In the Brazilian scenario, IOM operates from the extreme north to the south, collaborating with learning services to guarantee a wide range of courses, fostering training in entrepreneurship, mentoring and seed capital for the opening of small businesses by migrants.



- 14 INTERNATIONAL ORGANIZATION OF LABOR. ¡Soy inmigrante, tengo derechos! 2020. Available at: https://brazil.iom.int/sites/default/files/Publications/Cartilha_web.pdf.
- 15 UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD). Policy Guide on Entrepreneurship for Migrants and Refugees. 2018. Available at: https://brazil.iom.int/sites/default/files/Publications/policy_guide_migrants_refugees.pdf.



Although many migrants work informally (about 41% of national and international workers¹⁶ in Brazil work independently or in the private sector without a formal contract), it is understood that inclusion in the formal labor market can guarantee greater stability and protection of labor rights. In this sense, the articulation and continuous awareness of the private sector is essential in order to clarify doubts and myths and to highlight the benefits of hiring this population. The inclusion of migrants through business policies of diversity and inclusion can build a more diverse environment, bringing professionals with different thoughts, opinions and cultures, responding to the demands of today's plural society. According to studies, not only does this strengthen the corporate image¹⁷ of the company as socially responsible, but it also presents positive economic results¹⁸ and increased productivity and innovation¹⁹.



- 16 BRAZILIAN INSTITUTE OF STATISTICAL GEOGRAPHY (IBGE). Pesquisa Nacional por Amostra de Domicílios Contínua – PNAD Contínua. fev. 2020. Available at: www.ibge.gov.br/estatisticas/sociais/trabalho/9171-pesquisa-nacional-por-amostra-de-domicilios-continua-mensal.html?edicao=27233&t=destaques.
- 17 INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM). Acesso dos migrantes internacionais do mercado de trabalho brasileiro: desafios e oportunidades para as empresas. 2018. Available at: <https://brazil.iom.int/sites/default/files/Publications/BRL-OIM%20009.pdf>.
- 18 Companies with greater cultural and ethnic diversity are 33% more likely to present results above the market average than companies with less diversity. In: MCKINSEY & COMPANY. A diversidade como alavanca de performance. 2018. Available at: www.mckinsey.com/business-functions/organization/our-insights/delivering-through-diversity/pt-br.
- 19 BOURKE, J.; DILLON, B. The diversity and inclusion revolution: Eight powerful truths. Deloitte Review 22. Jan. 22, 2018. Available at: www2.deloitte.com/us/en/insights/deloitte-review/issue-22/diversity-and-inclusion-at-work-eight-powerful-truths.html.



In addition to highlighting the benefits that migrants bring to the staff of a company, IOM works in coordination with several partners to constantly train the private sector and other actors on how to better face the challenges of inclusion. It is essential to engage top leadership and thus adapt the organizational culture to integrate the migrant population through different inclusion initiatives preboarding and onboarding, raising awareness among Brazilian employees, mentoring programs, document translation, among others. It is observed that this type of preparation has been a constant demand from the business community, which often still has no experience in welcoming and inserting this population. In view of this, IOM has been developing materials and initiatives in conjunction with diversity and inclusion experts on how to better prepare and welcome these new people. These continuous and coordinated efforts have led to an increase in the inclusion of migrants in this market, with an increase in the issuance of the Work and Social Security Card (CTPS) and a positive balance between admissions and dismissals in the second quarter of 2019, of 4.7 1,000 new jobs filled by migrants, of which 3,800 are Venezuelan nationals²⁰. However, there is a decrease in wages when comparing the new admissions to the dismissals.



20 This number represents twice the number of new issues when compared to the first four-month period of 2018, with 17,300 new CTPS being issued. In: INTERNATIONAL MIGRATION OBSERVATORY. Relatório de Conjuntura: tendências da imigração e refúgio no Brasil. 2019. Available at: https://portaldeimigracao.mj.gov.br/images/dados/relatorios_conjunturais/Relat%C3%B3rio_Conjuntural.pdf.



THE FIGHT AGAINST LABOR INSTABILITY

Vulnerable migrants and refugees are frequently the target of continuous violations of their rights, especially with regard to labor rights – from wage discrimination, unhealthy work environment, lack of access to social protection, to labor exploitation and human trafficking practices.²¹ This is often the result of the belief that migrant labor is “cheap” and, therefore, can be easily exploited.

In Brazil, for example, migrants from Central America and Africa receive about one sixth²² of what migrants from North America and Europe earn and normally occupy positions in the production of industrial and commercial goods and services. In the case of Venezuelan nationals, according to an IOM survey, 71% of those who declared that they were salaried employees do not have a signed employment contract, and 72% of those who work independently or in salaried work in Roraima stated that they received less than a minimum wage. Of the people interviewed who work or carry out any income activity in Roraima, 18% said they had not received good treatment²³.



- 21 INTERNATIONAL LABOR ORGANIZATION (ILO). Decent work for migrants and refugees. 2016. Available at: www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_524995.pdf.
- 22 INTERNATIONAL MIGRATION OBSERVATORY. Relatório de Conjuntura: tendências da imigração e refúgio no Brasil. 2019. Available at: https://portaldeimigracao.mj.gov.br/images/dados/relatorios_conjunturais/Relat%C3%B3rio_Conjuntural.pdf
- 23 INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM). Monitoramento de Fluxo populacional venezuelano no Brasil DTM Rodada 5. nov. 2019. Available at: <https://displacement.iom.int/system/tdf/reports/27.01.2020%20OIM%20Brasil-%20DTM%20Rodada%205.pdf?file=1&type=node&id=7750>.



Through partnerships with the private sector and coordination with different actors, IOM seeks to articulate the promotion of dignified work, corporate social responsibility, and ethical recruitment, in order to mitigate many abusive situations to which migrants are exposed, especially in the Brazilian context with high unemployment rates. In this sense, it acts in the ongoing awareness of the added value of migrant labor and the promotion of diversity and inclusion policies, as well as supporting integrated strategies to prevent and combat labor exploitation, precarious work and other abusive practices and violations of rights.

However, it is still common that many migrant workers have their identity documents withheld, suffer from wage deductions that can amount to debts and receive threats, which can lead to situations of labor exploitation and labor analogous to slavery. In this regard, IOM has developed a global initiative to promote ethical recruitment – the International Ethical Recruitment System²⁴ (IRIS). This initiative defined a standard of analysis and evaluation that serves as a tool and guide for recruiters and employers to include principles of ethical recruitment within their equipment and practices. Through IRIS, IOM works with governments, the private sector and civil society organizations to make ethical recruitment the norm at every step of the labor chain.



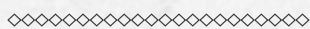
24 INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM). International Recruitment Integrity System. 2020. Available at: <https://iris.iom.int>.



FROM EMERGENCY RESPONSE TO LONG-LASTING SOLUTIONS

The political and socioeconomic situation in Venezuela has led to the largest displacement flow in recent history in Latin America. More than 5 million Venezuelans are outside their country of origin.²⁵ In Brazil, according to data from the Federal Police in November 2019, Venezuelan nationals already account for the largest group of migrants in the country, with about 254,000 refugees and migrants, the majority (54%) of whom are male and of working age²⁶.

Considering the growth in Venezuelan migratory flow in Brazil, in March 2018 the Federal Government established the Operation Welcome (Operação Acolhida). The operation, the first of a humanitarian nature on Brazilian soil, brought together several actors from national and international society to support the emergency response, including the IOM, which since August 2017 has been operating in Roraima. IOM is also a co-leader of the Regional Interagency Coordination Platform for Refugees and Migrants of Venezuela (R4V), created by the UN Secretary-General in April 2018, including UN and civil society agencies. As the state of Roraima is the main gateway for nationals of Venezuela and has a low capacity for economic absorption and reception, the Federal Government initiated the innovative strategy of “interiorization”, aimed at the voluntary transfer of Venezuelans from



25 COORDINATION PLATFORM FOR REFUGEES AND MIGRANTS FROM VENEZUELA (R4V). Available at: <https://r4v.info/es/situations/platform>.

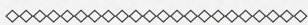
26 FEDERAL POLICE. Imigração Venezuela/Brasil. nov. 2019. Available at: www.pf.gov.br/servicos-pf/imigracao/Apresentao_Novembro_2019_VFinal_RETIFICADA/@@download/file/Apresentao_Novembro_2019VFinal_RETIFICADA.pdf.



the state of Roraima to other states of the country. From April 2018 to March 2020, the program has benefited more than 35,000 Venezuelans, mainly relocated to the South and Southeast regions²⁷.

Initially focused on displacing refugees and migrants from shelters in Roraima to shelters in destination states, the operation identified the need to unite the humanitarian response to the Venezuelan's sustainable socio-economic insertion and began looking for job openings from Roraima to other parts of Brazil. This initiative was named Signaled Job Opening Program (PVES). Since then, almost 4,000 migrants have been relocated to different cities in the country, where a company is waiting for them with a job offer. In this scenario, IOM is key to logistical support, carrying out medical verification, identifying jobs with the private sector, offering financial assistance and guidance before departure. In addition, it operates in the context of Operation Welcome, strengthening the reception networks, as well as articulating with local society, the public sector and the private sector the local integration of these people internally relocated to their destinations.

Understanding that the economic insertion of migrants and refugees is the sustainable way to guarantee their autonomy and well-being and also benefits the host society, IOM reinforced its support actions in this regard. By identifying local demands in a strategic and cooperative way, IOM aims to facilitate the economic integration of



27 INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM). Subcomitê Federal para Interiorização dos Migrantes: Deslocamentos assistidos de Venezuelanos. abr. 2020. Available at: https://brasil.iom.int/sites/default/files/Publications/Informe%20de%20Interioriza%C3%A7%C3%A3o%20_20Mar%C3%A7o%20de%202020.pdf.



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thousands of migrants and refugees in Brazil, promoting access to sustainable livelihoods and opportunities for formal employment. This has been done mainly through strengthening links with the private sector, coordination with other actors in the development of effective, innovative and durable solutions for migrants in the Federal District, Paraná, Rio de Janeiro, São Paulo, Rio Grande do Sul, Santa Catarina, Roraima and Amazonas, main recipients of Venezuelan refugees and migrants .

CONCLUSION

Migration is an integral part of every society and can enrich it in multiple ways if well managed. The successful and sustainable integration of migrants is a dynamic and collaborative process, involving the mutual adaptation of this population and the host society and being grounded in the protection of fundamental rights, tolerance and non-discrimination. Migrants, when effectively integrated, acquire new knowledge, skills and boost their human capital, in addition to increasing their well-being and dignity, being able to contribute even more to the development of the countries of origin, transit and reception. For that, it is essential to have a continuous and healthy articulation between the different levels of management and influence in the host society, as well as among the migrants themselves and the national population.

In this way, IOM continues to join efforts and act in a joint, collaborative, and innovative way in fostering dialogue and developing lasting solutions for the integration of migrants and refugees in Brazil. Only in this way, with coordinated and comprehensive action, ensuring respect



for human rights and decent treatment of migrants, can we achieve a safe, orderly, and dignified migration agenda and ensure that these people achieve their human development aspirations and potentials and that home and host societies thrive on human mobility.

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entry into force of Law No. 13,445/2017 (Migration Law) – are guaranteed the possibility of obtaining a residence permit, provided they have some annotation of employment contract prior to that same timeframe.

Over the years, the DPU and the Migrations and Human Rights Institute (IMDH) have always brought to the National Immigration Council (CNIg), as observers, with the right to speak, the concern with asylum seekers who could possibly have their own rejected protection requests. In fact, while the Foreigners' Statute was in force, there was little possibility of migratory regularization. In this context, several immigrants opted for the request for refuge, in order to ensure the regular migratory situation, even though in fact they were not entitled to protection, according to international parameters. However, considering the delay in examining asylum applications, several applicants, with the possibility of issuing CTPS, started to perform formal work. There was a risk that, although integrated into the labor market, at the end of the refugee process, the rejection of the request and the assumption of an irregular migratory situation would emerge.

For these reasons, at CNIg meetings, there were constant interventions for the advent of a hypothesis of migratory regularization that contemplated workers who, throughout the refugee process, managed to integrate into the labor market and eventually opted for migratory regularization to the detriment of international protection.

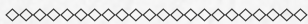
Finally, at the session of June 12, 2018, the CNIg announced its willingness to build a dialogue with the National Committee for Refugees (CONARE), sensitive “to the case of asylum seekers who entered Brazil before Law No.



It is to settle the liabilities formed by people who until then there were no other legal hypothesis provided for in the new law. It was recognized that people will be left out and there will be a universe of people who are refugee applicants and may eventually get a job opening after this date, so the justification for presenting this date is to mark as a reason for this joint resolution, (sic) the treatment of liabilities that only exist because at the time the interested party, in fact, had no better option⁶.

However, the impact of the different hypotheses of migratory regularization provided for in the Migration Law did not occur with the entry into force of the legislation. In fact, Decree No. 9,199/2017, which proposed to regulate the law, referred to complementary normative acts.⁷ Therefore, the operationalization of some hypotheses of migratory regularization occurred with the normative act complementary to the decree and not with the law⁸. In that sense, it would make no sense to use the law's entry into force as a timeframe.

The second relevant restriction in the text involves the fact that only workers applying for asylum submitted to an



6 *Minutes of the VI Ordinary Meeting of the National Immigration Council.*

7 This was one of the criticisms directed by civil society to the decree, which in fact has little regulation. In contrast, it was argued that the 180-day vacatio legis was insufficient to allow for more exhaustive regulation.

8 To give an example, Ordinance No. 87 of March 23, 2020, which provided for the granting and procedures for residence permits to a person who has been a victim of human trafficking, slave labor, or violation of rights aggravated by his or her migratory status, was published on March 23, 2020, a little over two years and four months after the Migration Law went into effect.



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The second initiative worth mentioning involves working for workers in the context of the covid-19 pandemic, resulting from the new coronavirus. As a result of this pandemic, Brazilians and immigrants residing in Brazil obtained the right to emergency assistance provided for by Law No. 13,982/2020, regulated by Decree No. 10,316/2020.

Emergency Aid is of an assistance nature and fits as a fundamental right, considering its role in food security and the health of the population. According to art. 4, VIII, of the Migration Law, the right to social assistance is guaranteed, which covers Emergency Aid, in favor of all immigrants residing in Brazil, regardless of the migratory situation. It means to say: the right should be guaranteed, whether it takes care of immigrants in a regular migratory situation – with a temporary or definitive residence permit, for a fixed or indefinite period – or in an irregular migratory situation – without any residence permit. Law no. 13.982/2020, with the respective regulations, makes no distinction, referring generally to workers and covering very wide working conditions, some of which may include immigrants in irregular migratory situations. In fact, considering that the Law on Migration realizes the new constitutional paradigm in matters of equality, Law No. 13.982/2020 could not even establish any distinction.

Despite this, according to what is reported to the Federal Public Defender's Office and civil society organizations, one of the main problems for the perception of Emergency Aid was the requirement by Organs paying agencies, for the payment to be made, of migratory regularity and/or a document with a photo issued. in Brazil.



In practice, this requirement for the effective payment of the benefit ended up hindering it in situations in which, strictly speaking, the right to benefit had already been recognized. Indeed, it is necessary to note that the recognition of the right to Emergency Assistance had already occurred in a general nature for all workers, in the wide range already mentioned, who fulfill the eligibility rules. The payment act would only be the consummation of a right already recognized to the CPF holder, without restriction by nationality or even migratory status. Therefore, it would not be up to the paying agency to create obstacles that, in practice, represented the rejection of a benefit already recognized.

The documentary restriction on payment affected precisely immigrants who did not have Brazilian identification documents or who had expired them. There was, therefore, a significant portion of immigrants who, although they were entitled to Emergency Aid, failed to receive it due to the opposition of unreasonable demands for effective payment. In fact, the most vulnerable portion of immigrants who have already endured documentary deprivation is taken care of and yet they were excluded from receiving aid.

In this context, the Federal Public Defender's Office of the Union in São Paulo developed a circular letter model for managers of branches of Caixa Econômica Federal (CEF) and the Brazilian Post and Telegraph Company, requiring the payment of Emergency Aid funds to people immigrants through the presentation of identification documents issued in the country, even if the term has expired, or documents from the countries of origin – passport, identity card, and/or consular card/card -, with the exemption of presentation



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of Brazilian documents with photo or proof of migratory regularization.

This circular letter was disseminated by federal public defenders throughout Brazil. The objective was that it would reach the immigrant's hands, allowing him to equip himself with arguments and a document in the bank branches for the realization of the withdrawal.

In several places, the trade allowed looting by immigrants; in others, no. Even so, in itself, there were guidelines to seek the Federal Public Defender's Office of the Union in case of failure.

In parallel to this, the Federal Public Defender's Office of the Union in São Paulo proposed Public Civil Action No. 5007915-28.2020.4.03.6100, aiming to enable the withdrawal of Emergency Aid by presenting identification documents issued in the country, even if their term has expired., or documents from the countries of origin.

After the filing of the action, through negotiations with CEF, administrative progress was made to guarantee the withdrawal of Emergency Aid by presenting Brazilian documents, even if they are past due. However, it was not possible to guarantee the withdrawal by presenting documents issued in other countries.

The preliminary injunction was rejected in the public civil action and, until the text was closed, the interlocutory appeal had not been judged.

The third initiative is also located in the context of the pandemic. It involved the intention of ensuring that the hiring



by federal, state and municipal public bodies was not made impossible, for the time necessary to fight and overcome the pandemic, of Brazilian doctors and immigrants qualified to practice medicine abroad under the justification of not having participated of the National Examination for the Revalidation of Medical Diplomas Issued by a Higher Education Institution (Revalida). The claim was deducted in Public Civil Action No. 5007182-62.2020.4.03.6100, proposed by the Federal Public Defender's Office in São Paulo. The preliminary injunction was rejected and, until the text was closed, the interlocutory appeal had not been judged.

The theme is related to the requirement to revalidate undergraduate degrees issued by foreign universities (art. 48, § 2, of Law No. 9,394/96).

In practice, the difficulties for revalidation constitute a real obstacle to the exercise, by immigrants, of the professions for which they have qualified academically abroad. There is the problem of limiting the spectrum of revalidation to public universities. In addition, there is an excessive waiting time for revalidation to take place. Although Normative Ordinance No. 22, of December 13, 2016, of the Ministry of Education (MEC), provides for a period of 180 days for the conclusion of the process (art. 6, caput), in practice there is a longer delay. In addition, sometimes the cost of the process, involving fees and expenses for obtaining, translating and legalizing documents, is impractical for some groups of immigrants. Nor do we mention the cases in which the documentary requirements simply cannot be fulfilled, considering the situation of the country of origin or the risks in the eventual return of the immigrant, or even in establishing contact with the respective diplomatic representations.



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As a result, there are significant losses to the local integration of immigrants, who are deprived of the exercise of the profession for which they have qualified. On the other hand, the country is deprived of the skilled labor effort of immigrants.

In the case of doctors, there is a specificity. The revalidation process may take place like the others or through Revalida, provided for in Law No. 13,959/2019. However, the examination has not been frequent. In addition, the deficit of doctors in Brazil is undeniable, especially for the care of the needy population, especially in the context of a pandemic, in which the contamination generated the removal of countless professionals.

It should be added that, in the judgment of ADI No. 5,035, the STF considered the Mais Médicos Program to be constitutional and specifically the hiring of doctors qualified to practice medicine abroad, without the revalidation of the diploma in Brazil, provided for in art. 13, § 1, of Law No. 12,871/13. In fact, it was understood that the right to health would justify the adoption of exceptional and temporary measures that do not require revalidation.

Now, if the chronic deficiency of doctors in many Brazilian locations justified, with the approval of the STF, the waiver of revalidation, with greater reason it could be admitted in a context of a pandemic, at least while its effects last.

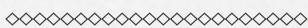
The fourth initiative consisted of carrying out, together with IMDH, the Jesuit Service for Migrants and Refugees (SJMR), the Women of Brazil Group in the Federal District, the Avina Foundation, the Federation of Trade in Goods,



Services and Tourism in the Federal District (Fecomércio DF) and the Federation of Industries of the Federal District (Fibra DF), from the *Experiências e Informações Práticas sobre a Contratação de Migrantes e Refugiados no Distrito Federal* panel, on September 11, 2019¹⁰.

The purpose of the event was to encourage the hiring of immigrants. Participation was opened to the research coordinator *Caminhos para o refúgio: inserção produtiva de refugiados no Brasil*¹¹, which had the opportunity to present data that indicate the lack of basic information and the prejudices that permeate the hiring of immigrants. In addition, employers were able to describe their experiences with hiring immigrants.

The Federal Federal Public Defender's Office presents these four initiatives, with the aim of illustrating a broad spectrum of action in favor of the needy. Covering the areas of work, migration and Social Security, the institution focuses not only through judicial action, but also through direct participation in the formulation of public policies and education in rights. At the end of the day, these initiatives discourage the institution of the broad constitutional mandate for legal guidance, promotion of human rights and defense of the rights of the needy.



10 Available at: <http://redpo.mercosur.int/dpu-promove-discussao-sobre-insercao-de-imigrantes-no-mercado-de-trabalho>.

11 Available at: <https://migramundo.com/wp-content/uploads/2018/06/CAMINHOS-PARA-O-REFUGIO.pdf>.



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The performance of the Federal Prosecution Service for a long time was largely oriented towards an almost repressive approach, based on the concept of the “illegal” immigrant, still reflecting the criteria adopted before the 1988 Constitution, in which the mere irregular entry into Brazil could be punished, and even then in force, in the provisions of the Foreigner Statute (Law No. 6,815/1980), even though there was already greater concern with the validity of the established rules and the perception of better migratory regularization.

Until then, the State used the law to build inequality, creating a subclass of people who were excluded from a significant portion of rights. The foreigner, the one who was viewed with suspicion and who deserved a different treatment from the national, was historically considered a second-rate citizen; and, in some respects, such as his inability to exercise political rights, he still suffers from constitutional limitations.

Although the issue of refuge was finally regulated internally by Law No. 9.474, of July 22, 1997, until the beginning of the current century, the migrant population, in addition to being small, was almost invisible, constituting basically border residents. and Bolivian, Peruvian and Paraguayan migrants, concentrated in the city of São Paulo (the so-called “sewing migrants”). Those who tried their luck in the country without great economic resources also ended up without citizenship and with little access to fundamental rights.

The current legislation, still a legacy of the military regime, brought this vision of the migrant as an alien being rooted – whose common etymology served to designate



the foreigner -, the different, potential enemy and constant threat to the employment of Brazilians and to national security, prejudice which unfortunately is still shared to this day by a significant portion of the population.

The Federal Prosecution Service, in several internal events to combat discrimination, already tried to remind society and members, when in the finalistic performance, that formal equality, in which everyone is equal before the law, passes through the commitment of the Powers constituted to acts so that inequalities are materially eliminated, also in terms of people's nationality - or lack thereof -. The bias of action was changed to understand migration no longer as a crime to be fought, but an opportunity for action aimed at building means to integrate and ensure rights and a dignified life for those who seek Brazil as an alternative.

The secondary role of the migratory theme began to be changed due to a tragic event. Haiti, in January 2010, suffered a severe earthquake in which it is estimated that almost 300 thousand people died, worsening the situation of the inhabitants of one of the poorest countries in Latin America. Brazil at the time coordinated the United Nations mission to stabilize peace in the country and became an almost obvious destination for the local population, which caused the first major migratory flow of the 21st century to the country.

The extent of this migration to Brazil gained national prominence when, in early 2012, more than 1,250 Haitians sought refuge in the city of Brasileia, in Acre, which corresponded to almost 10% of the local population. It was necessary to file a lawsuit by the MPF in Acre in order to guarantee minimum rights and decent conditions for survival



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through the recognition of the situation of refuge and the impediment of restrictions on the entry and circulation of Haitians in the national territory.

Together with Haitians, and considering the country's economic growth prospects at the time and due to the international visibility resulting from sporting events (World Cup in 2014 and Olympic Games in Rio de Janeiro in 2016), people from other nationalities – gaining prominence for migrants from African countries like Ghana and Senegal – started to see Brazil as a possibility of destiny.

The adequacy of the legislation, already belatedly, was now indispensable to prevent ordinary violations of migrants' rights from being perpetuated. The old Foreigner Statute was out of step with the constitutional text and also served to intimidate and criminalize people for the simple act of migrating.

The position of the Federal Prosecution Service throughout the construction process of the new law has always been to characterize the migratory phenomenon as an event that is not only expected, but also desired and that must be analyzed with a humanitarian vision. He pointed out that the new Migration Law should not include in its text themes of international legal cooperation in criminal matters, such as extradition, transfer of sentences and sentenced persons, which would best fit into specific legislation.

However, paradigm changes do not occur entirely. Despite the advances made with the new Migration Law (Law No. 13,445, of May 24, 2017), remnants of the view of migrants as a threat to the country, national security and the employment of Brazilians remained in its text.



Laws rarely have the ideal wording. The consensus necessary for their approval makes them dubious, but this does not prevent the effectiveness of their humanitarian dispositions and the perspective of welcoming and integrating migrants, as a subject of rights, from being treated with due priority in their application. And this task is not a simple one, one still perceives the attachment to the past in the infralegal legislation, impregnated by the vision of the migrant as a threat.

With this new legal support, the possibilities for more effective action by the Federal Prosecution Service are expanded. The new migratory flows need a more agile response for their regularization and integration, because, if a decade ago the greatest flow was of Haitians, today Venezuelans are emerging, arriving in Brazil in even greater numbers, many with the perspective of staying here and rebuilding Your lives.

Currently, the problems inherent in any migration are not sufficient with the pandemic caused by the new coronavirus (Sars-CoV-2), many end up pointing to globalization and the circulation of people as the biggest culprits for the spread of the disease and claim to build walls and for greater border surveillance, not only at this time, but as a guideline for the future, when the ideal would be to increase cooperation between countries to seek a joint solution to a problem that affects all of humanity. But the most comfortable solution is to appoint an external culprit to avoid responsibility and inefficiency in preventing so many deaths.

Thus, there is a real risk that, in the near future, even after the global situation resulting from the international health emergency caused by covid-19 has normalized, the



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adoption of tougher sanitary measures at the borders may increase prejudice against people. In a situation of migration, which can be mistakenly considered as vectors of diseases (and, worse, this is not new, because the notes of public authorities in this sense are not uncommon, in relation to recent migrations with destination to Brazil).

However, criticisms of migratory movements forget that social and economic growth is also linked to receiving people from other countries and different cultures. The more organized and less bureaucratic the procedure for receiving and regularizing migrants is, the faster their local integration and the benefits for the whole community will occur.

Thus, in addition to the immediate and future results, ministerial action aimed at welcoming and integrating migrants is essential to consolidate the fundamental objectives of the Republic of building a free, just and solidary society, for the good of all, without any discrimination.



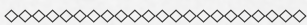
Mission of Peace in the inclusion policies for work and social protection of migrants

Paolo Parise¹

Missão Paz² is an integrated center that for decades has offered various interconnected services to immigrants and refugees. Among these actions, we highlight the welcoming at Casa do Migrante, support in documentation, health, education, language learning, socio-cultural insertion, legal assistance and work. This last item will be the object of the description of this article, aware that access to work in dignified conditions is an important factor of social integration.

The job insertion service, known as the Trabalho da Missão Paz axis, was born in 2012 in a context of growth in the flow of Haitian migration and intensification of the demand for labor by companies. In view of this reality, the institution began to develop a response with a methodology that has been modified and improved over the years, always with a concern for access to formal work, decent working conditions and equality with national workers.

The structure of the Work axis can be understood as a multi-stage process, involving immigrants, employers and members of the Missão Paz, together with their partners.



1 Father and director of Missão Paz

2 Missão Paz is an entity that belongs to the Congregation of the Missionaries of São Carlos, known as Scalabrinians, present in other places Brazil and in 34 countries.



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In the first stage, the immigrant participates in an intercultural lecture, as a condition to have access to job interviews. The lecture is held weekly by volunteers from SIETAR Brasil, an international society for intercultural education and training. Participants can choose between four languages: Portuguese, French, Spanish and English. Elements of Brazilian culture are presented, aiming to assist the insertion of migrants in the new context, and information on rights and responsibilities in the labor market and guidance on defense mechanisms in the event of exploitation or violation of labor laws. On the same day, the immigrants' documentation (physical or digital work card, RNM or Protocol, CPF) is checked and proof of participation is provided, and it is essential to present it on the day of the job interview session.

Similarly, the employer participates in a lecture, offered twice a week at different times, with the aim of raising awareness about the immigrant's reality and explaining how the hiring process works. The lecture is formatted to offer an experience that goes beyond the traditional concept of recruitment. The intention of this experience is to achieve a humanitarian and cultural perception, broadened from work relations, with the introduction of concepts of diversity, cultural and social enrichment in the work environment, positive changes in the organizational climate and in the team. There is a strong emphasis on equal opportunities for all migrants, regardless of country of origin, race, sexual orientation, gender, religion and age. In this lecture many doubts arise, and sometimes even prejudices, on the part of employers. It is the opportunity to clarify and overcome these obstacles. At the end of the lecture, the employer fills out a registration and provides personal and/or company



documentation; you receive a proof of participation and a vacancy offer sheet (job description, salary offered, benefits and other information). The profile of employers is quite variable and ranges from individuals, who offer job opportunities for domestic/rural workers (domestic workers, babysitters, caregivers, caretakers, etc.), small companies (industry, commerce or services), to large national and multinational companies.

After the immigrant and the employer go through the first stage, they have access to the second, which consists of the job interview session. They are organized by the Labor axis team with the presence of volunteer mediators, on Tuesdays and Thursdays. The job offer must include the name of the employer or the contracting company, number of vacancies, necessary skills, net salary, workplace, workload, working days, benefits and special characteristics of the vacancy. Interview sessions are organized, in which the candidates for the vacancies, the employer and the institution's mediators are present. The employer, once the candidate has been selected, fills out an ethical conduct form.

The third stage involves post-employment monitoring, carried out in various ways. Initially it happens by phone or email, checking the hiring situation. After two or three months, a visit to the workplace is carried out. Communication with the immigrant and the employer is carried out separately, avoiding embarrassment. In the case of perceived non-compliance with the conditions presented in the contract, measures are taken, according to the institution's powers, to solve the problems.



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In the table below we offer a summary of the results achieved over these years since the implementation of the Work axis.

	2012	2013	2014	2015	2016	2017	2018	2019	TOTAL
1	1050	2380	4996	2600	1709	721	1016	1057	15529
2	452	1203	2739	1473	317	355	361	443	7343
3	127	483	816	427	126	54	104	149	2286

1. Intercultural lecture; two. Contracted; 3. Contracting companies

The Labor axis achieved these results by inserting immigrants and refugees in formal work, but also by offering instruments for the person to assess working conditions and, when necessary, denounce degrading and exploitative situations. In this sense, when moving to a city, the person has this tool, not needing constant dependence on the institution and avoiding paternalistic mechanisms. In addition, the lecture with employers has a preventive function, as many offers of vacancies with signs of informality or exploitation are refused.

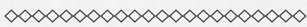


The Migrations and Human Rights
Institute and the Promotion of
Policies for Labor Inclusion and
Social Protection to Migrant
Populations

Rosita Milesi¹ and Paula Coury²

The Migrations and Human Rights Institute (IMDH) is a non-profit organization, linked to the Congregation of the Scalabrinian Sisters, whose mission is to promote the full recognition of citizenship of migrants, refugees, and stateless persons, acting in defense of their rights, through social, legal and humanitarian assistance, as well as through the promotion of their social and labor integration, with special attention to situations of greater vulnerability. Founded in 1999, IMDH's headquarter is based in Brasília-DF, with a branch office in Boa Vista-RR, established in 2018. Since 2004, the IMDH has also articulated the Solidarity Network for Migrants and Refugees (RedeMiR), which brings together more than 60 civil society organizations working on behalf of the migrant and refugee population in the five Brazilian regions

In recent years, a growing number of migrants and refugees are settling in Brazil, where they seek to rebuild their lives and also contribute to the development of the host country. In this process, they face different challenges, among



1 Director of the Migration and Human Rights Institute (IMDH/Scalabrinian Sisters), lawyer, observer at the National Committee for Refugees (Conare).

2 Integration Manager at IMDH and Master in International Security and Human Rights by the Institute for Political Studies in Paris (Sciences Po).



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which job insertion stands out. In addition to the difficulties associated with the national economic situation, there are other challenges, such as: the language barrier; cultural differences; xenophobia; employers' lack of knowledge that migrants and refugees are allowed to work regularly and have the same rights and duties as nationals; difficulties in accessing the banking system; complex revalidation procedures for university degrees obtained abroad; among others.

These obstacles are largely related to the misinformation of the host community and the diffusion by common sense of erroneous perceptions about supposed negative effects of immigration on the national labor market, economic growth and public finances. Recent studies show that these fears are often unjustified (FGV DAPP, 2020). They also reveal that, due to the lack of adequate public policies, destination countries are not able to fully benefit from migrants' human capital contributions, regarding their professional qualification, personal skills and the wealth of diversity (OECD/ILO, 2018).

Thus, it is noteworthy how much Brazil can profit from further promoting labor inclusion and social protection for this population. The emphasis on such policies also greatly benefits migrants themselves, for whom, work is not only a source of subsistence, but also a fundamental factor for the feeling of belonging to the host community and for the desire to retrace plans for the future. In this context, IMDH's work focuses on three axes: support for insertion in the formal labor market; fostering autonomous income generation initiatives; and inclusion of youth in specific employment programs. Across all axes, enhancing professional qualification is emphasized.



Therefore, among the institute's actions, the following stand out: activities and events to raise awareness among potential employers, where those who already hire migrants share their best practices and experiences; referrals for job interviews; information about labor rights and duties, including the distribution of printed materials in several languages; support for self-employed entrepreneurs, by providing equipment and raw materials, opportunities to participate in fairs and events to market their products, referrals to Sebrae and training courses; among others.

In practice, even when there are already rights and policies aimed at Brazilians and immigrants, without discrimination, specific attention may be required to ensure effective access for the immigrant population. An example of this is the Jovem Aprendiz Program. Upon identifying that, despite having the right to do so, young immigrants and refugees did not have access to the program, IMDH established a partnership with the Center for the Integration of Companies and Schools (CIEE), with support from UNHCR, to promote their participation. Since the first edition, in 2018, the program has been very important to promote the labor and social inclusion of the participants, reinforce family income, in addition to reducing school dropout.

Actions like this contribute for migration to realize its potential to improve both the living conditions of migrants and host communities. It is with this goal in mind that the IMDH has been operating for more than two decades, combining the work of direct assistance to migrants and refugees with the efforts of political advocacy, in search of the full social and labor integration of migrant populations in Brazil.



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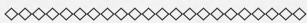


Political formation and immigrant
role in the construction of public
policies: CDHIC's performance

**By Paulo Illes¹
with the collaboration of Luciana
Landgraf²**

This article seeks to reflect on the political empowerment of immigrants and refugees and their impacts on the construction of more democratic and participatory public policies, from the municipal to the international level. The object of analysis is a set of actions organized by the Center for Human Rights and Citizenship of Immigrants (CDHIC) in partnership with other entities from 2009.

CDHIC has participated in the organization of political training courses for immigrants and refugees, in partnership with the Trade Union Confederation of the Americas and its affiliates in Brazil (CUT, FS and UGT), since 2009. The historical and political milestones of its foundation are, in that same year, the implementation of the migratory amnesty granted by the federal government and the campaign for the implementation of the free circulation agreements of the MERCOSUR States Parties – Southern Common Market and associates.



- 1 Coordinator of Rede sem Fronteiras, former Coordinator of Policies for Migrants of the City of São Paulo (2013-2016), activist, studied Philosophy at the Vincentian Philosophy Faculty of Curitiba.
- 2 Technical secretary of Rede sem Fronteiras, master in Comparative Study of Development by EHESS – Paris.



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The courses were initially designed with the aim of contributing to the awareness of grassroots union leaders and, at the same time, bringing immigrant workers closer to union struggle. It should be remembered that in 2012, the year the courses began, the legislation governing national immigration policy was the Statute of the Foreigner (Law No. 6,815 of August 19, 1980). This law dates back to the military dictatorship and contains an aversion to foreigners and immigrants, expressly forbidding them to freely manifest themselves politically and denying them the right to form associations and unions.

In text, the statute established, in art. 107, that “The foreigner admitted into the national territory cannot engage in activities of a political nature, nor interfere, directly or indirectly, in the public affairs of Brazil”. Paragraphs I, II and III specify that they were prohibited from organizing, creating or maintaining any political society, any action to obtain adherence to political ideas or organizations and the organization of meetings of any nature.

For CDHIC, the bureaucratic obstacles of the legislation did not constitute an obstacle to the realization of the training courses. The entity understood them as necessary for the promotion of political awareness and the organization of workers for the fight for their rights, not only union members, but also for social and political participation.

The rapprochement between the immigrant leaders and the national labor struggles greatly enriched the debates around the rights of immigrants in São Paulo and, consequently, in Brazil. Bringing the main union centrals for joint construction made it possible to suggest changes in national legislation. Some of these suggestions were



accepted by the new Migration Law (Law No. 13,445, of May 24, 2017), which finally guarantees migrants the right to associate and to participate in union life.

Art. 4 of the new law determines that “the migrant is guaranteed in the national territory, under conditions of equality with the nationals, the inviolability of the right to life, freedom, equality, security and property”. Item VII of the same article guarantees precisely the “right of association, including union, for lawful purposes”. In addition, in art. 3rd, principles and guidelines are considered, in item II, “the repudiation and prevention of xenophobia, racism and any forms of discrimination”; and, in item XIII, the “social dialogue in the formulation, implementation and evaluation of migration policies and promotion of citizen participation by migrants”.

Let us recover some important moments of the contributions of the CDHIC to the migratory agendas. In 2009, the year of its foundation, the entity launched in Brazil the worldwide campaign “Aqui Vivo, Aqui Voto”, later adhered to by several institutions. In 2013, the immigrant’s right to vote and to be voted took institutional form in the Proposed Amendment to the Constitution (PEC) No. 347/2013, presented by federal deputy Carlos Zarattini (PT). The PEC proposed to change the wording of § 2 of art. 14 of the Federal Constitution, with a view to granting political rights to immigrants residing in Brazil for more than 4 years who were in a regular migratory situation.





Source: Social Forum for Human Rights and Integration of Migrants in Brazil, 2014.

In 2011, CDHIC, in partnership with CSA, CUT, UGT, FS and a group of immigrant associations, launched the I Social Forum for the Rights and Integration of Immigrants in Brazil. Among the proposals and projects discussed were the National Immigration Policy and Protection for Immigrant Workers, the then Migration Law Project, the creation of the Immigrant Coordination in São Paulo, the creation of the Migration and Integration Council at Unasul, the campaign for the immigrants' right to vote, the UN Convention on the Rights of Immigrant Workers and members of their families and the creation of the Parliamentary Front for the Rights of Immigrants (Memorial da América Latina, 2011).

Between April 18th and 19th, 2015, the Political Formation Course for Immigrants and Refugees was held at the historic Cajamar Institute in Guararema, São Paulo. The



course resulted from a partnership involving CDHIC, CUT and the Grito dos Exclados Continental. During the two days of the meeting, 60 immigrants and refugees met with experts and representatives of social pastoral and social movements (MST and MTST) to discuss migration policies with a view to building a social movement. The course proposal was to put the struggle of immigrant workers on the political, economic, cultural and social agenda of Brazil (CDHIC, 2015).

It is important to highlight that, in 2015, the first Municipal Policy for the Immigrant Population was under construction in the City of São Paulo and it was, therefore, important to think about forms of participation and demands to be addressed to the different instances, in an effort to articulate between local and International. Among these demands were, at the local level, the Institutionalization of Municipal Policy (sanctioned by Fernando Haddad with Law No. 16,478, of July 8, 2016) and the creation of the municipal council of migrants. At the national level, there was a demand for changes in migratory legislation, the ratification of the UN Convention on the Rights of Immigrant Workers and their Families and the right to vote.

In 2017, Espaço Migrantes was inaugurated, an innovative proposal that integrates CDHIC, CUT and Patronato Inca/CGIL Brasil. The space welcomes migrant and refugee people with the aim of strengthening the promotion of their human rights, providing information about their social security, labor, union, social, economic and political rights and aiming at the recognition, participation and performance of migrants as subjects of rights. From the creation of the space, it is possible to observe a greater involvement of the union centrals in integration projects and also a greater participation of migrants in the unions.



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Between March and October 2018, the seminars on Migration, Refuge and Labor Rights took place in São Paulo, Foz do Iguaçu and Curitiba. Given the context of the recent implementation of the new Migration Law, the event discussed the potential advances and challenges it posed. Other presentations debated the political, economic and migratory situation in Brazil and specific problems in each city. On that occasion, for the first time, CDHIC worked in partnership with the MPT-PR and the Edésio Passos Institute to organize the events in Foz do Iguaçu and Curitiba. From then on, the training courses initiative gained visibility and partnerships and was able to expand its reach in the following years.

Between 2019 and 2020, citizenship and labor rights training for migrants and refugees took place in five cities: Foz do Iguaçu, Florianópolis, Manaus, Porto Alegre and São Paulo. The events were organized by CDHIC, the União Geral dos Trabalhadores (UGT) and the Solidarity Center in partnership, locally, with actors from the government, unions, companies and various organizations such as Cáritas, UNHCR and CNBB. The objective of the project is the political, labor and union training of multiplying migrants, in order to promote full citizenship and dignified work and ensure that the learning reverberates in their communities.

As the most immediate results of the courses, we can mention the partnerships between immigrant and refugee people and local unions, companies and civil society associations. In the medium and long term, we can think of the emergence of new leaders, the construction of new associations and their consequent impact on public policies.



At the local level, Bolivian Diana Soliz, who has been in Brazil for 24 years, is a concrete example of the achievements driven by the courses. Diana worked in precarious conditions and for years she was denied her labor rights. After attending the training, Diana was able to know her rights and approach the Union of Domestic Workers of the Municipality of São Paulo (STDMSPP), which helped her to sue the former employer. In addition to winning the action, Diana benefited from the new Migration Law and is now a representative of STDMSPP (CDHIC, 2017).

In turn, the Municipal Policy for the Immigrant Population, institutionalized by the Municipal Law No. 16.478/2016, by Decree No. 57.533/2016 and by the creation of the Municipal Immigrant Council, is recognized by ECLAC (2019, p. 9) as “a inspiring practice for other experiences, both nationally and internationally”. Such a policy was devised by Paulo Illes, then coordinator of CDHIC, and is exalted by the agency for its “originality, scope, format, objectives and results obtained”.

In order to build resistance in the face of the current political scenario that threatens labor rights, conquered through diverse and tireless political struggles over time, the political and union formation of immigrants and refugees is essential. These learnings must take place within a democratic and participatory perspective, with the exchange of experiences, with the union movement.

In addition, training contributes to building strategic alliances between immigrant associations and the social movement. These alliances are essential to building a more just citizenship – not only for migrants and refugees, but for all male and female workers -, especially with regard to promoting dignified work and tackling all forms of discrimination, xenophobia and slave labor.



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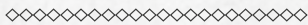
The University as “a safe space”:
the Federal University of Paraná
and its projects with humanitarian
migrants and refugees

Tatyana Scheila Friedrich¹

*“It is not just about teaching,
reading, and writing. But also about
offering young refugees a **safe space**
to express themselves”.*

Mohamad Al Jounde²

The Federal University of Paraná (UFPR), through the Sérgio Vieira de Mello Chair of UNHCR/Brazil (CSVM/UFPR) and its Migration Policy and Brazilian University program (PMUB), has a wide range of actions aimed at humanitarian migrants and refugees from the community in general and the academic community. There are several projects idealized by teachers and students on a voluntary basis, such as ins-



- 1 Tatyana Scheila Friedrich: PhD, professor of Private International Law at UFPR, with post-doctorate in Migration and Labor at Fordham University. She is the coordinator of the Migration Policy and Brazilian University program and the Sérgio Vieira de Mello Chair at UFPR. Leader of the Research Group on Global South Law (CNPq) at PPGD/UFPR. projetohospitalidadeufpr@gmail.com
- 2 Mohamad Al Jounde, a Syrian teenager who started a school in Lebanon, won the International Children's Peace Prize in 2017. “This is not just about teaching reading and writing but giving young refugees a safe space to express themselves.” Available at: <https://theirworld.org/news/inspiring-quotes-2017-education-school-learning-conflict-refugee-disaster>. Access in: Oct. 29, 2019.



titutional actions, teaching, research and extension actions (clinics). The main ones will be explained below:

1. Brazilian Portuguese Project for Humanitarian Migration (PBMIH – external), developed within the scope of the Language and Literature course, offers a free Brazilian Portuguese course to migrants and refugees, regardless of the level of knowledge of the language, in addition to the promotion of cultural activities, translation and dissemination of information, courses and special workshops (Creole language, embroidery, etc.). It was the project that started all actions in the area, still in 2013, with professors Bruna Ruano and João Arthur Pugsley Grahl, who implemented it. Currently the teaching coordination is in charge of Professor Maria Cristina Figueiredo Silva, who succeeded Professor Viviane Pereira, and the student coordination is by Professor Maria Gabriel.
2. Brazilian Portuguese Project for Humanitarian Migration (PBMIH – internal), which was also developed in the Language and Literature course, as an extension of the original project, but aimed at UFPR students who are humanitarian migrants and refugees, under the teaching coordination of Prof. Dr. Bruna Ruano Pupatto, Portuguese as a Foreign Language teacher, with the student body formed by Carla Cursino, Sérgio Lopes, Alessandra de Freitas, Nicolas Batista and Bruna Martins (Postgraduate Program in Language and Literature)
3. Project Refuge, Migrations and Hospitality, from the Law course, developed in the Law course, initially



under the coordination of prof. holder José Antonio Peres Gediél and currently by Prof. Tatyana Scheila Friedrich. It is located in room 28 of the UFPR Historic Building, where it provides daily assistance to migrants and refugees in relation to the most varied demands, in person, by phone or email. Performs translations of documents; offers legal and administrative advice, through Legal Clinic; it makes the protocol and directs internal processes, at the university level, related to entry and permanence in undergraduate courses and revalidation of diplomas issued abroad.

4. MOVE - Migration Movement and Psychology Project, developed in the Department of Psychology, under the coordination of Prof. Elaine Cristina Schmitt Ragnini. It offers psychological assistance and support to migrants and refugees in the community and acts in the selection and monitoring of migrants and refugees for various purposes, within the university, in addition to tutoring these students, accompanying them in the trajectory of their undergraduate and postgraduate courses. undergraduate course at UFPR.
5. Project Development of Computer Training Courses for Immigrants and Refugees, of the Computer Science course and its PET (Tutorial Education Program), offers free computer classes to students of Portuguese courses, on two levels.
6. Project of the International Migration and Multiculturalism Research Group, registered in Brazilian research bodies, such as CNPq and PIBIC, in



charge of the Department of Sociology, under the coordination of prof. Marcio de Oliveira. It carries out empirical and field research, having carried out the national coordination of the new *Pesquisa sobre o perfil socioeconômico dos refugiados no Brasil*, by UNHCR, with the participation of the Ministry of Justice and the Sérgio Vieira de Mello Chairs in Brazil.

7. Small in the World Project (Pequenos no Mundo), under the coordination of Prof. Graziela Lucchesi Rosa da Silva, from the Department of Psychology, who carries out recreational and educational activities with the children of migrants and refugees, while their parents study in Portuguese classes. The coordinating teacher supervised the activities, conducted in partnership with other teachers and students of Psychology, in a special room, with toys and appropriate teaching material.
8. Pathways to the Public Health System (Caminhos do SUS), coordinated by prof. Deivisson Viana Dantas dos Santos and the student Gabriel MA Pereira, carries out awareness actions in the areas of health and the Brazilian Unified Health System, for humanitarian migrants, and refugees.
9. Project AMMAR (Alliance of Migrant, Stateless, and Refugee Women), interdisciplinary, involving Brazilian and migrant teachers and students, which promotes actions aimed at migrant women and refugees victims of violence. It has worked in the field of awareness and full monitoring of concrete cases, in the workplace of harassed women, in the



commerce where they suffered discrimination, in the women's police station, in police districts and in the various bodies that make up the Casa da Mulher Brasileira in Curitiba. It operates in the Rede da Mulher Migrante, which involves the Office of Labor Prosecution, OAB-Mulher, Women's Police Station, IOM, among other entities.

10. Brazilian History Workshop for Foreigners, coordinated by PET História with the offer of history classes from Brazil and the relationship between Brazil and the foreign countries of origin of migrants and refugees, aimed at *UFPR* students and students from the community who take classes in Portuguese at UFPR.
11. A partnership with the extension program Núcleo de Comunicação e Educação Popular (NCEP), under the supervision of prof. José Carlos Fernandes, from the Social Communication course.

All these initiatives are linked and are put into practice in harmony and synergy, always with the objective of promoting the subjectivation and emancipation of migrants and refugees, who actively participate in all stages: their planning, execution and evaluation. These are projects that have autonomy in relation to the means and methods of action and are formally part of the CSVM, externalized in the form of the Migration Policy Program and the Brazilian University (PMUB). All activities count on the effective participation of students from the respective courses, most of whom are volunteers selected annually by the coordinating professors and receive a certificate of complementary hours at the end of each year of activity.



How the projects work

Each project carries out its activities independently, but always in an integrated manner, because they were created successively from the needs of the practice carried out, in addition to being planned and executed with a lot of dialogue.

In Brazilian Portuguese classes, most students are Venezuelans, Haitians, Syrians, Congolese, and other nationalities, Latin and African. Initially, the Portuguese as Foreign Language (PLE) methodology was adopted, but with the development of activities, they changed to the Portuguese as Language of Reception method (PLA – Portuguese como Língua de Acolhimento), in which language is the element of interaction with an affective character, aimed at the reception of the subject, generally an adult who needs the language to survive in a new context. The *Porta Giratória* (Revolving Door) methodology is also used, which will be analyzed in more detail in another chapter of the present work.

The revolving door is an adaptation of the classes to the theme of education in transit, which is one in which the student is not necessarily permanent, as he appears in one or some class, then stops attending and later returns or not. Thus, each meeting (of 3 hours, once a week, usually Saturday afternoon) has a beginning, middle and end, usually addressing a theme, always practical, for example the “search for work”: the vocabulary of the teacher is then taught. theme, an interview is simulated, behavior on the first day is addressed, paycheck analysis, etc. If the student does not attend the next class and only the next one, there is no problem about having lost the content, because when he returns, the class will be about a new subject, with a



new beginning, middle and end. There is no continuation from the previous class. Meanwhile, in computer classes, in an integrated way, they teach how to make the curriculum, access and fill the database to find work, for example. Periodically workshops with history classes are held. These classes happens at the Dom Pedro I Building.

Classes are free. The leveling is done from a text that the student writes in his own hand, when he appears for the first time. The result comes out on time and he can already attend the first class, all done in a simple, fast way, without red tape, and without the migrant having to return at another time, spending on transport, etc. The teachers are volunteers, usually students of letters who are starting their teaching. The number of women in the classrooms is increasing and many students have to take their children. In the beginning, the children stayed in the classrooms, with no specific activity and making learning difficult for their mothers. In 2017, a specific space was created for them, where since then training and leisure activities have been carried out, which ended up becoming an autonomous project, with the creation of the aforementioned *Pequenos no Mundo* project.

Within the scope of the Brazilian Portuguese Program for Humanitarian Migration (PBMIH-Externo), there are still activities that are different from those traditional, such as: preparing a newspaper with news of interest to students of a certain nationality or with news from their countries of origin, the which is nailed to the wall of the course corridor, so that all migrant students and also the entire academic community that passes by can read; the writing of testimonies about his life as a migrant or refugee in Brazil, which end up



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being a great life lesson and also a great source for scientific analysis of his conditions; cultural actions such as going to the museum, theater, official graduation ceremonies at the end of the year, participation of the entire team in traditional parties in the student's home countries; exhibition of photos of the program taken by a professional photographer or of photos in general taken by the migrants and refugees themselves; and organization of an annual festa junina. The Entrelaços project was carried out with migrant and refugee women, who met, told their stories, drew and then embroidered their drawings, involving a qualification in handcraft with narratives and personal testimonies.

Another prominent cultural initiative is the Literature of Refuge project, which are meetings where foreign literary excerpts are loud read in the original, usually by students from the author's country of origin. Then, the translation into Portuguese of each text is read, which is usually done by students as one of the tasks of the Portuguese course. Usually these meetings are themed, in which poetry and prose from one or a few countries come together, held in special places, such as the historic building of the old City Hall or some bookstore in the city. Both the original and the translation are displayed on screens, so that the public can follow.

Legal assistance was given concurrently with Portuguese classes and students who presented demands were referred by the teachers of the classes to be served in other rooms, where the professors and students from the UFPR Law course were located, providing guidance. As Portuguese classes are held on Saturdays, law students went there to attend. With the increase in demand and the understanding



of the importance of work by the institution, a room was provided on the ground floor of the Historic Building, where the Law course works.

In this room, known as Room 28, all the orientations related to the demands of migrants and refugees are given, which focus on rectifying information in documents, progress of the asylum application process, entering into a family reunion request, issues related to education, especially second-degree revalidation, revalidation of a higher education diploma and admission to university, mainly at UFPR itself. The project is responsible for the agreement with Conare, from which interviews with asylum seekers have been carried out since 2018, by the Eligibility Officer, via Skype or through face-to-face task forces of one week each.

In the same place there are psychological consultations, carried out by students of the Psychology course, under the supervision of the teacher, who also coordinates the interviews on the socioeconomic vulnerability of refugees who intend to participate in the admission, re-admission and revalidation of UFPR diplomas. The Psychology project is also responsible for tutoring with refugee undergraduate students at UFPR.

Since the beginning of the program, around 2,500 migrants and refugees have already taken classes, with an average of 15 classes per year, around 350 students. There is a waiting list for some levels. As for psychological and legal assistance, they are varied, but the average is 500 visits per year.

Even with the success of the actions, the CSVM/PMUB did not intend to be limited to activities to provide extension



services to migrants and refugees and began to take initiatives to incorporate the theme in the university structure itself, in order to create a university migration policy.

University Migration Policy: rules and actions of UFPR

From the experience with humanitarian migrants and refugees within the university space and after much planning, actions, meetings, and debates, stimulated by the CSVM and PMUB, UFPR started to issue its own rules regarding affirmative actions for this public, through resolutions of its Higher Education, Research and Extension Council (CEPE), which emerged over the years as the needs appeared in everyday practice situations.

1. CEPE Resolution No. 2/16 (ex-58/14) deals with the revalidation of the diploma of migrants and refugees, being available on the UFPR website at: www.soc.ufpr.br/wp-content/uploads/2016/07/resolucao_cepe_25052016-1144.pdf. The revalidation of diplomas is an expensive, slow and bureaucratic process in Brazil, in general. The differential of this UFPR resolution is that it is aimed at refugees, including asylum seekers, and migrants with a humanitarian visa, who are Venezuelans and Haitians. In the absence of all the necessary documentation for revalidation, which includes a wide range of documents such as school history, detailed menu of the subjects, information from the university and faculty, among others – which they usually do not have at hand, at least in a way complete –, it is foreseen the possibility to compensate this



with the accomplishment of proof of knowledge of the course in which the person graduated. This resolution is also the subject of study in another chapter of this book.

Issued in 2014, with subsequent amendment, the resolution was put into practice the following year. Through the Pro-Rectorcy of Graduation and Professional Education (Prograd) of UFPR, Publications No. 6/2015, 35/2016, 32/2017, 58/2018 and 57/2019 were launched, launched by the UFPR Competitions Center, the even though it leads the entire entrance exam process to enter UFPR and that it already has many years of expertise in this type of call and exams. Such notices, in general, require certain mandatory documents from candidates, such as: copy of the diploma to be revalidated, professional experience report abroad and identity document. Aiming at the attempt to reduce bureaucracy and promote academic recognition and professional practice in Brazil, based on the aforementioned resolution, the public notices make it possible to justify the unavailability of documents or the impossibility of obtaining consular services in their country of origin, including due to financial restrictions. As for the enrollment fee, UFPR allows the granting of exemption for the underprivileged candidate, and the process for granting the benefit is in charge of the CSVM/Migratory Policy Program and the Brazilian University. Thus, the candidate for revalidation goes to Room 28, makes its registration and uploads the documents with the help of law students, if necessary. Subsequently, interviews are carried out by Psychology students, who already have a standard procedure adapted to the reality of migrants and refugees. The candidate's economic and social situation will be taken into consideration for the purposes of deciding whether or not the R\$550.00 fee should be waived.



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A commission of professors from UFPR, specially appointed for this purpose, analyzes registrations and documentation. In relation to the candidates who have their applications accepted, the Competition Center asks the Coordinations of the respective to prepare the tests. Three eliminatory steps are then carried out, in Portuguese: the objective test, the practical examination and the interview.

Regarding the profile of the candidates, over the three years, the revalidation of diplomas proved to be the type of demand most sought by women, mainly coming from Venezuela, Haiti, Syria and Angola. The process can be considered as successful, but the problem is still in the language barrier, which makes it difficult for candidates to take the test. Another negative factor is the degree of demand for the tests, given that many courses take extremely rigorous tests, requiring knowledge that even a regular student trained at UFPR would not be able to prove. These two factors mean that the number of approved in the revalidation process is low, although there has been a gradual increase in the result.

It is worth remembering, however, that ordinary processes for revalidating diplomas in Brazil, which are not specific to migrants and refugees, also have high levels of disapproval or rejection. Anyway, it is a special process that needs to be improved by CSVM and UFPR. There were generally around 23 candidates for revalidation tests per year, but in 2019, 82 applications were accepted, with a large increase in those of Venezuelan nationality. Through this resolution, 29 diplomas were revalidated until 2019, a much higher number than most other Brazilian universities able to revalidate diplomas. There are also no impediments



for humanitarian migrants and refugees to request the revalidation of their diplomas by the usual means of the Brazilian government, with indication from UFPR, through the Ministry of Education Platform (Plataforma Carolina Bori).

2. CEPE/UFPR Resolution No. 13/14 deals with the entry of migrants with a humanitarian visa and refugees in UFPR undergraduate courses (www.soc.ufpr.br/wp-content/uploads/2016/07/resolucao_cepe_09072014-902.pdf). In relation to courses that have remaining vacancies, resulting from the dropouts and lock-ups of regular students at the university, an announcement is launched annually for the filling of these vacancies by migrants with a humanitarian visa and refugees who have started graduation in their country in these specific courses or in courses very similar and could not finish it there. The criteria for this selection of candidates are: full payment, time spent in Brazil, knowledge of the Portuguese language and psychological interview. There are no fees and the bodies involved are Prograd, the International University Agency, the Office of the Rector and the Migration Policy and Brazilian University program. There are currently 115 students at UFPR who have enrolled by this procedure.

As there are remaining vacancies, the offer is always much less than the demand. The university's biggest challenge is to keep such students in courses. Many have some form of support, be it meals at the University Restaurant (3 meals a day), permanence assistance or scholarship. This scholarship stems from UFPR itself or from a Cooperation



Agreement established between UFPR and the Office of Labor Prosecution – State of Paraná, which is also studied elsewhere in this book.

3. Resolution CEPE/UFPR No. 63/2018 establishes the creation of 10 additional vacancies for humanitarian migrants and refugees to enter UFPR (www.soc.ufpr.br/portal/wp-content/uploads/2018/11/cepe-63-18-vagas-supplementares-migantes.pdf). CSV/PMUB was essential for the approval of this regulation and has been acting since then in the organization of the special entrance exam, also in charge of the Competition Center. There have been two editions to date, totaling 20 students who entered under this rule.
4. Resolution CEPE UFPR No. 56/19 constitutes the Supplementary Training Program: Academic Reception Cycle for Refugee Students (PFS-Refugees), intended for students admitted to the Federal University of Paraná (UFPR) as refugees, holders of a humanitarian and/or migrant visa, notably due to the admission mechanisms established by Resolution No. 63/18 – CEPE, Resolution No. 13/14 – CEPE and, eventually, Resolution No. 2/16 – CEPE (www.soc.ufpr.br/portal/wp-content/uploads/2020/02/cepe5619.pdf).

The PFS-Refugiados, usually known as *Ano Zero*, aims to provide adaptation, reception, integration and insertion of the migrant student to the university and social life of the country, increasing the chances of success in the process of inclusion in the Brazilian socio-cultural context through university training. Therefore, the first year at the university provides training activities that include, at least, the following



skills: I – minimally master the linguistic and cultural codes and practices in the Portuguese language, which are indispensable to profitably accompany other classes and training activities; II – understand their insertion in Brazilian society as a subject of rights and duties, in full conditions to develop on a personal and professional level and contribute with their knowledge and work to build more equitable and democratic social relations; III – know and interact with the academic and administrative life of the university, particularly the coordination of courses, departments, the library, etc.; IV – understand the curriculum of the course in which the student is enrolled, its requirements and possibilities; V – operate with ease the various systems aimed at the management of the academic life of students, in particular the Student Portal; VI – understand the functioning of the UFPR Library System, being able to perform the basic operations of searching, locating, borrowing and returning titles from the basic bibliography of the courses taken.

This means that migrant and refugee freshmen take fewer courses in their courses, have a lot of Portuguese classes, in addition to classes in law, computers and psychology. The pedagogical and administrative management of PFS-Refugiados is in charge of an interdisciplinary collegiate formed by five teaching and/or technical-administrative servers from UFPR indicated by: I – Migration Policy and Brazilian University Program (PMUB); II – Sérgio Vieira de Mello Chair (CSVM), of the United Nations High Commissioner for Refugees (UNHCR) at UFPR; III – Dean of Undergraduate and Professional Education (Prograd); IV – Superintendence of Inclusion, Affirmative Policies and Diversity (Sipad); and V – Agência UFPR Internacional (AUI).



Actions aimed at UFPR undergraduate students who are migrants and refugees

In order to improve the admission, permanence and integration of these students at UFPR, CSVM/PMUB has been offering students selected to start their undergraduate courses (freshmen) for 5 years, the Linguistic and Academic Reception Course, organized by Brazilian Portuguese project for Humanitarian Migration (PBMIH – internal). This course begins with the welcome of the Rector, Pro-Rectors and Professors of the Chair and offers, for 5 weeks, Portuguese classes directed to the fields of knowledge of undergraduate courses, information on the functioning of UFPR and the countless opportunities teaching, research and extension offered by the university, visits to the various campuses of the university, lectures with pro-rectors, coordinators and servers in strategic areas, among other activities. At the end of the five weeks, the Re-Admission Congress is held, in which these students make an oral presentation with projection, of the theme chosen during the course and related to the undergraduate course that will begin.

In this line, CSVM/UFPR created the discipline of Academic Portuguese, offered to all refugee freshmen, in which the genres of academic written and oral language are taught, with a methodology created especially for this purpose. Such discipline was incorporated in 2020 to the Refugee PFS.

The Academic Portuguese discipline, divided into two, one oral and one written, is attributed to a specialist teacher not only in Portuguese, but also in the inclusion of refugees in universities. Under their supervision, students must make a weekly report of their academic life in the



respective course, including the week's obstacles and challenges. There, the prejudice suffered by them, on the part of some colleagues (who do not want to do teamwork with them, who do not answer their questions in the group's WhatsApp group) is repeatedly detected; teachers (who complain about Portuguese, who send indirect questions, ask for inaccessible things); and technical servers (who do not strive to understand them). As a result, the CSVM, together with pro-rectories, develops awareness campaigns, such as the two broad campaigns: *Vozes e Culturas na UFPR* (videos on YouTube) and *Recomeços são Possíveis* (posts on social networks).

Another action that deserves to be highlighted concerns the master's and doctorate of the UFPR Law course, considered one of the best in the country, with a score of 6.0 in Capes' evaluation, which reserves up to 5 vacancies for migrants with a humanitarian visa and refugees, under the terms of Resolution No. 05/2015-PPGD/UFPR. In 2017, the first student joined: a Syrian refugee who has already completed his master's degree and is now a PhD Candidate. In 2018 another Syrian joined to start the master's degree in 2019. Currently, there is also a master's student from the Democratic Republic of Congo.

Actions during the covid-19 pandemic period

During the pandemic, all projects functioned normally, remotely:

1. PBMIH – External published in 6 different languages (Portuguese, Spanish, Haitian Creole, Spanish,



French and English), after studying, summarizing, translating, and editing, various materials related to the event, always in partnership with other projects, such as Caminhos do SUS, Refuge, Migration, and Hospitality and Pequenos no Mundo. Thus, health and Covid-19 materials were made; Emergency Aid from the federal government, Aid from Armazém da Família of Paraná state government and on the use and maintenance of masks. The material is available at pbmihufpr.com

2. Hospitalidade provided remote legal assistance by cell phone and email, mainly explaining the operation and directing the request for government resources. It also carried out translations for the State Department of Health of the State of Paraná, to produce banners and posters about domestic violence, which increased a lot in the country during the confinement period.
3. The PBMIH – Intern, even with the classes suspended, continued the practice of the freshman's Academic Diary, which reported their socioeconomic and also psychological vulnerabilities during the pandemic, and the Psychology Project was immediately activated. With the return of classes, on line, Academic Portuguese classes were resumed, as well as the other disciplines from Year Zero, in addition to the classes of the respective undergraduate and graduate courses.
4. The *Pequenos do Mundo* team, with the participation of PBMIH – Externo, made some very affectionate videos and sent them to the children of the project.



5. The AMMAR Project personally attended to some cases involving gender violence, monitoring the victim at the Women's Police Station, in addition to a case involving violence against children.

All projects endeavored to obtain and deliver Food Stamps (in Brazil called *Cestas Básicas*) for vulnerable migrants and refugees who asked for help.

Other university actions

The contribution of CSVM/PMUB in the scientific production area is also considerable, considering that the projects have groups of studies and research, and the professors and several students involved have already published book chapters and articles in qualified journals, as a result the studies and experiences provided by the program. Two books were released 2016 and in 2020 with support from UNHCR/Brazil.

Those initiatives in the educational area demonstrate the concern for their approach to be intercultural, so that the Brazilian culture dialogues with the culture of origin of these migrants and refugees, always with the concern of not overlapping them, precisely extolling the diversity that so enriches a society.

Finally, it is worth remembering that CSVM/PMUB is also part of and coordinates the Support Network for Migrants, Refugees and Stateless Persons, which brings together numerous organizations that work in the area, daily, in the state of Paraná, in addition to participating in the Forum of Rights of Migrant Workers, an initiative of the



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Labor Prosecution Service of Paraná. In addition, UFPR, through CSVM/PMUB, sits on the State Council for the Rights of Refugees, Migrants and Stateless Persons, in the state of Paraná, as a guest. Due to its internal and social actions, the program also participated in public hearings held in 2016 and 2017 on the rights of migrants and refugees and on the new Brazilian Migration Law, respectively, both held in the Legislative Assembly of Paraná.

In 2018, UFPR hosted the National Meeting of the Sérgio Vieira de Mello Chairs, together with a large congress on the theme of migration and refuge. There were 3 days of a great meeting of the Chairs, many lectures with professors and professionals in the area, 153 presentations of student work, with many cultural activities. On that occasion, much was discussed and a working group was created, which resulted in the alteration of Interministerial Ordinance No. 5 (by Ordinance No. 16, of 10/3/2018), which required certification of Portuguese proficiency through CelpeBras as mandatory to migrants and refugees start the process of naturalization. With the modification, other forms of demonstrating the ability to communicate in Portuguese are now accepted. This also shows UFPR's commitment to holding scientific events on the subject, in addition to carrying out advocacy actions, always aiming to promote the dignity of migrants and refugees.

These are actions and cooperation outside the university that contribute to their insertion in the local society, helping to make their work more effective in favor of migrants and refugees.

The goals for the future are focused on improving the actions already taken and expanding external relations with



other universities in Latin America. We intend to form a continental network of educational institutions that research the subject and welcome migrants and refugees, considering that the Migration reality is quite common in the countries, with very close obstacles and challenges. We believe that solutions can be more effective, if thought of in partnership, through a dialogical approach and aimed at transforming the life of migrants and refugees. We need to expand these safe spaces for migrants and refugees across the continent!

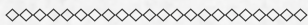


Interdisciplinary practices in the
field of migration and refuge:
the Porta Giratória methodology
(Language and Literature) and the
Life and Work group (Psychology)

Bruna Pupatto Ruano¹

Elaine Cristina Schmitt Ragnini²

The purpose of this chapter is to report two experiences, as well as the reflections arising from them, built in the field of Language and Literature and Psychology within the scope of the university extension program Migratory Policy and Brazilian University (PMUB), started in 2014 at the Federal University of Paraná (UFPR). The PMUB is linked to the Sérgio Vieira de Mello Chair, of the United Nations High Commissioner for Refugees (UNHCR), and its purpose is to welcome and assist migrants and refugees who need to work and live in the new land, in close relationship with the new cultures). This program consists of activities from 8 different courses at this university (Language and Literature, Law, Psychology, Sociology, Informatics, History, Medicine, and Communication) and also has partnerships with different



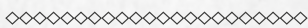
- 1 Professor at the Department of Polish, German and Classical Language and Literature (DEPAC) at the Federal University of Paraná. PhD in Linguistic Studies and responsible for the linguistic and academic reception of migrants and refugees at UFPR. She was one of the creators of the Brazilian Portuguese project for Humanitarian Migration (PBMIH-UFPR).
- 2 Professor, Department of Psychology, Federal University of Paraná. PhD in Education. Coordinator of the university extension project Migration and Subjectivation Processes: psychology, psychoanalysis and politics in the service network for migrants.



of studying at this university – to guarantee not only access, but their permanence at the institution.

In this sense, the consolidation of a migratory policy at UFPR requires a wide range of activities, which are developed within the scope of the PMUB, through different courses, at an intersection between the activities of extension, teaching and research. It is also worth mentioning that, although we have started this work with the assistance to the Haitian population, the program currently welcomes migrants and refugees of the most different nationalities, especially Syrians, Venezuelans, Congolese, among others, adding more than 5,000 people since its inception. start.

In the field of Psychology, the activities developed in the project ⁵are articulated based on the notion of processes of subjectification related to migration. It is understood that the migrant is a subject who broke the social and emotional ties established with and in the place of origin. The condition of coming to Brazil is usually marked by the experience of religious and/or political conflicts, civil war, natural disasters or else by the search for work and a more dignified life



5 The Migration and Subjectification Processes extension project has several activity fronts. It should be noted that they are developed from different areas of psychology. In the clinic area, clinical care is provided to migrants and psychosocial care. In the area of education, we carried out: the Pequenos do Mundo project, which aims at the development of migrant children – children of PBMIH students; the Mentoring Program for migrant students from UFPR undergraduate courses; and the Observatory of Migrant Policies for access and permanence of migrants and refugees in our institution, in partnership with the Center for Consultancy and Research in Psychology and Education at UFPR. In the area of work, we develop actions for the guidance, referral and monitoring of migrants in the world of work, either by the Vida e Trabalho group or by the psychosocial care that takes place in Room 28 of the UFPR Historic Building.



condition. The rupture in history hitherto consolidated by these migrants and the possibility of countless losses (from living with family and friends, or even their death; from ties; from identity; from a place of reference; and from symbolic references, among others) can configure a traumatic situation, which will require from these subjects a process of elaboration of these losses and traumas (RAGNINI, 2019).

In this perspective, listening to these migrants becomes essential for the restoration of their psychic condition, since they are in a state of exception in a new system of social relations, crossed by their uprooted experiences (ROSA, 2016), in a place, or on the margins, in the discourse that forms the social bond and, therefore, outside politics. Thus, the work of welcoming and listening to this audience can allow them to elaborate their place on the social scene, in a practice that refers both to the subject and to the institutions and social discourses that welcome and challenge them. In this way, the work of psychology is circumscribed in direct care for migrants and refugees, in the interaction with other professionals who care for them (such as teachers of Language and Literature) and in the construction of a transference network that welcomes them into the city (SEINCMAN, 2019).

In the area of language teaching, we have reflected on the Portuguese nomenclature as the “Welcoming Language” (PLAc), which has been used in this teaching environment. To conceptualize this terminology, we can list some items, for example: i) language acquired in a migratory context; ii) language acquired by a mostly vulnerable population; iii) language that is immersed in a tangle of languages, cultures, ethnicities and interactions; iv) language that facilitates access



to social and work spaces; v) language to act in the world and that prioritizes the immediate needs of this audience; and vi) language as a facilitator in the process of integrating these subjects into the local community.

Thus, we assume that teaching and learning Portuguese to a migrant and refugee public differs considerably from the more conventional teaching practices in the areas of Portuguese as a Foreign Language (PLE)/Portuguese as an Additional Language (PLA), so it should be studied under a specific bias. This is due to several linguistic and extralinguistic factors present in the cLAP courses, originating from the very life condition of these subjects and their several particularities, which we can mention, among others: the social, economic and/or psychic vulnerabilities, the volunteer work and the lack of specialized teachers and teaching materials; the personal narratives loaded, many times, with suffering and traumas in the classroom; and also the profile of the students: volatile public, in transit, which we will explore in the next section.

Porta Giratória Methodology (Language and Literature)

A particular characteristic of the profile of PLAc students concerns the volatility of this audience in classes. We think that this is a situation present, at least in the beginning, in several Portuguese courses for migrants and refugees. The dynamics of the course, as well as that of the target audience, led us to reflect on structural and methodological changes that are generated by the urgencies of the students present there. In the specific case of the PBMiH-UFPR Project, this finding, related to the students' volatility, occurred right at



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the beginning of our practices, and very quickly we started to work supported by our own methodology, adapted to this teaching context, which we call “Teaching in Transit “or” Revolving Door” (RUANO; GRAHL; PERETI, 2016).

This approach develops very differently compared to foreign language courses in general. Although the groups are semiannual, the project’s proposal is to assist the student the moment he arrives. Thus, first, the student passes a placement test so that he can assess his knowledge of Portuguese. If there is a place in the class at your level, the new student is promptly directed to the classroom and starts the course on the same day. Practically every week, the project receives new students and part of them, for financial or work reasons, stop attending the course or follow classes with great irregularity. The teachers responsible for creating the project report that “from the beginning, we realized that any ‘linear’ approach to language acquisition would not be productive for the group. From the discussions, we came to the idea that each class would be a closed communicative task” (RUANO; GRAHL; PERETI, 2016, p. 298). According to the authors:

The idea has been, then, to start from a contextual situation common to the new life of these students, such as, for example, conducting a job interview, and from there to list the elements of discursive and linguistic adequacy, so that, at the end of a class three hours, the student has built repertoire and developed language skills to perform a communicative task. And it is in this perspective that we are developing our didactic material for this audience. In this way, the feeling of having lost previous content is lessened. We thus moved from a linear form of language



teaching to a centrifugal spiral model, much more productive in this situation of constant traffic. (RUANO; GRAHL; PERETI, 2016, p. 298).

Therefore, students more often do not feel unmotivated by constant “retakes” of content. On the other hand, beginners will not depend on past classes to continue the didactic work of the day. In addition, if, for some reason, this student can no longer follow the course, he/she will have come out of this experience with something concrete: he will have had contact with the linguistic resources necessary to carry out a specific task, which is certainly already valid. However, for this dynamic to be possible, it is necessary to make some didactic-methodological adjustments, as we have observed in our experience.

In the case of PBMIH-UFPR, the work is carried out with more than one teacher in the classroom and this choice is due to two main reasons: a) lack of specialized professionals with experience in this field. Thus, in this format, less experienced teachers can be inserted in the classroom with colleagues who have been working in PLAc courses for a longer time and, thus, can observe the classes and feel supported to teach part of the activities, a practice they have contributed a lot in the training of future professionals in the area; b) when the migrant and refugee student enters the class for the first time (at any time during the semester), he will come across several teachers: one is more experienced, the other trainee teachers are part of the Language and Literature course, they are in training and they can dedicate themselves to this new student in an almost individual way, bringing him up to date on the theme, methodology and assisting him in the beginning of his journey in a more individualized way. We have realized, through this practice,



a concrete possibility to work in a motivating way within a context of teaching in transit, with free entry at all times, as we believe it should happen in this teaching environment.

Vida e Trabalho Group (Psychology)

The proposal of Psychology is the report of the history and the migrant condition, which is similar to a clinical work in the social field (ROSA, 2016). To operate the testimonies, we have two strands of action: interdisciplinary practice with other professionals who assist migrants and refugees (in this case, Portuguese teachers); the actions with this public and the resources that make his life in the city viable (instrumentalization for the job market, for example). Thus, the practices proposed in the project are created based on the demands of the target population or the professionals who serve them. In 2014, the monitoring of Portuguese activities began on three fronts: a) participation in language classes by the Psychology team, with emphasis on the Cultural Differences in the Migration Process project (RUANO; CURSINO, 2019), in which if topics relevant to the migrant's life are worked on in relation to other cultures (cultural differences, identity, norms of sociability, prejudice, discrimination, difficulties in the organization of concrete and subjective life); b) Collective Catharsis Project, which is a conversation with PLAC teachers about the difficulties encountered in the classroom in the face of the migrant's trauma and the violence that goes on in the city, exclusion, prejudice and vulnerabilities, as well as their possible ways of coping; and c) a working group for this population called Vida e Trabalho no Brasil, which will be detailed here.



The Vida e Trabalho project addresses the differences between life, the market and labor relations in the country of origin and in Brazil and establishes the minimum conditions for the process of seeking and obtaining a job in the host country (curriculum guidelines, interview and group dynamics of the selection process). The purpose of these activities is to welcome and equip migrants for life in the city, which inserts them into the social bond and creates a discursive field for their existence in relation to the other. The group Vida e Trabalho no Brasil took place on Saturdays, before Portuguese classes, with several editions. As a methodology, 5 thematic meetings were held, lasting 1h30min each, for which group dynamics and oriented and dialogued activities were used. The themes of the meetings were: Living in Brazil; Migration and Work Stories; Migrant Life and Cultural Aspects; Planning the Future – Professional and Personal Aspects; Guidelines for the Labor Market (curriculum and interview). In the end, migrants have the curriculum, a training for interview and group dynamics, as well as a certificate of accomplishment of these activities. These elements corroborate the perception of the reality of the Brazilian labor market and the cultural and behavioral differences in the work environment, which instrumentalizes them in the search for an opportunity in that market. They still find in the group and in the psychology team a reference for the dialogue about the difficulties experienced in the search for a job, a contact that remains beyond the activities restricted to the group. These actions, whether with professionals from different areas that serve this population, or with the migrants themselves, promote openings so that their life trajectory, memory and affections can be evidenced in the migrant experience.



Some considerations

The experience of working with migrants and refugees shows us that a significant part of this population comes from contexts quite different from those found in the Brazilian scenario. In other words, the construction of world meanings for this audience takes place in ways that are sometimes different from the reality of the host country. Thus, it was quickly understood that it would be necessary to mobilize other concepts, methodologies and practices for the inclusion of these migrants in the world of work and, consequently, in the social bond. This instrumentalization for concrete and working life is developed in Portuguese classes and in meetings with psychology. Thus:

It is notable that the listening spaces provided by Psychology help the student to better situate themselves culturally in the new society and give him the welcome and confidence that will be taken to the classroom. These gains, as highlighted by Buors and Lentz (2009), are fundamental steps for teaching-learning in contexts of high economic, social, and moral fragility. (RUANO; CURSINO, 2019, p. 52).

In this sense, it is understood the importance of interdisciplinary work between these two areas of knowledge, especially when we are facing a complex context, such as migration and refuge. It appears that work is what guarantees, to some extent, the concrete life of these subjects in the new land, but it is also what can re-signify a professional identity and a place in the social bond. It should be noted that deprofessionalization and precarious inclusion in the labor market is not uncommon in the migrant trajectory. This population makes up a cheap and more exploitable



labor force, whether due to vulnerabilities, exclusion or lack of knowledge of labor laws or rules of conduct in work contexts.

From psychology, the stories of life are heard and it is learned about the encounter of these subjects with the new land and the new culture (s). The language is a fundamental tool for the migrant to move more easily in the city, organize life and work. In addition, the new language is also a marker of its relationship with the territory and with a large part of its members. Without knowledge of the majority language of the country, the exclusions, precariousness and vulnerability of this population are worsening.

If teaching a host language is putting in place what mobilizes the subject for life, social interaction and work, it is understood that there are moments in this process that are intertwined with what is the specific object of Psychology: the subject, its history, its trajectory, its narratives and the implications of its desire in that. Teaching a language in the context of migration means activating affections, cognitive and symbolic resources, stories, memories and traumas. In this way, the dialogue between Language and Literature and Psychology can be useful for the development of teaching strategies and methodologies, for the training of teachers who work in this field, as well as for PLAC students – when they are heard and welcomed they can be better situate culturally and affectionately, having, as a consequence, a higher probability of success in learning the target language.

To conclude, we suggest four central assumptions for the work agenda in the field of migration and refuge: (i) that practices are built according to demands, whether concrete or subjective, that come from the public we serve; (ii) that



the work is interdisciplinary; (iii) that the methodologies are revisited and recreated; and (iv) that there is an opening to the other in the welcoming process in a new land and culture. The practices reported here, in addition to being in line with these principles, demonstrate that the work is done in the encounter with this migrant subject and in the cracks that are designed to establish a place of visibility and life, which includes the social and political field, but also the field of desire, be it those who welcome or those who seek possibilities of existence in the new country.

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International migration and labor: challenges for the visibility of immigrants and refugees in the labor market insertion

Rosana Baeninger¹

The current context of international migration in Brazil, with its growing diversity and an increase in the arrival of international immigrant workers, has led to the expansion of debates with different sectors of society. Considering ILO Recommendation No. 151 – Migrant Workers Recommendation (1975) and ILO Convention No. 143 – Migrant Workers – Supplementary Provisions (1975), it is necessary to guarantee the promotion of the formalization of the informal economy for migrant workers and their challenges and initiatives to extend the protection of labor rights and labor equality to these immigrant contingents, in order to remove exploitation and slave labor.

However, it is essential to understand that there is a broader context in global production chains where international migrations make up the informal economy with networks of exploitation of the “global market for immigrant workers” (GUARNIZO *et al.*, 2003). Immigrants and refugees are more subject to exploitation and slave labor networks due to their conditions of extreme vulnerability in the face of the destination society (SASSEN, 2011), configuring the invisibility of immigrant workers in “economic niches” (WALDINGER, 1994).



In the Brazilian context, since the beginning of this century, Brazil has been part of the international migration route, especially from the Global South, precisely because of the restrictions on the entry of immigrants in the countries of the North (BAENINGER, 2014), with the entry, between 2000-2020, of about 1.5 million immigrants and refugees documented with permanent or temporary visas and another 193 thousand asylum seekers in the country, especially from Venezuela, until March 2020.

Performance of the MPT/Unicamp Agreement for the advancement of knowledge and labor inclusion of immigrants and refugees

One of the main challenges for the eradication of immigrant slave labor is to know the profile of international migrant workers in Brazil in the 21st century. Thus, the elaboration of the Thematic Atlas of the Migration Observatory in São Paulo –Population Studies Center Elza Berquó (NEPO/Unicamp), in partnership with the Labor Prosecution Service, is an effort to aggregate different data sources for recent years (Ministry of Justice – Federal Police/Sismigra, National Refugee Council – Conare, Annual List of Social Indicators – RAIS, School Census) to compose the scenario of international migration and subsidize actions related to social policies and, in particular, those that may generate income and employment.

In order to understand and analyze contemporary international migrations, it is important to highlight the heterogeneity of this social phenomenon and the need for empirical knowledge of the migratory phenomenon –



marked by dynamics in continuous transformation. Based on this information and analysis, the following publications were produced:

- *Atlas das migrações internacionais no estado de São Paulo* (2017) and *Atlas of Refugee Migration in Brazil* (2018) – in these cases, the support of the MPT made it possible to reprint 1,000 copies, which were distributed to history and geography teachers at the Technical Schools from the Paula Souza Center – São Paulo and to the schools that visited the São Paulo State Immigration Museum.

- *Atlas das migrações internacionais na Região Nordeste* (2019), whose states have recently faced the arrival of immigrants from Venezuela, with the rescue of these immigrants from slave labor. A thousand copies were printed and distributed to teachers in public schools in Salvador – Bahia and in the Cariri region – Ceará

- *Atlas das migrações internacionais na macrometrópole paulista* (2020) based on the regionalized knowledge of the presence of immigrants and their forms of insertion in the formal and informal labor market in an expanding metropolis.

- *Atlas das migrações venezuelanas no Brasil* (2020), with the mapping of the interiorization of immigrants from Venezuela in different Brazilian cities and the sociodemographic profile of that immigration.

- *Atlas das migrações internacionais na região Sul*, a space for the expansion of immigrants from Haiti, Bangladesh, Venezuela, with many situations of human trafficking.



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- Books: *Migrações venezuelanas* (2018); *Migrações Colombianas* (2019); *Espaços regionais da agricultura globalizada em São Paulo: trabalhadores rurais e imigrantes* (2020); *Migrações Internacionais e a pandemia de covid-19* (2020); *Vamos juntos! Português como língua de acolhimento* (2020)

The following campaigns were also carried out in partnership with MPT-UNICAMP²: Não somos escravos da moda; Todos contra o tráfico de pessoas; Eu abraço esta causa: eu uso máscara; Por trás do aplicativo; Faces e sustentabilidade. These actions aim to give visibility to immigrants and refugees, valuing the creative economy, creating a virtuous cycle that breaks with economic niches and networks that lead immigrants and refugees to exploitation and precarious labor.

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Ethnic concentration of immigrants in the host country's economy is usually

described by the concepts of ethnic niche, ethnic enclave, and ethnic economy. Ethnic

niche is a concept that describes ethnic division in the labor market (Waldinger, 1994;

Wilson, 2003), the concept of ethnic enclave relates to ethnic entrepreneurship (Aldrich

and Waldinger, 1990), and the concept of ethnic economy is a broad concept, which

includes all economic activities, in which ethnicity and ethnic concentration play a role,

and concerns immigrant ethnic self-employed, employers and employees (Light and



Gold, 2000). This classification was used by different scholars who gave diverse names

to types of ethnic concentration, but a division was always made according to ethnic

concentration of immigrants or ethnic minorities in their labor and entrepreneurial

activities (Logan et al., 2000; Zeltzer-Zubida, 2004).

UFRR's role in the inclusion policies for work and social protection of migrants

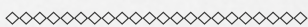
João Carlos Jarochinski Silva*

¹The Federal University of Roraima (UFRR) started its work in 1989, being the first federal educational institution to be installed in the state of Roraima, having as one of its goals the development of trained staff to meet the professional needs of the region.

Additionally, it is noteworthy that, over the years, due to the social and economic dynamics of the place, UFRR focused on the border context, since it is present in everyday life in Roraima, being a fundamental factor in the development of the region the triple border between Brazil, Guyana and Venezuela.

Boa Vista, which houses the institution, is the main city in a context that exceeds Brazilian limits, being the reference municipality for the entire southwestern region of Guyana and southeast of Venezuela, a reality that has transformed the place into a migration hub. This fact has not gone unnoticed by members of the university, generating a series of actions at the level of research, extension and teaching.

Extension actions were developed in order to grant the university community and the external public – including international migrants in both categories – access to what



¹ * Adjunct professor at the Federal University of Roraima. Post-doctorate by NEPO/Unicamp.



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was produced by the institution, in addition to making these people aware of various issues. Among the topics covered in these actions, two have always been very relevant and related to the dynamics of the world of work. The first is the provision of training that facilitates job insertion, which has always attracted many stakeholders, including migrants. The second is awareness of the importance of dignified work for all, in order to combat discrimination, xenophobia and labor exploitation.

The reality of the institution was already a milestone in this regard, since to be able to offer its courses it was necessary the arrival of professionals from other countries, who contributed to solve the needs that the region had and send a positive message in relation to the presence of migrants in the community.

In addition, several researches were developed and demonstrated the benefits of regional migration dynamics, such as those developed by the Interdisciplinary Study Group on Borders (Geifron), which included analyzes of the departure of Brazilians from Roraima to other countries, with prominence to Venezuela and Guyana, as well as pointing out the difficulties encountered by emigrants and immigrants in these three countries, notably in terms of labor exploitation and human trafficking.

These and other UFRR measures have become more evident and necessary with the increase in the flow of Venezuelans to Brazil through Roraima. As of 2015, the institution assumed a greater role in the subject due to the need to provide information and support in a scenario that demanded many actions.



The first reason for this greater engagement stems from the change in the regional scenario in relation to migratory flows, in which the arrival of immigrants far outpaced the departure of Brazilians in the regional dynamics. In addition, the significant increase in asylum seekers in the state has also set new standards in terms of regulation.

The second was that the university was demanded in this context to carry out the initial diagnoses of the social reality of Roraima, whose focus was on the needs of immigrants and the capacity for local integration of these immigrants. These diagnoses were made through the publication of works and mainly through various conversations with state and international agencies. It is noteworthy that, in some cases, the university provoked these dialogues, realizing the need for actions in the context in which it operates.

By becoming the privileged place in Roraima for the debate on migration issues and the formulation of actions, UFRR hosted events produced by different agencies, as well as celebrated agreements that took a series of initiatives inside its facilities, such as being the place that it initially housed the offices of several United Nations agencies, such as UNHCR and IOM, and the Reference Center for Migrants in Roraima. The latter provides guidance, protection and integration services to Venezuelan citizens and other nationalities.

Accompanying these actions, an agreement was signed for the installation of the Sérgio Vieira de Mello Chair (CSVM) with research, teaching and extension actions focused on the refugee public and asylum seekers, highlighting the selection process for entry into specific UFRR courses for



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this public and the dissemination of the rights of applicants and refugees, such as the right of access to work.

In addition to these, there are initiatives such as the legal clinic that provides assistance to the general public and migrants; teaching Portuguese as a host language – which is also essential for integration and job insertion; and the dissemination of narratives produced by migrants through the Estórias Migrantes project.

Finally, the intense production of research that reveals the scenario of issues related to migrants and refugees in Roraima and the formation of cadres who have been working to welcome, protect and integrate everyone cannot be overlooked.



CHAPTER 4. MPT AND MIGRATIONS



Therefore, there would be no effective Democratic State of Law that could live with the prohibition of interferences from the justice system in the acts of other branches of the Public Power.⁴

It is noteworthy that the State's observance of fundamental rights, whose realization occurs through government policies, is the surest way to guarantee economic, social and cultural development for the Brazilian State. The 1988 Constitutional Charter cannot remain indefinitely as an empty promise of meaning for significant portions of the Brazilian population, still invisible to the eyes of the Public Administration.

In this respect, it is beneficial to reproduce the words of Thiago Gurjão Alves Ribeiro, who claims that the omission in the realization of public policy when it comes to fundamental rights is not discretionary⁵:

There is no doubt that the realization of public policies is, above all, a task reserved for majority political deliberation. However, intervention by the Public Prosecutor and/or by the Judiciary Branch would not, in principle, take place to rediscuss the criteria adopted in the planning and execution of a given policy, but rather to control a



4 VIOLIN, Jordão. *Protagonismo judiciário e processo coletivo estrutural: o controle jurisdicional de decisões políticas*. Salvador: JusPodivm, 2013, p. 146.

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5 RIBEIRO, Thiago Gurjão Alves. Trabalho Escravo e o Dever de Implementação de Políticas Públicas de Prevenção e Assistência às Vítimas. In: PAIXÃO, Cristiano; CAVALCANTI, Tiago Muniz (coord.). *Combate ao trabalho escravo: Conquistas, estratégias e desafios*. São Paulo: LTr, 2017. p. 281.

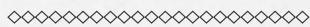


point that is not subject to the decision administrative: failure to carry out policy, which frustrates the realization of fundamental rights. Failing to guarantee respect for the fundamental rights of the citizen does not fall within the discretion conferred on the administrator.

The Federal Supreme Court has long recognized the legitimacy of the Judiciary to control unconstitutional omissions by the Public Administration (ADPF No. 45, Rel. Min. Celso de Mello, DJ 5/4/2004, p. 12). More recently, the Superior Court reiterated its understanding of the possibility of interference by the Judiciary for measures to assure fundamental rights (RE No. 554446 AgR, Rel. Min. Roberto Barroso, DJe No. 072, 4/13/2018).

Therefore, we have as premise of the present study that the legal system admits the possibility of intervention of the justice system in the realization of fundamental rights that have been breached.

In the specific case of confronting contemporary slave labor, the 2nd National Plan for the Eradication of Slave Labor (2nd PNETE)⁶, produced by the National Commission for the Eradication of Slave Labor (Conatrae), currently linked to the Ministry of Women, Family and Rights Humans, constitutes the framework of the national public policy for the prevention and repression of labor analogous to slavery in Brazil.



6 BRAZIL. Presidency of the Republic. Special Secretariat for Human Rights. // *National Plan for the Eradication of Slave Labor*/Special Secretariat for Human Rights. Brasilia: SEDH, 2008. Available at: <https://reporterbrasil.org.br/documentos/novoplanonacional.pdf>. Access in: Apr. 4, 2020.



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Despite criticisms of the separation of public policies to confront work analogous to slavery and human trafficking, which is justified by historical and political reasons, which are outside the scope of this text, and the very efficiency of the measures adopted by the Brazilian State⁷, the public policy adopted in Brazil is recognized as a world reference in confronting contemporary slave labor⁸; and the Federal Public Prosecution Service (MPT), a branch of the Federal Prosecution Service, which is charged with defending diffuse and collective rights and interests within the scope of Labor Justice, has contributed decisively to the ongoing process of preventing and suppressing this crime against dignity of human person⁹, whether as responsible for or participating in specific actions provided for in the Pnete, as an inducer of new and comprehensive actions developed to adapt the state response to social, economic and political demands, as will be seen below.



7 “[...] State authorities identified and assisted fewer victims of *trabalho escravo*, and protection efforts available for all victims were insufficient given the scope of the problem. The government’s efforts to criminally investigate, prosecute, and convict labor trafficking cases decreased and the government treated forced labor as a distinct crime from human trafficking; it treated most cases as administrative matters rather than criminal.” DEPARTMENT OF STATES. *Human Trafficking Report June 2019*. United States of America. p. 107. Available at: www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf. Access in: Apr. 5, 2020.

8 CAVALCANTI, Tiago Muniz. *Neaboliconismo & direitos fundamentais*. São Paulo: LTr, 2016. p. 115.

9 As decided by the Federal Supreme Court in RE No. 459,510, DJE No. 245, released on 12/3/2015.



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which allows consultation of the geographical panorama by municipality, with information on the geographical context and priority areas of activity¹², the profile of slave labor cases¹³, protection and guarantee of national migratory rights¹⁴ and flows.¹⁵

In turn, systems for managing and monitoring national and state public policies to combat work analogous to slavery and human trafficking were developed and made available to public managers. In this sense, the Integrated System of Attention to Victims and Vulnerables to Slave Labor (Integra 2.0), an online platform to support the management of integrated care initiatives for victims of work analogous to slavery, human trafficking and children, which stands out, stands Oct. allows strategic and operational planning of care, and the Monitoring Platform for Plans of Goal 8.7 of the Sustainable Development Goals – In favor of the eradication of Forced Labor, Contemporary Slavery, human trafficking and Child Labor¹⁶, a tool for monitoring plans, programs and



- 12 With records of those rescued from slave labor – born in the municipality and UF, rescued from slave labor – residing in the municipality and UF, rescued from slave labor in the municipality and UF, where workers were rescued, where they were born, where they lived, heat map, map of groupings of nearby municipalities in the UF and historical series of rescues.
- 13 With records of more frequent occupations, races, economic sectors more frequently involved, education, age, and sex profile.
- 14 With records of operations to combat slave labor and rescues, actions to combat slave labor, actions to combat forced or slave labor and the reintegration of its victims and a committee and commission to combat slave labor.
- 15 With records of flows per unit of the federation of origin and year of the redemption occurrence, which indicate possible occurrences of internal human trafficking.
- 16 Available at: <https://monitora87.mpt.mp.br>. Access in: Apr. 5, 2020.

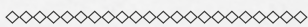


projects linked to Goal 8.7 of the United Nations Sustainable Development Goals, namely:

To take immediate and effective measures to eradicate forced labor, end modern slavery and human trafficking, and ensure the prohibition and elimination of the worst forms of child labor, including recruitment and use of child soldiers, and by 2025 end the child labor in all its forms.

In parallel with the development, in partnership with the International Labor Organization's Brazil office, of these tools aimed at the general public and public managers, the MPT focuses on relevant efforts to improve the conditions for processing internal data and making relevant information available to all Labor Prosecutors who work in confronting work analogous to slavery, in line with action 5 of the 2nd Pnete¹⁷.

With the new information management tools, it is possible to quantify the complaints related to the theme of labor analogous to slavery and human trafficking, to identify geographically the main sources of occurrence of these complaints, to investigate the main productive sectors, sources of contemporary slave labor from the joint analysis of the news in fact distributed to Labor Prosecutors across Brazil.



17 "Prioritize processes and measures related to slave labor in the following bodies: Regional Superintendencies of Labor and Employment/MTE, SIT/MTE, Labor Prosecution Service, Labor Justice, Federal Police Department, Federal Prosecution Service, and Federal Justice".

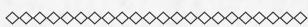


This information has the potential to greatly assist in the planning and execution of actions to repress work analogous to slavery, giving effect to action 2 of the 2nd Pnete¹⁸.

Another action worth noting is the recent signing of a Technical Cooperation Agreement between the Federal Highway Police, the MPT and the Brazilian Association for the Defense of Women, Children and Youth (Asbrad), which aims to develop specific methodology and the inclusion of the topic of human trafficking, *with the specific purposes of exploiting labor analogous to slavery and sexual exploitation*, in PRF's Mapear Project¹⁹, for surveying points of vulnerability on the country's federal highways.

In future updates of the project in question, the points of vulnerability for human trafficking and for contemporary slave labor, by federal land routes, will be raised, serving as an indispensable instrument for the planning and implementation of effective public policies to combat these crimes.

Finally, it should be noted that the MPT has become one of the main recipients and repositories of complaints about labor rights violations in the country, with an annual average of more than 103,200 factual news related to all

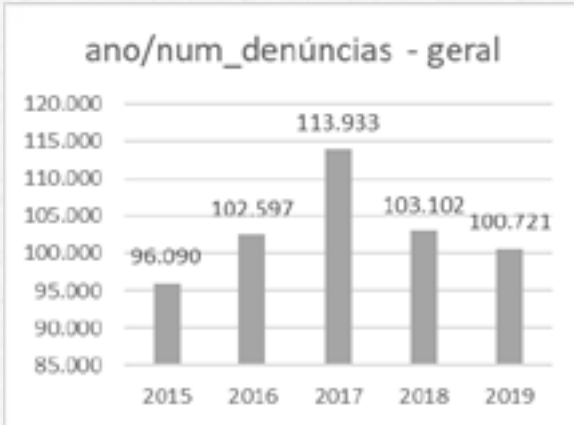


18 "To establish integrated action strategies in relation to the repressive actions of the organs of the Executive, Judiciary and the Labor Prosecution Service, with the objective of eradicating slave labor".

19 The Mapear Project, by the Federal Highway Police, aims to map vulnerable points to the sexual exploitation of children and adolescents on federal highways and roads, reaching 71,000 kilometers of highways in 26 states and the Federal District. Available at: www.prf.gov.br/agencia/wp-content/uploads/2018/05/Projeto-Mapear.pdf. Its database is used in the production of public information at the Observatory for the Prevention and Eradication of Child Labor – Comprehensive Data-Guided Protection. Available at: <https://smartlabbr.org/trabalho infantil>.



areas of the institution’s activities and an annual average of more than 1,108 complaints related to labor analogous to slavery and human trafficking, in the 2015-2019 period.



*year/number_reports - general
Source: MPT Digital



*year/number_reports - general
Slave labor/ human trafficking
Source: MPT Digital

The more than 516,000 complaints directed to the MPT, of which more than 5,500 related to contemporary slave labor, in the period from 2015 to 2019, demonstrate



3. Structuring judicial act

Based on the North American experience of the Judiciary's active participation in the realization of social rights²⁴, a specific type of judicial act began to be outlined that would make the necessary interventions feasible to put an end to the practical requirements arising from taking a favorable position for the implementation of the fundamental rights.

If it is true that the legal system admits the possibility of intervention by the justice system in the realization of defaulted fundamental rights, one cannot lose sight of the fact that *social rights have specific characteristics that demand expenditure of resources, personnel and time from the State*, which require of the Judiciary an active and aware stance of its role of last safeguard of the real dignity of the citizens.

In this sense, ex-STF minister Eros Grau states that:²⁵

The Judiciary Branch is the ultimate enforcer of the law. This means that if the Public Administration or a private individual – or even the Legislative Branch – from whom the correct application of the law is claimed, refuses to do so, the Judiciary Branch may be called upon to apply it.

Immediately applicable provision ultimately binds the Judiciary Branch. Denied by the Public Administration, by the Legislative Branch or by private



24 BARROSO, Luís Roberto. *Curso de direito constitucional contemporâneo: os conceitos fundamentais e a construção do novo modelo*. 5. ed. São Paulo: Saraiva, 2015. p. 159.

25 GRAU, Eros Roberto. *A Ordem Econômica na Constituição de 1988*. 12. ed. São Paulo: Malheiros, 2007. p. 320.

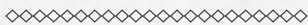


individuals its application, it is up to the Judiciary to decide for the imposition of its immediate effectiveness.

The Judiciary Branch, then, will be of a band, bound by the duty to give immediate effect to the precept. On the other hand, it will be authorized to innovate the legal system supplying, in each decision that it takes, any gaps that, if the precept was not endowed with immediate applicability, would act as an obstacle to its feasibility.

The structural decision arises precisely to meet these needs. The doctrine has understood this type of *decisum* as the one used for the implementation of structural reform in an entity, organization or institution, with the objective of realizing a fundamental right, carrying out a determined public policy or resolving complex disputes²⁶.

The MPT, in line with actions No. 3, 57, 58 and 60²⁷ of the 2nd Pnete, has been promoting a series of actions of a structuring nature in the public policy to confront work analogous to slavery, either to avoid its dismantling, or to guarantee its improvement.



26 DIDIER Jr., Fredie; ZANETI Jr., Hermes. *Curso de direito processual civil: processo coletivo*. 12. ed. Salvador: JusPodivm, 2018. p. 425.

27 Respectively: "To establish integrated action strategies in relation to the repressive actions of the Executive Branch, Judiciary Branch, and Federal Public Prosecution bodies, with the objective of eradicating slave labor"; "To maintain the systematic disclosure of the list of employers who used slave labor in mass media and community radio stations and encourage their consultation for the appropriate purposes"; "To defend in court the constitutionality of the Register of Employers who have maintained workers in conditions analogous to slavery" and "To take action to eliminate slave labor from the Brazilian economy through actions with suppliers and customers".



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As an example, Public Civil Action No. 0001704-55.2016.5.10.001 is mentioned, which was processed at the 11th Labor Court of Brasília, which has already been res judicata, which sentenced the Union and the then Minister of Labor to:

Publish the Employers' Register, with the inclusion of all administrators who hold against themselves a final administrative decision on the merits of the tax assessment notice provided for in art. 444, of CLT, resulting from the exploitation of labor analogous to slavery since the date of July 1, 2014; and provide, in an exceptional manner, the execution of a judicial agreement or TAC with the administrators that may be included in the first publication of the Employers' Register and that have against them a final administrative decision regarding the validity of the infraction notice issued before the Interministerial Ordinance is in force. n. 4/2016.

It should be noted that the aforementioned collective demand was proposed when the Federal Government stopped publicizing, without reason, the so-called Dirty List of slave labor, an essential tool for the development of public policy for the eradication of slave labor.

Another structuring judicial measure was the filing of public civil actions against the largest financial institutions in the country in which it was requested, in short, the redrafting of their responsibility policies, with the inclusion of guidelines capable of guiding the institutions' actions in identifying socio-environmental risks related to human rights violations, of a labor nature, including slave labor, human trafficking, child labor, fatal accidents and occupational illness in large numbers, caused by non-compliance with health and safety



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MPT's role in tackling slave labor

CATARINA VON ZUBEN¹
ULISSES DIAS DE CARVALHO²

Presentation of the study

This study aims to present an overview of the work of the Labor Prosecution Service (MPT) in confronting slave-like work, from a labor perspective.

To this end, we will divide the work into three parts: in the first, we will discuss the institution's legal-institutional role in the defense of diffuse and collective rights within the scope of Labor Justice, briefly presenting the main thematic areas of its performance; in the second, we will present the institutional functions and the main legal instruments made available to the members of the *Parquet* for the exercise of such attributions; finally, we will analyze the role of the MPT in combating contemporary slave labor, from the outline of general aspects and the presentation of new challenges that arise in the face of the serious socioeconomic problems that Brazilian society has been going through.



1 Labor Prosecutor in São Paulo. Post-graduate lato sensu in Labor Law and Process.

2 Prosecutor of Labor in Pernambuco. Master in Laws.



as well as certain fundamental rights provided with an institutional component that characterizes them”.

Indeed, it cannot be denied that the Constitutional Charter granted the Public Prosecutor an extraordinary range of protection. To the functional, administrative and financial autonomy of the institution are added the functional independence, the vitality and the immovability of its members, a circumstance that reveals an undeniable position of prominence in the constitutional framework.

Thus, we agree with the thesis that the Labor Prosecution Service constitutes itself as a true fundamental guarantee of the individual, whose existence cannot be the object of discussion by the Derived Constituent Power (CF/88, art. 60, § 4º, inc. IV).

Following this line of thought are the authors Emerson Garcia⁸, Carlos Roberto de Castro Jatahy⁹, Hugo Nigro Mazzilli¹⁰ and Alexandre de Moraes.¹¹

In the structure created by the Federal Constitution of 1988, the Labor Prosecution Service covers the Federal Public Prosecution Service and the States. At the federal level, four branches were established, namely: Federal Prosecution Service, Labor, Military, and the Federal District and Territories. In view of the specific purpose of this work, we will limit the considerations to the Labor Prosecution Service.

Complementary Law No. 75, of May 20, 1993, which provided for the organization, duties and statute of the Federal Public Prosecution Service, gave the MPT the primary function of exercising its powers with the Labor Justice



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bodies (art. 83, *caput*). Therefore, whenever there is a need to defend the legal order, the democratic regime and the social and individual interests unavailable in the labor field, the assignment will be the Labor *Parquet*.

Other specific functions conferred to the MPT were listed in the items of the aforementioned art. a) to promote the actions attributed to it by the Federal Constitution and by labor laws; b) to manifest itself in any phase of the labor process, accepting the judge's request or by its own initiative, when it understands that there exists public interest that justifies the intervention; c) promote public civil action within the scope of the Labor Court, for the defense of collective interests, when the social rights constitutionally guaranteed are not respected; d) to propose the appropriate actions for the declaration of nullity of contract clauses, collective agreements, or collective conventions that violate individual or collective liberties or the individual inalienable rights of workers; e) to propose the necessary actions for the defense of the rights and interests of minors, incapacitated and indigenous people, resulting from labor relations f) to appeal the decisions of the Labor Justice, when he or she understands it to be necessary, both in the lawsuits in which he or she is a party and in those in which he or she officiates as a law enforcer, as well as to request the revision of the Enunciates of the Precedent of Jurisprudence of the Superior Labor Court g) to function in the Labor Court sessions, manifesting himself verbally on the matter being debated, whenever he or she deems necessary, being assured the right to see the cases being judged, and being able to request the requisitions and diligences he or she deems convenient h) to initiate proceedings in the event of a strike, when the defense of legal order or public interest



so requires i) to promote or participate in the instruction and conciliation in disputes resulting from the stoppage of services of any nature, mandatorily officiating in the processes, manifesting its agreement or disagreement, in eventual agreements signed before the homologation, safeguarding the right to appeal in case of violation of the law and the Federal Constitution j) to file writs of injunction, when the competence lies with the Labor Justice; k) to act as arbitrator, if so requested by the parties, in disputes under the jurisdiction of the Labor Justice; l) to request the diligences that it deems convenient for the correct progress of the processes and for the best solution of labor disputes; and m) to intervene obligatorily in all the actions in the second and third degrees of jurisdiction of the Labor Justice, when the party is a legal entity of Public Law, a foreign state, or an international organization.

For the purposes of this study, from the list of attributions above, we can highlight the defense of collective interests (*lato sensu*), when the constitutionally guaranteed social rights are disrespected, through public civil action. This kind of *interest* (legally relevant) is conceptualized by Law No. 8,078, of September 11, 1990, in the sole paragraph of its art. 81. There are three modalities or categories of collective rights or interests: diffuse, understood as transindividuals, of an indivisible nature, held by indeterminate people and linked by *de facto* circumstances; the collective (*stricto sensu*), the transindividuals, of an indivisible nature that holds a group, category or class of people connected with each other or with the opposing party through a legal-base relationship; and homogeneous individuals, arising from common origin.

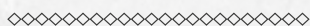


Despite all the questions about the stipulation of pragmatic concepts, however highly problematic due to their conceptual insufficiency¹², we will adopt in this study such structural concepts because they still make up the basis of the Brazilian collective procedural microsystem.

The protection of these interests and rights in the labor sphere occurs in the Labor Prosecution Service, strategically, from the definition of specific objectives outlined in its Strategic Planning, instituted by the Ordinance of the Office of the Prosecutor General of Labor 2,121, of December 18, 2018.

In this act, the strategic objectives of the institution were defined: a) to promote inclusion and equality at work, as well as to combat slave and child labor; b) to guarantee health and safety in the work environment; and c) to promote dialogue and social protection at work, as well as the enhancement of labor rights.

From the finalistic point of view, these objectives are realized within the national thematic coordinators specialized in combating child and irregular adolescent labor, in promoting equal opportunities at work, in combating labor fraud, in combating labor irregularities in public administration, in defense of the work environment, in the promotion of union freedom, in port and waterway work and, finally, in the eradication of slave labor, the focus of this study.



12 VITORELLI, Edilson. *O devido processo legal coletivo: dos direitos aos litígios coletivos*. 2. ed. São Paulo: Thomson Reuters Brasil, 2019. p. 20-26.



Institutional functions and instruments of action

The Federal Constitution of 1,988 established as institutional functions of the Labor Prosecution Service the promotion, privately, of the public criminal action, the zeal for the effective respect of the Public Powers and services of public relevance to the rights enshrined in this Constitution, promoting the necessary measures to guarantee, the promotion of civil inquiry and public civil action, for the protection of public and social patrimony, the environment and other diffuse and collective interests, the filing of an unconstitutionality or representation action for the purposes of intervention by the Union and the states, in the cases provided for in this Constitution, the judicial defense of the rights and interests of indigenous peoples; the issuance of notifications in the administrative procedures of its competence, requesting information and documents to instruct them, the exercise of external control of the police activity, the request for investigative diligences and the initiation of a police inquiry, indicating the legal bases of its procedural manifestations, as well as the exercise of other functions that are conferred on it, provided that they are compatible with its purpose, being prohibited the judicial representation and the legal advice of public entities.



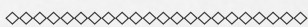
Public civil action can be considered both the collective demand that protects *lato sensu* collective rights and interests and the set of rules and procedural techniques that exist in the microsystem of judicial protection of collective conflicts¹⁵.

Institutional functions and instruments of action also include notifications in administrative procedures and requests for information and documents to instruct them.

Other essential instruments for the performance of MPT members are set out in art. 8 of the Complementary Law no. 75, of May 20, 1993, which highlights the possibility of hearing witnesses, including coercive conduction in the case of unjustified absence, the request for information, examinations, expert examinations and documents from the authorities of the direct or indirect Public Administration, the request for the provision by the Public Administration of temporary services by its employees and the necessary material means for the exercise of specific activities, the carrying out of inspections and investigative measures, free access to any public or private place, respecting the constitutional rules regarding the inviolability of the domicile and the unconditional access to any database of public character or related to services of public relevance.

MPT's role in combating contemporary slave labor

All these instruments of action have been frankly used by MPT in the confrontation of contemporary slave



15 RODRIGUES, Marcelo Abelha. Ação civil pública. In: DIDIER JR., Fredie (org.). *Ações constitucionais*. 6. ed. Salvador: Jus Podivm, 2012. p. 365-366.



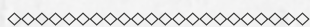
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labor, which, as seen above, constitutes a specific strategic objective of the Institution.

The fight against this modern form of exploitation is carried out on several fronts of the institution's operations.

In the political-institutional field, the MPT closely monitors the primary and secondary legislative production on the subject, paying special attention to the rules that seek to restrict the sphere of protection of workers subjected to slave labor, and the actions of the Federal Government that sometimes clash national and international commitment to protect the dignity of the human person. As an example, we cite the case of the discontinuity of the publication of the Dirty List of Slave Labor, which was only reversed after the filing of a public civil action against the Union in order to impose the obligation to reestablish the said register of employers.¹⁶

Still in this area, the MPT closely monitors the meetings of the National Commission for the Eradication of Slave Labor, currently regulated by Decree No. 9.887/2019, which is responsible for monitoring compliance with the actions contained in the 2nd National Plan for the Eradication of Slave Labor¹⁷, the proposition of measures that are necessary for the implementation of the referred plan, the monitoring and evaluation of the technical cooperation projects signed between the Federative Republic of Brazil and international organizations on the subject and the proposal for the



16 Public Civil Action No. 0001704-55.2016.5.10.0011, which was processed at the 11th Labor Court in Brasília/DF.

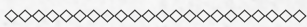
17 Available at: <https://reporterbrasil.org.br/documentos/novoplanonacional.pdf>.



elaboration of studies and research and the incentive to carry out campaigns related to the eradication of slave labor.

In the aforementioned National Plan, other important actions were attributed, both as a responsible body and as a partner institution, in the various actions for the prevention, confrontation, and repression of slave labor, information for society, professional training and reintegration of victimized workers, as well as the economic repression of the explorer.

One of the most emblematic actions foreseen in said public policy is the maintenance of mobile inspection teams to eradicate slave labor¹⁸. The MPT actively participates in the screening of complaints, in the planning and execution of the confrontation operations carried out throughout the national territory, occasion in which all the action instruments made available to its members are used for the benefit of the fundamental rights of the victimized workers¹⁹.



- 18 The Special Mobile Inspection Group was created within the extinct Ministry of Labor through Ordinance No. 550, of June 14, 1995, with the purpose of coordinating and enhancing inspection against slave-like labor.
- 19 Tiago Muniz Cavalcanti, in his study on neo-abolitionism, states that “Currently, the inspections coordinated by the Group have an eminently interinstitutional character, with the presence of several state bodies, notably the Federal Police or the Federal Highway Police (guarantors of the members’ safety) of the team and co-responsible for the evidence collection) and the Labor Prosecution Service, which has the legitimacy for the civil-labor liability of the explorers and beneficiaries. It also gradually began to decentralize the inspection of allegations of slave labor, and it is certain that in certain States of the Federation, such as Mato Grosso, Minas Gerais, São Paulo and Tocantins, the Regional Labor Superintendencies themselves usually do this to their satisfaction, always that the case does not involve a high level of complexity and does not put the safety of auditors and other team members at risk”. CAVALCANTI, Tiago Muniz. *Neoabolicionismo & Direitos Fundamentais*. São Paulo: LTr, 2016. p. 98.



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In these operations, it is incumbent upon the designated member to promote the collection and early production of evidence, the filing of urgent legal demands, the signing of terms of conduct adjustment regarding the payment of severance payments and eventual indemnities resulting from collective and individual moral damages, as well as the filing of any and all actions capable of providing adequate, necessary and effective protection to violated labor rights.

Since 1995, the interinstitutional group for the inspection of working conditions has rescued more than 53,000 workers from situations similar to slavery, mostly young men with a high level of socioeconomic vulnerability, little education and in places without a state structure guaranteeing basic human rights.²⁰

In support of all this repressive action, the MPT maintains an important database of its final activities, which serves to maximize the effects of the work of labor prosecutors.

Just as for the theme of contemporary slave labor, the *Parquet* Labor has a collection of 10,543 procedures instituted to investigate complaints of submission of workers to degrading working conditions, 3,766 referring to exhaustive hours, 1,316 to bondage by debt and 1,119 related to forced labor – all modalities of the crime of submitting another



20 Detailed information on combating contemporary slave labor can be obtained from the *Observatório da Erradicação do Trabalho Escravo e do Tráfico de Pessoas* (Observatory for the Eradication of Slave Labor and Human Trafficking), an initiative of the Labor Prosecution Service in partnership with the Office of the International Labor Organization in Brazil. Available at: <https://smartlabbr.org/trabalhoescravo/localidade/0>.



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In this context, the actions of the Labor Prosecution Service (MPT) in the fight against slave labor also translate into the fight against human trafficking, notably when the purpose of this phenomenon is forced labor, work done in degrading conditions that violate the life and health of the worker, tiring working hours, work done in debt bondage, or forced sexual labor. For, in all these modalities, we understand that there is an abusive use of the work force, with the objectification of the human being. As we understand that there is an interdependence between the facts that characterize these concepts, we consider human trafficking, slave labor and forced sex work (sexual exploitation) as modern or contemporary slavery.

The MPT already has a very solid role in combating work in conditions similar to slavery, but it is still consolidating experiences and techniques for acting in the fight against forced sex work and on the acts that precede a situation of labor exploitation and that, in its together characterize human trafficking.

Progress in tackling these complex facts, viscerally related to the labor exploitation of human beings, is essential so that not only the MPT, as one of the branches of the Federal Public Prosecution Service, but the State as a whole develop preventive actions and implement public policies dedicated to the insertion and maintenance of the male or female worker in decent employment.



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or by restricting, by any means, their locomotion due to debt contracted with the employer or agent.

Penalty – imprisonment, from two to eight years, and a fine, in addition to a penalty for violence.

§1 The same penalties apply to those who:

I – Restricts the use of any means of transport by the worker, in order to retain him in the workplace;

II – Maintains overt vigilance in the workplace or takes possession of documents or personal objects of the worker, in order to retain him in the workplace.

The Palermo Protocol, ratified by the Brazilian State in 2004, through Decree No. 5,017, which deals with the prevention, repression and punishment of human trafficking, provides in its art. 3º:

a) “Human trafficking” means the recruitment, transportation, transfer, accommodation or reception of persons, resorting to the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of authority or situation of vulnerability or the delivery or acceptance of payments or benefits to obtain the consent of a person who has authority over another, for the purpose of exploitation. Exploitation should at least include exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, or practices similar to slavery, servitude, or organ harvesting;

b) The consent given by the victim of human trafficking with a view to any type of exploitation



described in subparagraph a) of this article, should be considered irrelevant if any of the means referred to in subparagraph a) has been used;

c) The recruitment, transport, transfer, accommodation, or reception of a child for the purpose of exploitation shall be considered “human trafficking” even if they do not involve any of the means referred to in paragraph a) of this article;

d) “Child” means any person under the age of eighteen.

And in this wake, harmonizing the internal rules to the international legislation, Federal Law No. 13.344/2016 established a new legal framework, providing for human trafficking for the purposes of sexual exploitation, with the aggravation of the crime being committed against children and adolescents. and including art. 149-A to the Penal Code:

Human Trafficking

Art. 149-A To solicit, recruit, transport, transfer, buy, lodge or welcome a person, through a serious threat, violence, coercion, fraud or abuse, with the purpose of:

I – remove organs, tissues, or parts of the body;

II – subject him or her to work in conditions similar to that of a slave;

III – subject him or her to any type of servitude;

IV – illegal adoption; or

V – sexual exploitation.



Penalty – imprisonment, from 4 (four) to 8 (eight) years, and a fine.

§ 1 The penalty is increased from one third to half if:

I – the crime is committed by a public official in the exercise of his duties or under the pretext of exercising them;

II – the crime is committed against a child, adolescent or elderly or disabled person;

III – the agent takes advantage of kinship, domestic relations, cohabitation, hospitality, economic dependence, authority or hierarchical superiority inherent in the exercise of a job, position or function; or

IV – the victim of human trafficking is removed from national territory.

§ 2 The penalty is reduced from one to two thirds if the agent is a primary officer and does not belong to a criminal organization.

The consent given by the victim of human trafficking is irrelevant, not detracting from criminal activity or the situation of victim of the crime, when any of the devices such as threat or use of force, other forms of coercion, abduction, fraud, deception, abuse of authority, taking advantage of the victim's situation of vulnerability, or delivering or offering payment or benefits, because there is a presumption that consent is not legitimate, free and spontaneous, since the means of control achieve the autonomy and dignity inherent in every being human. This legal presumption is necessary because human trafficking removes from the victim the very



condition of a human person by treating them as an object, a product, a commodity that can be exploited without limits.

It is important to note that to incur the above type, when the victim is under 18, the consummation of the act of recruiting, transporting, transferring, accommodating, welcoming or exploring is enough for the subject to commit the illicit human trafficking, even if the means of coercion, coercion, seduction or persuasion described are employed. In this age group, human beings do not yet have full awareness of their actions, nor complete physical and psychosocial development.

From the analysis of the international and national standard on human trafficking, it is clear that there is a gap in the definition of the term "sexual exploitation". In practice, the term is now used to refer to the sexual work of children and adolescents, which is prohibited and considered one of the worst forms of child labor, in the light of ILO Convention No. 182; prays to report on forced prostitution; prays to treat prostitution as a crime; now as a synonym for sex work (mainly for indoctrinators and social movements who argue that sexual activity alone is a crime and its practice violates the dignity of the human person).

The imprecision of the expression has confused the enforcers of the law and has often been shown as an impasse to the realization of fundamental rights. Thus, we will consider the term "sexual exploitation" as encompassing the sex work of children and adolescents, forced sex work and/or sex slave labor. Such reasoning is justified by the need to distinguish voluntary and therefore lawful sex work, in the Brazilian legal system, from the involuntary one, which attracts the condition of victim of the worker, who spent



of CR/88, provides for freedom of work as one of the most elementary fundamental rights of the human person.

Once again, it is emphasized that the protection granted by the current and constant rule in arts. 149 and 149-A of the Penal Code falls on the dignity of the human person. Therefore, it is criminalized who exploits and not who is exploited.

If the individual is capable and has freely consented to commercialize his sexual activities, an employment relationship must be recognized with the person who organizes the commercial enterprise. Therefore, any interpretation that goes against the recognition of prostitution as a licit job, which must be protected by the legal system, must be overcome.

Even though the activity of the enterprise and the conduct of the employer are crimes provided for in arts. 229 and 230 of the CP, it is undeniable the characterization of the provision of a human activity with the economic benefit of the explorer, that is, of a true working relationship.

In this context, the Ministry of Labor, through Ordinance No. 397, of October 9, 2002, when instituting the Brazilian Classification of Occupations (CBO), explicitly recognizes sexual activity as work, that is, exercised in the field of economic activities lawful. Here is the provision:

5198-05 Sex worker – Call girl; Call boy; Whore; Messalina; Michê; Life woman; Prostitute; Sex worker.



SUMMARY DESCRIPTION

They seek sexual programs; serve and accompany customers; participate in educational actions in the field of sexuality. The activities are carried out following norms and procedures that minimize the vulnerabilities of the profession.

TRAINING AND EXPERIENCE

For professional practice, workers are required to participate in safe sex workshops, access to the profession is restricted to those over eighteen years of age; average schooling is in the fourth to seventh grade of elementary school.

GENERAL CONDITIONS OF EXERCISE

They work on their own, in different places and irregular schedules. In the exercise of some of the activities they may be exposed to bad weather and social discrimination. There are still risks of STD contagion, and ill-treatment, street violence and death.

The recognition of the effects of the sex work relationship, even if forced, and the resulting labor patrimonial rights constitute an imperative measure of full responsibility for the exploitation of the victims.

Such a measure prevents the exploiter's illicit enrichment and fully repairs the damage suffered by the victim of forced sex work. One cannot deny his or her condition as a worker and, consequently, the resulting labor rights.

As in all the unfortunate cases of contemporary slavery faced, despite being considered a victim of a crime (crime of



subjection to conditions similar to that of a slave), resulting from an unlawful practice by her employer (exploitation of work in conditions similar to that of a slave), when rescued from slavery, his status as a worker and, therefore, holder of labor rights, is not denied.

The recognition of these rights to victims, of course, does not prevent criminal prosecution of the employer for this practice: they are different types of liability, which are not mutually exclusive, on the contrary, they are complementary in the necessary and integral protection due to the victims.

The same reasoning applies, fatally, to forced sex work or sexual slavery. When rescued from sexual slavery, it is not legally possible, under the argument that it is unlawfully required work (since no one is formally allowed to prostitute others), to deny their condition as a worker and, therefore, holder of labor rights.

It is imperative that sex slave workers be guaranteed the same labor rights due to other workers rescued under conditions analogous to slavery.

The Brazilian State, through its agents, must respect the mandates brought to our legal system by the Palermo Protocol and the Law to Combat human trafficking, which provides in art. 2 that the fight against human trafficking will meet the principles of respect for the dignity of the human person, the promotion and guarantee of citizenship and human rights, non-discrimination on the grounds of professional activity and comprehensive care for victims.



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In the same tone, art. 6 of the already mentioned Law No. 13,344/2016, which deals with human trafficking, provides:

Art. 6 The protection and assistance to the direct or indirect victim of human trafficking include:

I – legal, social, labor, and employment and health assistance;

II – reception and temporary shelter;

III – attention to their specific needs, especially in relation to gender, sexual orientation, ethnic, or social origin, origin, nationality, race, religion, age group, migratory status, professional performance, cultural diversity, language, social, and family ties or other status;

IV – preservation of intimacy and identity;

V – prevention of victimization in care and in investigative and judicial procedures;

VI – humanized care;

VII – information on administrative and judicial procedures.

As can be seen, all the relevant regulations are aimed at a perspective of promoting rights, and, from the point of view of work, it is oriented towards social inclusion and non-discrimination of the sex worker.



of science (sociology, anthropology, psychology, among others) and it is clear that the legal interpreter has difficulty in dialoguing with social movements that act on the theme (organized movements of prostitutes and feminists, for example), in order to get closer to reality, understand it and encourage the development of public policies that dignify sex work and, at the same time, identify and avoid situations of exploitation.

The lack of knowledge of the normative structure regarding prostitution, whose protected legal good is sexual dignity, understood as the human being's right to self-determination and sexual freedom, ends up criminalizing sexual activity as a whole. Voluntary sex workers or even victims of sex slave labor are culturally taxed as criminals and remain ignored, living on the margins of society, on the sly, excluded from basic rights such as education, health, professional qualification, leisure, culture, art, housing, etc.

The culture of patriarchy, sexist patterns of behavior and conservative religious ideologies, rooted in Brazilian customs, deepen the vulnerabilities of women, girls and the LGBT public to domination and sexual exploitation by others. Discrimination and social prejudice around sexual activity deny these groups social and political participation in discussions about the role of the State in this reality.

All this particularity that involves human trafficking for the purpose of sex slave labor results in the underreporting of complaints to public agencies, since the victim is afraid of being incriminated or even more discriminated against and is ashamed to assume his professional activity publicly. There is also the lack of knowledge and/or denial of his condition as a victim, the lack of knowledge and credibility



in the reporting mechanisms, as well as the fear of reprisals on the part of the aggressor.

The lack of knowledge about the phenomenon on the part of the professionals of public agencies that assist people in a situation of exploitation of sex work also contributes to the lack of registration or inaccurate records about the reality. For no other reason, public agencies that work on the topic are making efforts to offer humanized care to people who intend to offer complaints and seek the assistance network.

Furthermore, the lack of self-recognition of the condition of a worker by sex workers and the eventual characterization of work in a condition analogous to that of a slave contribute to the underreporting of complaints and the performance of the MPT.

Testimonies about voluntary sex work and sex slave labor in the MPT are scarce. In the few diligences carried out, with listening to testimonies, it is perceived that it is common for workers to suffer some type of domestic violence or sexual abuse in childhood, without due assistance from the family, society, or the State. With a history of exclusion of rights (education, housing, health, leisure, psychological, emotional support, etc.), due to lack of job opportunities and basic survival needs, they decide to voluntarily prostitute themselves or accept deceptive promises of employment, which end up leading them to sex slave labor. People born in this reality end up perpetuating the life cycle and “choices” of their mother. Others state that they remain voluntarily in sexual activity because this activity is profitable and allows for the purchase of desired consumer goods.



The different narratives only allow us to conclude the complexity of the theme and the certainty that the absence of public policies aimed at groups with a profile of vulnerability facilitates forced sex work. They also point out that the performance of public agents must be extremely cautious and respectful in relation to voluntary prostitution in order not to foster stigmas and prejudices about sexual activity that, in the end, only increase the deprotection and marginalization of thousands of people.

In this context, between 2017 and 2018, the MPT participated in two repressive operations in the state of São Paulo, involving international trafficking in transsexual women for the purpose of sex slave labor, in partnership with the Federal Prosecution Service, the Labor Prosecution Service of the State of São Paulo, Ministry of Economy, Federal Police, among others. After a complex investigation, including with the support of international bodies, a joint conviction was established on the characterization of human trafficking for the purpose of sex slave labor due to the following facts: the workers were originally low-income, with a low level of education, suffered a process of discrimination and social rejection by their families, school and local community because they understand they are transsexuals. The desire for bodily transition and the absence of job opportunities, added to this reality, highlighted the vulnerability to exploitation.

The workers were recruited, transported from one city to another, or at least welcomed or accommodated by the brothel keeper/employer who offered a decent sex work proposal, with guaranteed combined salary, housing and food. However, the practice was quite different, cha-



racterizing deception, deception, fraud and abuse of the relationship or the “contract”. In fact, female workers were forced to do sexu work in a process of debt bondage, characterized by the high value of the daily rates charged and intended for the payment of housing, food and consumer goods (wigs, makeup, clothes, shoes). They were still induced or even coerced to carry out body transition procedures (application of industrial silicone on the body, prostheses, rhinoplasty, etc.), in a clandestine way, in “bombadeiras”, in motels, without medical or hygienic care. The amounts charged and paid for the procedures and consumer goods, in addition to being extortionate, were not revealed, making it impossible to settle the “debts” by the workers, who were prevented from disengaging from the brothel keepers.

There were strict rules for staying in the house and applying fines, if not complied with, in addition to the other values described above. The workers were obliged to perform sexual service at a predefined time by the brothel keeper/ employer, who constantly threatened to expel from the house and applied punishments (physical violence, shaving of hair, among others) to the “disobedient” workers. There were reports of the murder of one of the workers.

Some were sent to other cities and even to another country, in a continuous process of bondage by debt, threat and psychological coercion.

Human trafficking for the purpose of sexual slave labor remained materialized by the testimonies of the victims/ workers, as well as by documentary evidence collected during the intelligence service and on the occasion of the outbreak of the operation, which evidenced forced labor (lack of spontaneity for the sexual activity, use of threat, psycholo-



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gical coercion, deceit, fraud), debt bondage, exhausting work hours and degrading conditions (submission of workers to surgical procedures with risk of death or serious illness).

The reality described above can never be confused with a purely economic exploitation, unrelated to violence and human subjugation, not least because any other labor activity provided under these conditions would fatally be recognized by the MPT as work under conditions analogous to slavery.

At the end of the due diligence, each partner institution acted in accordance with its attributions, and the MPT filed a Public Civil Action, in one of the cases, for the condemnation of those responsible for sex slave labor, with the recognition of employment bonds, full payment of the severance pay to female workers, indemnity for individual moral damages and collective moral damage.

However, the greatest collaboration of MPT for this repressive interinstitutional action was the development of a Work Plan to assist victims of human trafficking for the purpose of sexual exploitation, the result of a partnership between the Working Group – human trafficking within MPT (Coordination of the Eradication of Slave Labor – Conaete) and the International Labor Organization – ILO, which enabled the participation of a multidisciplinary team of psychologists and health professionals in the due diligence, providing assistance and assistance to rescued workers.

Still in the post-rescue period, the workers were voluntarily referred to a non-profit institution, with consolidated experience and experience in assisting transsexual people, for psychosocial care, educational



leveling and professional qualification, which made it possible for some to reintegrate into the labor market. in a dignified way.

When repressive action proves to be the only possible action to remove a person from a condition of sex slave labor, all the above described victim assistance measures must be ensured for a truly humanitarian treatment and strengthening of these people who live a history of deprivation of fundamental rights.

Such experiences are driving the reflection and development of some institutional pilot projects so that the topic of human trafficking is added to the agenda of the National Coordination of the Eradication of Child Labor (Coordinfância), notably in the MPT na Escola project, which trains educators from education network on the issue of child labor, since the school is the institution that can most contribute to reduce intolerance, prejudice and change the wrong cultural patterns that subjugate women, girls and LGBT people, leaving them vulnerable to sexual exploitation.

The intense migratory flow in Brazil (Venezuelans, Haitians, Bolivians, Paraguayans, Ecuadorians, Congolese, among other nationalities, in addition to the constant mobility of people from the North and Northeast to the South and Southeast of the country), as a serious factor of vulnerability to trafficking of people, it also challenges the articulation of the MPT with other institutions to induce public policies for training and insertion in the labor market of migrants who move in search of better opportunities for work and life.



4. Conclusion

Summarizing the above, the lack of normative understanding on the topic of human trafficking for the purpose of forced or slave sex work, added to the culture of patriarchy, to an extremely conservative religious doctrine, to a sexist society, which subjugates women, girls and transgender people, has allowed thousands of people to be sexually enslaved.

It is not by blaming prostitution, placing it as the cause of trafficking, that we will end the problem. We need information that clarifies the experience and culture of this population, reducing stigmas and prejudices, which increase inequality and reinforce the marginal condition in which they live.

It is necessary to make the most of the experiences and information that can be generated from the joint work of the various bodies that work on the theme and, mainly, to articulate and integrate the projects of the institutions that can contribute to the construction of a more just and egalitarian society.

To conclude, it is not too much to emphasize that, in a reality of economic recession and structural unemployment, submitting to a situation of exploitation may be the only way of survival for thousands of people. Thus, there is an urgent need for an integrated, articulated and efficient action by all institutions to understand the nuances and characterize human trafficking for the purpose of sex slave labor in the Brazilian reality, with the development of public policies that address their visceral causes and avoid actions that can accentuate all the negative stigma surrounding the theme.



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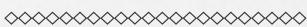
**THE PANDEMIC OF NEOLIBERALISM AND
THE DISEASE OF THE EXPLOITATION OF
THE WORK OF MIGRANTS IN THE CONTEXT
OF DIGITAL PLATFORMS.**

Vanessa Patriota da Fonseca¹

SUMMARY

This article analyzes the effects of neoliberal rationality and the Toyotist model of production on working conditions, drawing attention to the process of capturing the subjectivity of the worker; deconstructs the discourse of autonomy and entrepreneurship; addresses the new international division of labor and the intensification of precariousness, informality, outsourcing and the increase in poverty and social exclusion; brings to the center of discussions the new production models that emerged with the Digital Revolution and the advent of the explosion of Information and Communication Technologies; makes considerations about on-demand work by application, revealing its fallacies, the kind of link maintained between owners of digital platforms and workers and the intense precariousness; demonstrates how migrants are being overexploited in this model; and concludes that the way out of this unprecedented civilizing crisis presupposes the search for alternatives to the neoliberal model.

Keywords: Neoliberalism. Digital Revolution. Instability. Migrants. Civilization Crisis.



¹ Labor Prosecutor. Doctoral candidate of Labor Law and Critical Social Theory, at UFPE.



1. Neoliberal Rationality and the Fallacy of Autonomy²

The 2008 crisis, of global proportions, could have triggered a great discussion about the devastating consequences of neoliberalism for the States, for the world population and, even, for a good part of the companies. It turns out that, contrary to expectations, the European Commission, the Eurogroup, the European Central Bank, the International Monetary Fund (IMF) and the Organization for Economic Cooperation and Development (OECD) pressured the nation-states to come out of an economic policy Keynesian demand, based on tax incentives, to implement a neoliberal policy of fiscal austerity, containment of public spending and tax increases. The pressure increased and took on a threatening tone in early 2010. This further turn to the right implied curbing measures aimed at heating the economy and generating employment in favor of measures aimed at reducing public debt (INFANTE, 2015, p. 246-281).

The fact can be explained by the existence of a neoliberal rationality, as taught by Dardot and Laval (2016, p. 189-243), a rationality that organizes the action of both the governed and the governed; a logic that governs power relations and ways of governing. The authors explain that there is a common element between governors and governed, rationality, capable of giving meaning to practices and limiting the horizon of reactions. They clarify that the emergence of neoliberal rationality goes back to the Walter Lippmann Colloquium, held in France in 1938, when the participants concluded that liberalism was going through a moment of crisis and needed to be deeply reinvented. The liberalism crisis certainly had the effect of boosting the



welfare state. In response to social reformism, however, the seed of neoliberalism was planted at that time. Although it was not possible to clearly distinguish the trends of neoliberalism from those of liberalism, competition was accepted as the fundamental relationship of the market, which should be ordered and regulated by the State (DARDOT; LAVAL, 2016, p. 71-73).

It was only during the period of the Thatcher and Reagan governments, however, that there was “the great turning point”, with the triumph of neoliberal policies and the strengthening of the ideological struggle against the Social Welfare State. From then on, governors are forced to austerity and governed to dominate themselves under the pressure of competition. A general neoliberal rationality is established and only what follows its logic has validity, which has limited the political possibilities for creating alternatives to neoliberalism (DARDOT; LAVAL, 2016, p. 190-199).

In this context, there was a process of transformation of the company as a model of subjectification for both the State and individuals. Through different management techniques and the concept of governance, neoliberal rationality has reshaped the functioning of companies, driven by the Toyotist model of management that has spread and become widespread. Performance assessments have come to be used, as a rule, to measure the effectiveness of teams and individuals and to stimulate competition between them as a way to increase production.

At the individual level, neoliberal subjectivation incorporated the form of self-company and people started to seek their valuation with an eye on the competition with other EUs/SA. Within this logic of capturing the subjectivity of



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workers by companies, it is important that they identify with it, that they “wear the shirt”, that they become a “partner”, in order to lessen the capital vs. work struggle and limit the possibilities reaction to the system, because, after all, the struggle became between the different EUs/SA for survival.

In the same sense, the construction of the deception of entrepreneurship and its incorporation both in the discourse of its direct victims, the pseudo-autonomous workers, and in that of the consumers who benefit from the exploitation of human work on the basis of low cost, quality of service and inevitability of the strength of new technologies, is meticulously carried out by marketers and psychologists. The whole society ends up participating in the deception engendered by large corporations. In other words, it seeks to shape public opinion by appealing to the emotions of the masses in the post-truth society, using terms such as: collaborator, microentrepreneur, collaborative economy, sharing economy, entrepreneurial spirit, creativity, opportunity, etc.

For the spokespersons for entrepreneurship, it is important that this discourse fulfills the role of intensifying the symbolic link that unites a legion of exploited with the companies that exploit them; let this legion feel indebted and, for that very reason, loyal to those who gave them the opportunity to be an entrepreneur. Freedom, therefore, is not in the emancipation of peoples from capital and in overcoming capitalism, but in the possibility of being the capitalist himself. Certainly, there are serious consequences, from a psychological and social point of view, of this model that isolates, that intensifies competition, that breaks ties of



solidarity, that puts on the back of the worker all the weight of failure, that imprisons him in an addictive game.

Filgueiras (2019, p. 47) points out that the rhetoric of entrepreneurship is a great irony, because whoever has the resources to be an entrepreneur is not interested in being one, while the poor, who “have always practiced survival entrepreneurship”, are thrown into this pseudo-entrepreneurship, where the “ultra-centralized” markets in the hands of a few companies dictate the rules and suck the energies of the worker. And it also reproduces “a spurious competitiveness, based on the depredation of workers, which tends to increase profit rates without contributing to expand the productive accumulation, expansion of investments and employment”, as the beneficiaries of the concentration of income privilege rent-seeking, the financial speculation, to the detriment of productive investment. In the words of Dowbor (2018, p. 32-33), “resources exist, but their productivity is sterilized by a generalized system of speculation that drains the capacities to invest in the real economy”.

2. The Digital Revolution and the Advancement of Work Instability

With the advent of the explosion of Information and Communication Technologies (ICT), the expulsion of live work from the productive world and the intensification of informality, outsourcing and unemployment have been observed. Whether in the production chain for the manufacture of electronic devices, or in the service sector on digital platforms that make the connection between worker and consumer through applications – in on-demand work – job insecurity has grown in geometric proportion. In



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the first case, Foxconn's working conditions, for example, are a faithful portrait of overexploitation. The company, hired, among others, by Apple and Nokia, based in China, keeps workers at an intense work pace, with exhausting hours, high productivity goals and a high level of stress – facts that leveraged the company's suicide numbers, making it a world example of predatory capitalism.

The new technologies, on the one hand, have greatly facilitated the management of networks and their control by the mother cells. On the other hand, they allowed the increase of added value as the contracted companies are obliged to produce the maximum in the shortest time, considering that the controllers can discard them in seconds and look for other possible “partners” in any corner of the planet. Therefore, with the Fourth Technological Revolution, cyberspace appears as an interactive network that controls production.

In the second case, on-demand work by applications, one in which, as Valerio De Stefano teaches, traditional activities such as transport, delivery and cleaning are made possible through applications that connect the requester and the service provider at the time of demand (*apud* OITAVEN; CARELLI; CASAGRANDE, 2018, p. 16), the lack of recognition of employment, the maintenance of exhaustive hours and the lack of supply of PPE are the rule. Examples of this work model are those offered by Uber (transportation of people); iFood (delivery of meals); Loggi (delivery of objects in general); Parafuzo (cleaning in homes and commercial establishments); DogHero (walking with dogs); and Make You (hairdressing, manicure, and make-up service).



In on-demand work by application, everything is controlled by means of algorithmic programming, from the request of the service until its completion.

Thus, the apparent portion of autonomy granted to the worker in the performance of the service is surpassed by the stipulation of commands preordained by the platform programmer that causes the worker to only react, in real time, to the issuance of such commands so that the intended objectives are achieved. The absence of personal orders issued by the employer, coupled with the decision to work or not, causes the illusion that autonomy is present, when, in reality, it was buried under the existing programming and the duty of the worker to keep up mobilized to react to commands. The world of work, therefore, is faced with cyber subordination. (FONSECA, 2020)

The owner of the digital platform stipulates the price of the service and forces the worker to remain active, since through the low rate it makes him or her work harder in search of the minimum necessary to survive; it defines operational procedures and the way to approach the client; it stipulates goals and grants and cuts bonuses at will; it uses the GPS to follow the worker's steps in real time; unilaterally stipulates punishments, whether for failing to meet goals or for cancelling accepted services, with no room for objection; creates the omnipresent evaluator by urging thousands of customers to report, through a note, how the worker behaved in order to verify if the programmed goals were met.

Therefore, the worker has no autonomy to say how much the work is worth, to define its operational procedure and not even to stipulate his workload. However, in spite of



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the absence of worker autonomy, on-demand job companies by application evade employment bonds with a fallacious discourse that these are technology companies that limit themselves to connecting worker with consumer. Despite the aura of novelty, the services offered by companies are the most traditional. They range from cleaning, delivery, and transportation services to hairdressers, manicures or education. The job is the same, but with the difference that orders are passed through an application and not directly, by phone or email. What is the difference, for example, between an electrician from an electric utility that receives the service order via the on-board computer or through the system inserted in the cell phone and a delivery person hired by a digital platform that receives the task through the application? The procedural similarity is evident. Both await the call on the street, inform the start of the service through the system and its conclusion in the same way. In fact, even less subtle is the difference between traditional delivery companies and those that perform the service through an application. In the first case, the service is passed directly to the worker; in the second, it is passed through the application. In the first case, its conclusion occurs with the return of the service order with the client's certificate; in the second, it occurs when the order is closed in the application.

But the deception of entrepreneurship, collaboration, partnership seems to involve the whole society in a hypnotic trance.

It is of solar clarity that the worker has been doubly imprisoned: for the discourse of freedom to be himself or herself a capitalist, taking advantage of the benefits of platforms with which they were presented; and by the algorithmic programming



itself that guides each of his steps without his noticing. The algorithm, a kind of entity that controls everything, moves human parts so that they meet the objectives of capital. It hypnotizes the worker by making him or her feel like he or she is in a game, with several steps to overcome in order to reach the proposed objective and reach the final victory. And so, he or she is forced, without realizing it, to stay connected. (FONSECA, 2020)

The farce needs to be unveiled! The assumptions of the employment relationship are easily perceived, just open your eyes and see: work by an individual; personality present to the extent that the worker cannot be replaced by another, even if also registered on the platform; remuneration in the form of tariffs and bonuses (defined unilaterally by the company); non-eventuality substantiated by the fact that the very lack of regularity in the acceptance of services by the worker can lead to their unsubscribing; subordination, either direct or algorithmic, the latter being accepted by the sole paragraph of art. 6 of the CLT, according to which “the telematic and computerized means of command, control and supervision are equated, for the purposes of legal subordination, with the personal and direct means of command, control and supervision of the work of others”.



3. Degrading Conditions of Delivery Persons in On-Demand Work by Applications³

Dozens and dozens more articles can be found on the internet about working conditions in crowdsourcing: “UOL: Dormir na rua, pedalar 30 km e trabalhar 12 horas por dia: a rotina dos entregadores de aplicativos”⁴; “UGT denuncia las ‘precarias’ condiciones de trabajo de los repartidores de Glovo”⁵; “Denuncian ‘precariedad extrema’ de los trabajadores de Glovo e Rappi”⁶; “Pagam uma miséria e nem dá para as refeições diárias”⁷; “El repartidor de Glovo que duerme en la calle: ‘No



- 3 This chapter integrated the article *As condições de trabalho no Crowdsourcing: o futuro repetindo o passado*. In: FREITAS, Ana Maria Aparecida; FARIAS, Fábio André de; CALDAS, Laura Pedrosa. *Entre o Tripalium e a Revolução 4.0: Saúde e Segurança no Trabalho*. Belo Horizonte: RTM, 2019.
- 4 UOL. *Dormir na rua, pedalar 30 km e trabalhar 12 horas por dia: a rotina dos entregadores de aplicativos*. Available at: <https://noticias.uol.com.br/tecnologia/noticias/bbc/2019/05/22/dormir-na-rua-pedalar-30-km-e-trabalhar-12-horas-por-dia-a-rotina-dos-entregadores-de-aplicativos.htm>. Access in: Jun. 23, 2019
- 5 REPÚBLICA. *UGT denuncia las ‘precarias’ condiciones de trabajo de los repartidores de Glovo*. Available at: www.republica.com/2019/05/26/ugt-denuncia-las-precarias-condiciones-de-trabajo-de-los-repartidores-de-glovo. Access in: Jun. 23, 2019
- 6 CONCLUSIÓN – LIBERTAD CON RESPONSABILIDAD. *Denuncian ‘precariedad extrema’ de los trabajadores de Glovo e Rappi*. Available at: www.conclusion.com.ar/la-ciudad/denuncian-precariedad-extrema-de-los-trabajadores-de-glovo-y-rappi/10/2018. Access in: Jun. 23, 2019
- 7 DIÁRIO DE NOTÍCIAS. *Pagam uma miséria e nem dá para as refeições diárias*. Available at: www.dn.pt/portugal/interior/pagam-uma-miseria-e-nem-da-pa-ra-as-refeicoes-diarias-9405018.html. Access in: Jun. 23, 2019



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growth was 12%. The country is the second largest Uber market in the world, second only to the United States, where the company's headquarters is located (EXAME, 2019). The recession and the unemployment rate are factors that justify such growth, both from the point of view of the worker and the consumer, who is led to seek services with lower prices.

But the low prices of the services represent a high cost for the worker: low income, long working hours, poor resting conditions, and accident risks are some of the consequences observed. Food delivery workers, for example, on motorcycles or bicycles, wait for the call from the application on public sidewalks or in squares, many sleep a few hours on the street, risk traffic jams and dangerous overtaking to meet delivery deadlines, do not have weekly days off and paid vacations, and are subject to a high stress load.

Data obtained by the Labor Prosecution Service of Labor in the course of Civil Inquiry No. 001417.2016.01.000/6, underway at the Regional Office of Labor Prosecution of the 1st Region, show that, with the entry of transportation and delivery companies of objects by app, companies that performed the same activity using the labor of motorcycle couriers registered as employees closed their doors.

Such companies, which succumbed in the face of unfair competition, were obliged to bear all labor and social security obligations, including those set out in the category's normative instrument, as well as in Law No. 12,009/2009, which establishes, among others, that motorcycles must have dog-killer, kite-cutting antenna and semi-annual inspection (art. 139-A, items II, III and IV).



Without granting safety equipment and determining the maximum delivery time to be fulfilled, companies that work in on-demand work seem to play with human life, including granting bonuses to those who reduce delivery time and take more risks.

An article published in G1 reports that the number of motorcyclist deaths in traffic in the city of São Paulo suffered an increase of 17% from 2017 to 2018, with an average of one more death per day. According to the article, according to data from the Ministry of Health, 11,000 motorcyclists died in a year, which led to the payment of DPVAT insurance of more than 167,000 compensation to victims in 2018, with a third of them in the Northeast, the region with the highest number of indemnities paid. The increase in the number of accidents is related to the increase in the number of workers who deliver by applications due to the speed they must print to the race to meet the established goals and receive bonuses (G1, 2019)¹³.

As for the workday, a survey reported by Rodrigo Carelli, in which 40 Uber drivers were heard, attests that 70% of them work more than 44 hours per week and 35% work more than 61 hours per week, and may exceed 90 hours (CARELLI, 2017).

In this sense, it is known that, in general, the maintenance of excessive working hours exposes the worker to a heavy load of stress, especially when he works as a driver, in chaotic traffic and subject to bad weather. Along these lines, Zuher Handar affirms that “stress at work by drivers can be related to the risks of the profession, with high demand, irregular hours and social aspects” (REVISTA PROTEÇÃO, 2012).



Therefore, the working conditions described are driving factors of burnout (stress due to work overload).

Unfortunately, the excess of drivers' hours is not characterized by the originality desired, constituting a prosaic practice adopted by countless employers. Such a situation, which leads many employees to become addicted to drugs and to use medicines to stay awake, exposes not only their lives but also the lives of passers-by and other drivers who encounter them on the country's roads.

4.The Degrading Work of Migrants in Delivery Services

Although in the new international division of labor the "clean" industry is predominantly concentrated in the northern hemisphere and the "dirty" industry in the southern hemisphere, globalization reveals that the north spreads across the south and the south enters the north, as highlighted by Ricardo Antunes. The exploitation of the work of immigrants in Europe is an example of this. (ANTUNES, 2018; p. 20-21). In fact, the situation of immigrants is an open fracture of current capitalism. It is one of the most perverse aspects of the exploitation of human labor. These are workers subjected to the most degrading working conditions. Where there is inequality, there is exploitation of the work of migrants, whether in the clothing industries that hire Bolivians and in the agribusiness that uses Northeasterners in orange crops in Southeast Brazil, or in delivery companies that close their eyes to the sale of registration to African and Latin American countries in Europe.



In the latter case, news reports show that there is a clandestine market for renting accounts on delivery platforms in different countries in Europe, such as England, Portugal, Spain and France. This type of service is less controlled by immigration, especially considering that it takes place on the streets, with no defined physical space. Thus, people register with delivery companies that own digital platforms and lease their accounts through advertisements on Facebook or other social networks, where immigrants also announce that they are looking to rent accounts.

Without the requirements to perform the registration on the platforms, among them the authorization to live and work in the country, Brazilians have used the account/registration rental at Uber Eats, Deliveroo, Glovo, Stuart, among others.

They pay between £ 50 and £ 80 in the UK and often need to make an advance deposit as a guarantee. For each delivery, a Brazilian courier heard by the BBC receives around £ 3.37, while the minimum wage in the UK is £ 8.21 an hour for people over the age of 25 (BBC NEWS BRASIL, 2019).

The delivery company makes the payment in the bank account informed in the register, which often belongs to the lessor, who passes the amount to the lessee less the rental price. According to the aforementioned report, a Deliveroo account tenant explains that the delivery of a bicycle implies less expense than the delivery of a motorcycle, but more physical preparation is necessary and the remuneration depends on it.

An article from *O Estado de S. Paulo* also reports on the illegal market, this time in France. In Glovo alone, about 5%



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of delivery personnel were undocumented in that country. The report portrays the situation of an 18-year-old Tunisian immigrant who lives in an abandoned car and performs bicycle delivery services by renting an account. He receives slightly more than half of what the platform pays for deliveries, the remainder remaining with the tenant, and works around 13 hours a day. On the day of the interview, he had earned 17 euros for four hours of work. (ESTADÃO, 2019)

According to the aforementioned article, “competition has reduced the earnings of couriers, causing some to exploit those who are most desperate for a job [...] Delivery persons negotiate these agreements on the street or through Facebook, WhatsApp and Telegram, and they take 30 to 50% of the earnings”. These are the poor exploiting the miserable.

Another article reports that an immigrant from Nepal died in traffic when he was hit by a garbage truck while traveling by bicycle to make a delivery to Glovo in Barcelona. He did not have a visa to work in Spain and rented the account to someone else. (E-DUBLIN, 2019)

Exhausting workdays, which are already the norm in the sector, become even more evident in the case of the mentioned immigrants, since, in order to survive, they need to work for them and the accountants.

In this sense, the Penal Code provides:

Art. 149. To reduce someone to a condition similar to that of a slave, either by subjecting them to forced labor or exhausting work hours, or by subjecting them to degrading working conditions, or by restricting, by any means, their locomotion



due to debt contracted with the employer or agent : Penalty – imprisonment, from two to eight years, and a fine, in addition to the penalty corresponding to violence.

The penal type encompasses exhaustive journeys – a subjective concept that needs to be well delineated. To do this, at first, it is necessary to consider that some jobs take the worker to exhaustion more quickly than others. The work in the production of charcoal, with high temperatures and physical effort, is evidently more exhausting than the work carried out by a receptionist at a doctor's office. Thus, on the one hand, it is necessary to inquire about the conditions in which the work is carried out. On the other hand, it is important to assess the intensity of the day's extrapolation beyond the legal limit, being certain that this limit is based on studies of health sciences.

Aware that art. 58 of CLT stipulates as a normal working day one that lasts a maximum of eight hours a day; as an admissible extraordinary workday, added to at eight o'clock plus two; and as an extraordinary workable day, but admissible only in the case of imperative need, to attend to the completion or completion of urgent services or whose failure to do so may result in a manifest loss, one that extends up to twelve hours of work in the day, it can be assumed, as logical deduction, that working above this limit tends to lead the worker to exhaustion. (FONSECA, 2018; p. 101)

It is necessary to add to this picture the fact that the work takes place in an activity that demands physical effort (as is the case of delivery workers by bicycle); with open air activities and, consequently, subjection to all kinds of weather (from excessive heat to rain and snow); in which



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a high degree of attention is required due to the risks of traffic; often without personal protective equipment, such as helmets; without sufficient rest and feeding intervals; and with goals to achieve in order to obtain bonuses. In this context, there is no doubt that working more than twelve hours a day, during almost every day of the week, as has been observed, characterizes the exhausting journey, attracting the criminal type mentioned. Otherwise, what would art. 149 of the Penal Code?

The struggle for survival and the dream of achieving a better life is what moves these workers, but instability and insecurity are the characteristic features of this type of work (on-demand by apps) and, in the case of undocumented immigrants, it is added a dose of fear, since they impersonate other people and end up committing a crime. The South, therefore, entered the North, as mentioned by Ricardo Antunes; but it is important to say, as this renowned Brazilian sociologist clearly did, that there is a substantial difference between the proletariat of the North and the South. In Brazil, for example, the proletariat flourished with the abolition of slavery. Instability thus became the rule. Here, as in the South in general, the labor aristocracy did not develop, unlike what happened in the North, especially in Europe. There, the recent flourishing of the precariat made the stark difference between the traditional proletariat and the situation of immigrants stand Oct. (ANTUNES, 2018, p. 61-62)

Therefore, “contrary to the complete elimination of work by digital informational machinery”, Ricardo Antunes says that the world is faced with the alarming expansion of the new proletariat of the digital age, “a global variant of



what can be called digital slavery, which was driven by ICTs. (ANTUNES, 2018, p. 30)

On the one hand, it must donate to capital and be eternally available for work, as can be seen in the field of on-demand work by application. On the other hand, precariousness expands. If the situation is not put on hold, the new service workers “will oscillate between unemployment and, at best, the privilege of servitude. (ANTUNES, 2018, p. 34)

Despite the gravity of the situation, what is being defended here is not the use of the well-known model of rescuing workers in the case in question. The intention, yes, is to call attention to the fact that contemporary forms of slavery are galloping on the loose. It is necessary to put a brake on the situation. Therefore, it is necessary to place working conditions in crowdsourcing at the center of debates in different spheres: unveiling their fallacies and stripping the figure of entrepreneurship; demand the guarantee of decent working conditions in the field of digital platforms, both for nationals and for immigrants; and hold companies accountable for exploitation.

We are experiencing an unprecedented civilization crisis. Dowbor (2018, p. 9) was precise in stating:

A deep gap was created between our technological advances, which were and continue to be spectacular, and our capacity for civilized coexistence, which stagnates or even regresses. It is a systemic dysrhythmia, a mismatch in the times. This challenge has been correctly conceptualized as a civilizational crisis.



The construction of alternatives and solutions to the crisis demands the action of different social actors, from different levels, from the State and from civil society. In this context, the new social movements (anti-racists, feminists, environmentalists, in defense of housing, among many others) stand out, which are promoting a more horizontal and globalized struggle, with political action aimed at public opinion and the articulation of an intense network in organized civil society.

The construction of alternatives also involves the reformulation of unionism and, in a way, its return to its origins, rescuing its emancipatory and non-repairing struggle, which embraces not only the formal worker, but also the informal and the unemployed, aware that the concept professional category has lost its meaning in the cyber world; that is not limited to the shop floor, but gains the squares, the streets and cross borders. For Andrade (2008, p. 141-165), union entities need to contribute to the construction of supranational instances of articulation, conflict resolution, guarantee of rights and the formation of legal rules.

Overcoming the crisis involves profound changes in the social security system. It is certain that neoliberalism aims with its cannon the destruction of public social security and the privatization of the system, which will lead to the expansion of the capital market, mainly of private insurance, converting social security benefits into new products of financial speculation. As a result, the social security system remains dehydrated, limiting its possibility to reduce social inequalities (SALVADOR, 2010). It is necessary to invest in social protection and in the public social security system to face these social pathologies.



The way out of the crisis, therefore, requires a global confrontation of the pandemic of neoliberalism and the collective discovery of a remedy capable of tackling social diseases, overcoming capitalist individualism and enabling the distribution of incomes and wealth and the guarantee of human dignity.

Conclusion

Neoliberalism was widespread globally, a kind of pandemic from which few could escape. Under the pressure of capital, neoliberal rationality, with the help of marketing professionals and management science, reshaped the functioning of nation-states, companies and individuals. Nothing outside of it has validity, which has hampered the possibilities of reaction to the system. The worker's body and soul were captured by a fanciful speech of autonomy, qualification and overcoming and a management model that stimulates competition, while placing on his back all the weight of failure in the incessant struggle to be a successful entrepreneur.

The Digital Revolution and the explosion of Information and Communication Technologies have intensified the exploitation of workers, increasing social inequality and exclusion. By greatly facilitating the management of company networks, they facilitated the migration of capital to the South, mainly to countries with higher unemployment and a larger contingent of available workforce to accept more precarious working conditions in outsourced companies, hired by the parent cells, established in the North.



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Deregulation, outsourcing, precariousness, informality are the keynote. In this context, a new production model is designed, crowdsourcing. Within it, the on-demand work by application stands out, also known as uberism, in view of its leading company. In an effort to promote deregulation and consequently subtract labor rights in order to undermine competition and guarantee the monopoly (or oligopoly) of the service, companies holding digital platforms, which offer the most traditional services, with the charm of technological novelty, sought convince the population that they are mere technology companies.

The assumptions of the employment relationship, however, are striking. The intense control of the work, through algorithmic programming, and the stipulation of all contractual conditions unilaterally by the companies reveal the subordination. The contract is personae intent, and there is no possibility of a worker willingly replacing himself with another. Remuneration is perceived in the form of a bonus or a fee. And the work is not eventual. On the contrary, workers undergo an exhaustive workday on a daily basis.

Exhaustive working hours, combined with other conditions in which the service is developed – in the open, with intense physical effort, without a break for rest, in a stressful environment and with goals to fulfill – are revealing of such degradation, that it can configure work analogous to that of a slave. Such conditions are intensified in the context of migration, especially when the worker is in an irregular situation in the country.

The problem requires a structuring solution. It is urgent to put a stop to this situation by dispelling myths, revealing



fallacies, and seeking alternatives to a system that has built a chronically sick society.

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Charting routes for equality at work

Adriane Reis de Araujo¹

Summary: I – Introduction; II – Equality and non-discrimination: deepening of concepts; III – Good practices in favor of promoting equality at work: affirmative actions, transversality and intersectionality; IV – Conclusion

Abstract: The imprecision of legal rules contributes to the formation of gray areas around discrimination. The legitimacy of the norm or behavior must be assessed by the proportionality test and hermeneutical rules. The repression of discriminatory conduct is not sufficient to consolidate the process of balancing forces between the opposing parties. Equality can be achieved efficiently and quickly by equality-promoting measures (best practices), in which cross-cutting analyses of the factors that interfere with the vulnerability of the minority group are used, intersectionality is considered, and the place of speech is respected.

Keywords: Ethnicity. Discrimination. Transversality. Intersectionality. Place of speech.

Abstract: The imprecision of law contributes to the creation of grey zones concerning discrimination. The legitimacy of the law or behavior must be affirmed by the proportionality test and the rules of its interpretation. The



¹ Regional Labor Prosecutor. Master of Social Relations Law at PUC/SP. Doctor of Labor and Social Security Law from Universidad Complutense de Madrid. National Coordinator of the Coordination for the Promotion of Equal Opportunities and Elimination of Discrimination in the Work of the Labor Prosecution Service – Coordigualdade



penalization of discriminatory conducts is not enough for the consolidation of a balance between the counterparts' forces. Equality can be achieved efficiently and faster by measures that promote equality (good practices), where multifaceted analyses of factors that interfere in the minority's vulnerability are used, as well as considering the intersectionality and the standpoint theory.

Key-words: Ethnicity. Multifaceted analyses. Intersectionality. Discrimination. Standpoint theory.

I – Introduction

Migration is not a state, but a process. It refers to mobility, in whose displacement two opposing references are inserted, that is, a starting point and an arrival point, which makes the migrant occupy two positions: emigrant and immigrant.

Upon reaching their destination, the immigrant is faced with new challenges: segregation and acculturation, the division of roles in migrant communities and their qualification as an "ethnic minority". In a sociological sense, the ethnic minority refers to *dominated, classified collectives, differentiated according to origin and culture* (QUIMINAL, 2009, p. 140). The new qualification overlaps other difficulties, such as working conditions, health, housing. Success in this new stage of life requires the realization of a new journey with the social group that welcomed it.

The realization or alteration of "cultural routes" also requires the subject to clearly define his starting point, the desired point of arrival and the risks he will encounter on



This document, as its first theme, highlights the need to produce high quality data (Measure what we treasure), with a breakdown of key dimensions related to age, gender, migration status or traditional community membership, ethnicity, disability, among others. The speed in the production of data is highlighted as a decisive factor to allow faster decisions, essential in view of the dynamism of the transformation of the world, which can use technology to collect and disseminate information in real time. In conclusion, the report draws attention to the importance of strengthening statistical capacity, which is essential for monitoring the progress of any development agenda.

The agenda, therefore, was renewed in its course, with the breakdown of the eight initial goals into 17 Sustainable Development Goals, which are expected to be implemented by all countries by 2030. The global objectives are now: 1. End poverty in all its forms, in all places; 2. End hunger, achieve food security and improve nutrition and promote sustainable agriculture; 3. Ensuring a healthy life and promoting well-being for all, at all ages; 4. Ensure inclusive, equitable, and quality education, and promote lifelong learning opportunities for all; 5. Achieve gender equality and empower all women and girls; 6. Ensure the availability and sustainable management of water and sanitation for all; 7. Ensuring reliable, sustainable, modern and affordable access to energy for all; 8. Promote sustained, inclusive, and sustainable economic growth, full, and productive employment and dignified work for all; 9. Build resilient infrastructures, promote inclusive, and sustainable industrialization and foster innovation; 10. Reduce inequality within and between countries; 11. Make cities and human settlements inclusive, safe, resilient, and sustainable; 12.



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Ensure sustainable production and consumption patterns; 13. Take urgent measures to combat climate change and its impacts; 14. Conservation and sustainable use of oceans, seas and marine resources for sustainable development; 15. Protect, recover, and promote the sustainable use of terrestrial ecosystems, manage forests sustainably, combat desertification, stop, and reverse land degradation and stop biodiversity loss; 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels; and 17. Strengthen the means of implementation and revitalize the global partnership for sustainable development.

The experience related to the construction, monitoring and unfolding of the Millennium Agenda reveals that the construction of an agenda for the reduction of poverty and hunger is primarily based on the promotion of equality between individuals and peoples, equalizing citizens, refugees, and migrants in rights and access to public goods and services, as well as the right to dignified work. The collection and comparison of data is the best way to evaluate the effectiveness of transformative proposals, allowing the expansion of its purposes, horizontally and vertically, by illuminating the problem clearly and broadly. Clear actions and objective comparative data are the only sure way that any development agenda will not forget anyone.

Agenda 2030 demonstrates that the defense of equality and non-discrimination is not limited to fighting privileges, but above all it is manifested in the construction of bridges. The study presented here aims to examine concepts that are essential to any project that aims to bring ethnic



minorities closer to equality. The concepts analyzed here do not exhaust the wealth of useful tools to carry out the emancipatory path. They were selected with the purpose of overcoming misunderstandings and confusions in order to encourage their management.

II – Equality and non-discrimination: deepening of legal concepts

The legal declaration of equality demonstrates that equal rights are not an empirical reality, but a goal to be fulfilled, “due to an order instituted by citizens who undertake to replace birth privileges with the principle of ‘a general law for all, known to everyone and elaborated by everyone’”(VARIKAS, 2009, p. 116)

The right to equality, provided for in art. 5, *caput*, of the Brazilian constitutional text, is an expression of the principle of human dignity (art. 1º, III, CRFB), which applies to nationals and foreigners. The legal concept of respect for human dignity is based on the Kantian formula and states that there is violation when one treats a person as a mere means or instrument, that is, when one does not recognize his or her infungible nature. This concept reveals both an individual aspect and a relational aspect, confirming the general perception that it is difficult for a person to know himself/herself worthy, if other people do not treat him/her with respect (CORTINA, 2009, p. 202) or, in another perspective, that “a persona as a result of which dignity starts, should be a persona” (SAGARDOY BENGOCHEA, 2005, p. 53).

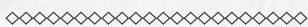
The recognition of the dignity of the human being is a bilateral action, in which satisfaction is not obtained by



eliminating the other but by solidarity with him, allowing himself to be himself and be free.⁴ Respect for dignity thus brings together the individual and social perception of each individual's internal value. For this reason, the struggle for the recognition of dignity (and for equality) is transcendental in history.

Equality, associated with freedom, is a key value for the foundation and the exercise of all other constitutional rights, being the basis of the Democratic Rule of Law. It reverberates in several devices throughout the constitutional text, with special emphasis on the following fundamental rights related to work: art. 5, I, art. 7, XX, XXX, XXXI, XXXII, and XXXIV. Its impact is also felt in ordinary texts, among which it is worth highlighting in the subject under consideration the principles set out in the Migration Law (Law No. 13,445/2017): equal treatment and opportunity for migrants and their families, inclusion social, labor and productive life through public policies, the equal and free access of migrants to social services, programs, and benefits, public goods, education, comprehensive public legal assistance, work, housing, banking, and social security and social security. strengthening the economic, political, social, and cultural integration of the peoples of Latin America, through the creation of spaces for citizenship and free movement of people.

In a scenario based on the capitalist model of production, productive and non-productive or paid and unpaid work stands out as elements of social integration



⁴ This concept was expressed by Hegel, in *Phenomenología del espíritu*, *apud* DE KONINCK, Thomas. *De la dignidad humana*. Madrid: Dykinson, 2006. p. 188.



and as a reference for citizenship characterized by economic inequality. The materialization of formal equality, therefore, requires its realization through the enjoyment of social rights, a situation that requires the presence of the State as guarantor of social needs.

The right to equality plays a dual role in the regulation of the employment relationship: on the one hand, it regulates the relationship of the State with all labor subjects (subjects with labor and capital), individual and collective, and thus ensures equal treatment by part of the public authorities in the exercise of their legislative (equality in law), executive and jurisdictional (equality before the law) functions; on the other, it regulates the relationship between private individuals, by ensuring that the working person is not discriminated against within the productive organization from the pre-contractual stage (admission) to the end of the legal relationship (dismissal).

The principle of equality limits state regulatory and enforcement action, as well as limits collective autonomy. Any and all cuts, whether constitutional or infraconstitutional, to the right to equality in the law and before the law, therefore, need to respond positively to the proportionality test. Respect



of employment or occupation”; as well as, “such other distinction, exclusion or preference which has the effect of destroying or modifying equality of opportunity or treatment in respect of employment or occupation as may be specified by the Member concerned after consultation with representative employers’ and workers’ organizations, where such exist, and with other appropriate bodies. This standard only excepts situations where exclusions or preferences are based on qualifications required for a given job.

The law is opposed to arbitrary discriminatory conduct, which deepens or perpetuates historical and social inequalities, as noted in the following concept: “discrimination is the conduct by which the person is denied treatment compatible with the legal standard established for the concrete situation experienced by him or her” (GODINHO, 2000, p. 97). The right to non-discrimination is, therefore, an unfolding of the right to equality, with a more severe judgment and more serious consequences.

The anti-discriminatory rules protect in particular the differences, physical or not, that are alien to the individual’s will, such as sex, race, ethnicity, among others, or arising from the manifestation of the exercise of a human right, such as marital status, religion, mobility, among others. Depending on the measure adopted, these rules can be repressive, compensatory or promotional and have in common the purpose of minimizing the legal, social and economic effects of the difference. As an example, the Migration Law (Law No. 13,445/2017) contains the principle of non-discrimination due to the criteria or procedures by which the person was admitted to national territory, as well as the right to guarantee compliance with legal and contractual labor obligations and



the application of worker protection rules, without discrimination on grounds of nationality and migratory status (art. 4, XI).

The principle of equality and non-discrimination serves as a hermeneutic parameter of legal rules. As an example, we cite the prohibition contained in art. 17 of Law No. 6,019/1974 and in art. 12 of Decree No. 10,060/2019 on hiring foreigners with a temporary stay visa in the country (asylum seekers, refugees and migrants with temporary residence) by temporary work companies. Once § 5 of art. 147 of Decree No. 10,060/2019 provides “for the purpose of attracting labor in strategic areas for national development or with a deficit of professional competencies for the country, a joint act by the Ministers of State for Justice and Public Security, Foreign Affairs, and Labor Prosecution, after consulting the National Immigration Council, will establish simplified conditions for the residence permit for work purposes”, the only interpretation compatible with the principle of equality, non-discrimination and the principles of the Migration Law is that art. 17 of Law No. 6,019/1974 should be interpreted as an exception and in a restricted way, that is, this rule only prohibits the active search of workers abroad as long as the need to attract labor by the Brazilian authorities has not been recognized (Technical Note No. 9/2020 – Conaet/Coordigualdade/GT Migrantes e Refugiados).

In the analysis of a case of discrimination, therefore, the jurist or public agent (judge, prosecutor, public administrator) must demand from the authority or natural or legal person to consistently justify the act of discriminating or differentiating in an unfavorable or harmful manner the subject tutored. The legitimation of the investigated act requires



dense and consistent reasoning, which goes beyond the mere allegation, as well as proof of the reasonableness of the difference in order to prove the non-arbitrariness of the measure.

Hateful discrimination can also be classified as direct or indirect. Indirect discrimination constitutes a legal fraud, whereas direct discrimination, that is, one in which the author of the act, in the legitimate exercise of a right intentionally, defiles its execution by the practice of a clearly excuse purpose constitutes abuse of rights.

Indirect discrimination is more complex, since fraud to the law consists of:

In practicing the act in such a way that eventually another legal rule may be applied and the fraudulent legal rule will no longer be applied. That did not affect, because it did; fraud against the law puts factual support in front of the judge, so that the judge can make a mistake. Fraud of the law is a breach of the law, relying on the offender in whom the judge makes a mistake. The judge applies the sanction, as it is his duty to respect



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the disadvantaged group. For the efficiency of this measure, the principle of proportionality must be observed in the requirements imposed for the filling of the vacancy or for the selection procedure (that is, for example, if the requirements are not excessive for the vacancy offered or if the procedures required for the dispute meets the reality for the beneficiary group), if there is greater turnover in the position occupied by the person who fulfills the quota, if there is the necessary adaptation of the company to welcome the person of the shareholder (accessibility, compatibility of family and professional life), if there is the possibility of career progression, among others.

It is important to highlight that affirmative action does not constitute odious discrimination, precisely because it is compatible with “the legal standard established for the concrete situation experienced by it” and intends to artificially create a more beneficial situation that helps to break the group’s cycle of poverty and prejudice. vulnerable. It meets the principles of equality, non-discrimination and proportionality, since its objective is to promote a more egalitarian and free society. Affirmative actions may be provided for in international texts (Convention on the Elimination of All Forms of Discrimination against Women/UN, art. 4.1⁸), *ordinary rules*



8 CEDAW, art. 4, inc. 1: “adoption by the States Parties of special measures of a temporary nature aimed at accelerating de facto equality between men and women shall not be considered discrimination in the manner defined in this Convention, and in no way will it imply the maintenance of unequal or separate rules. These measures will cease when the objectives of equal opportunity and treatment have been achieved”.



The principle of transversality or mainstreaming takes into account the fact that inequalities, inserted in the social organization, are previous and go beyond the framework of productive and market relations, even though they consider them, together with social protection, decisive for the projection of life social, economic and cultural. Because it is collective, this principle adheres to the prohibition of indirect discrimination and is linked to affirmative actions, since it seeks real equality and distances itself from the abstract or neutral value of the principle of equality. Therefore, it must be an objective of the State and a characteristic feature in actions to tackle inequality in all its spheres and levels.

This principle requires the modification of old conceptions. The change in the case law of the Court of Justice of the European Union regarding the interpretation of gender equality is quite emblematic. The jurisprudence, which previously treated gender inequality at work through the exclusive prism of the situation of a worker, pushed by the evolution of the social and legal community context, started to take into account the need to make working conditions compatible with the worker's family burdens (CASAS BAAMONDE, 2009, p. 42).

The transversality is also expressed in a legal technique, dispersed throughout the order, which aims to examine the implications of any type of public action, including laws, public policies and programs in any area. It is a tool to consider the interests of the opposing groups in an integrated manner when designing, implementing, monitoring and evaluating policies and programs from all political, social and economic spheres. This technique can be used in the analysis of programs or standards written by individuals.



The transversality, as a technique, is made operational by the realization of a report, the necessity of which is verified before the specific case. This report should assess data separated by gender, race, ethnicity, disability and check for differences between the compared groups in terms of rights, access to resources or participation in decisions. If the answer reveals disparate results, the potential impact of the proposal should be assessed against the differences found (for example, gender impact report).

The questions analyzed in the report are: a) access to resources, in the broadest sense, to cover time, space, information, remuneration, political and economic power, education and training, work and professional career, access opportunities and new technologies, between others; b) level of participation and representation in decision-making positions; c) influence on the sexual, racial, class and disability division, on the attitudes and behavior of the members of the groups and the value attributed to social roles or individual characteristics; d) sufficiency of the level of recognition of rights to compensate for direct or indirect discrimination, the level of respect for human rights and obstacles in accessing justice and the procedures for guardianship and anti-discrimination guarantee. Finally, this report should indicate criteria for action to help eliminate inequalities and promote equality (PEREZ DEL RIO, 2005).

Thus, if the company, unilaterally or through collective bargaining, decides to implement programs or policies to promote equality based on ethnicity, it may, as a preventive and enlightening measure, submit the analysis of the projects or standards to a qualified person or internal group. to analyze the positive or negative repercussions of these



measures, along the lines of the principle and technique of transversality. This analysis can serve as evidence of the justification of the measure when it adopts the character of affirmative action.

Another fundamental concept to understand the real situation of the discriminated group is intersectionality. When associating the chosen discrimination factor, whether for study or coping actions, with other factors equally susceptible to discriminatory situations, the unequal repercussion, in degrees and forms, of discrimination in the people of the group considered comes to the fore, which also requires responses differentiated. This concept breaks the universalization of certain categories (migrants, women, blacks, people with disabilities) and rejects any hierarchy between oppressions. It allows a better understanding of the multifaceted character of the realities, which is why it must be considered in the production of the data under analysis.

Finally, it should be remembered another concept that aims at criticizing the hierarchy of knowledge as a product of classification among people in the disputed groups, that is, a concept that recognizes that those who have social privilege have epistemic privilege: the place of speech. Taking racial conflict as an example, the place of speech attacks precisely the hierarchy that legitimized the Eurocentric epistemological explanation as superior, giving it the exclusivity of what would be valid knowledge and making other experiences of knowledge unfeasible.

The place of speech intends to decolonize knowledge, “not only to show how the colonization project has created these identities, but to show how certain identities have



historically been silenced and disallowed in the epistemic sense, while others are strengthened". (RIBEIRO, 2017, p. 25).

The location (social place) and social identity stand out, as they influence the experiences and knowledge of the speaker and the audience. Thus, language can constitute an obstacle to understanding and create spaces of power instead of spaces for sharing, that is, it can be instrumentalized by colonialism, both to create and to legitimize or delegitimize certain identities. The place of speech highlights "who may speak" and their point of view, both of people and of institutions (for example: place of speech of the popular press and of reference newspapers). In this sense, it generates reflection on the difference in social positions and symbolic capital in the speeches, without necessarily excluding any interlocutor, being particularly important in dealing with issues related to ethnic minorities.

In addition to refuting epistemological neutrality, the claim to the place of speech gives visibility to historically invisible groups and contributes to social transformation through participation. Therefore, it encourages protagonism and the ability to listen.

IV – Conclusion

Privileges are hidden in practices and speeches, norms and procedures naturalized in everyday life. Under the apparent consolidated stability in identities, and social places, the violence contained in the discriminatory act is constantly minimized, as well as the claims of the harmed subjects, disqualified.



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The search for equality intends to neutralize the differences attributed to a certain person or group of people in social life, emphasizing the acquired, variable and artificial character of most of what is recognized as traits and roles associated with the discriminatory factor. Differences, which create social compartments, affect and shape social structures that feed on unequal access and control of economic, cultural, and social resources between the disputing parties, affect the dignity of people in the minority group, both in their individual dimension and collective. The concepts presented here reflect the complexity of the work of analyzing situations of discrimination.

Promotional measures, on the other hand, map the field of actions and decisions necessary to accelerate the pace of reducing inequalities. The voluntary alteration of the route, thus, seeks to constitute equality as an objective situation, in which all people can develop their capacities and decide on their destiny without limitations imposed by traditional stereotypes.

Equality is one of the most unfinished promises of modernity. The jurist, like any explorer, must appropriate the instruments and good practices to make his or her journey towards equality safely and efficiently, with the only certainty that there is something more to learn, deepen and develop. always.



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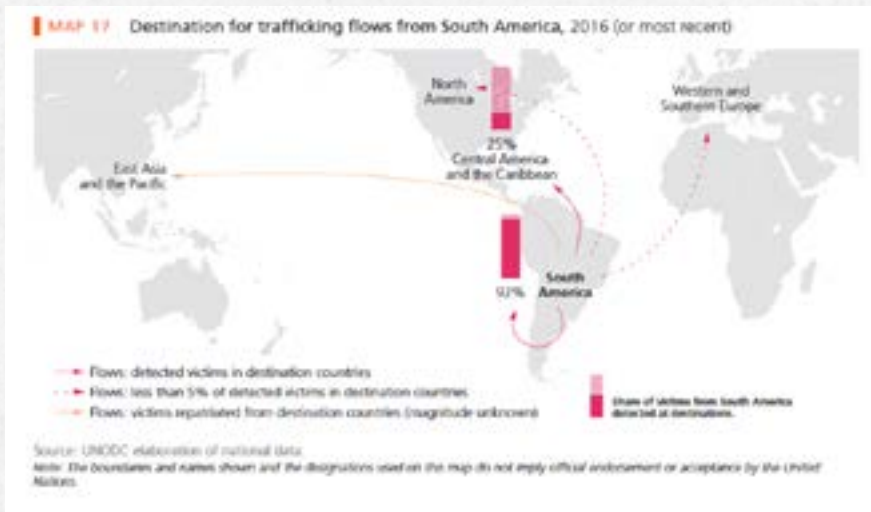
CHAPTER 5. COMPILATION OF GOOD PRACTICES



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forced labor, degrading working conditions, exhausting work hours and debt bondage. Data analysis, in these cases, serves as a guide for public actions and policies, without losing sight of the underreporting of cases, as it is clandestine conduct and difficult to verify, as human traffickers do not issue receipts.

The way of acting changes and takes on new guises year after year. To achieve their goals, criminals use various means of transportation, among them air transport. According to Forbes magazine, about 60% of the crime of human trafficking is committed using air transport⁷, so that action that seeks to prevent human trafficking for the purpose of working in conditions analogous to slavery must act in this regard. sector.



Trafficking routes can include long journeys, as shown in the image below, taken from the 2018 Global Report Trafficking in Persons (UNODC, 2018):



Analyzing the figure above, it is possible to perceive the relevance of the means of air transport to make this practice feasible and the importance of preventive action in the sector that has already experienced situations such as that of the American flight attendant Shelia Fedrick, who saved a girl victim of human trafficking in the year 2011, after distrusting the way her companion treated her during the flight.

Inspired by this story, the Liberdade no Ar project was created, within the scope of the Labor Prosecution Service, aimed at disseminating knowledge on the subject among passengers and personnel linked to road or air carriers, because, in addition to reactive action, based on complaints, it is also preventive action is necessary through socio-educational and awareness campaigns, in addition to training on the topic to train society's view of this practice⁸.

The project seeks to raise the community's awareness about human trafficking and slave labor, in order to reduce the number of victims of these repugnant crimes, in actions that can be divided into three axes: information campaign, promotion of multidisciplinary debate, and continuing education.

On the first axis, informative campaigns will be launched periodically with actions such as the dissemination of educational videos and comic strips for placement on board aircraft and buses, as well as the posting of warning videos on the screens of airport and highway administrators. To this end, the MPT has already signed a technical cooperation agreement with Infraero to prevent human trafficking and slave labor. The pact concluded is part of the Liberdade no Ar project.



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As for the second, the stimulus to the debate must be multidisciplinary and for this reason, throughout the month of July 2020, the *Liberdade no Ar* Strategic Project developed, in partnership with the Brazilian Association for the Defense of Women, Children and Youth (Asbrad), the webseries *20 Questões para Entender o Tráfico de Pessoas no Brasil* (20 Questions to Understand Human Trafficking in Brazil).

The webseries had more than 16 thousand views, an average of 200 people followed daily logged in the chat, 80% of them female and 70% of the age group from 35 to 54 years old, with access even outside of Brazil, from Mexico, States United States, Uruguay and Argentina. The 20 lives addressed various topics related to human trafficking, such as cyber crimes, trafficking in athletes, sexual exploitation of children and adolescents, drug trafficking “mules”, structural racism, illegal adoption, among other issues.

Throughout the month of July, podcasts and radio spots on the topic were also disseminated, in addition to a series of animations that – in comic or video format – alert to suspicious situations, false promises of work and professional success, which can lead the person to be a victim of human trafficking.

The actions were carried out by the MPT in partnership with the *Coração Azul* Infraero campaign, Asbrad, the United Nations (UN) – United Nations Office on Drugs and Crime (UNODC), the International Labor Organization (ILO) and the International Organization for Migration (IOM).

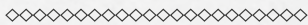
The United Nations forecast is that world GDP will decline by US\$ 2 trillion, meaning that overcoming the pandemic will be followed by a global recession unprece-



dented in history and with the risk of increasing the number of people trafficked for the purpose of reducing condition analogous to that of a slave. Along these lines, the ILO warns that the effects will be far-reaching, pushing millions of people into unemployment, with a real risk of increasing cases of work in conditions similar to slavery and human trafficking. UNODC Executive Director Ghada Waly further warns that, with covid-19 restricting movement, diverting resources to law enforcement and reducing social and public services, victims of human trafficking are even less likely to escape and find help. She explains that:

As we work together to overcome the global pandemic, countries need to keep shelters and hotlines open, safeguard access to justice and prevent the most vulnerable people from falling into the hands of organized crime. UNODC is supporting governments and NGO partners around the world to enable anti-trafficking units to continue to do their essential work safely and to ensure that victims of human trafficking can get the assistance they need.⁹

The third line of action is training courses for the community, including flight attendants and airline workers. Due to the coronavirus pandemic in Brazil and in view of the very serious impact on the passenger transport sector in Brazil and worldwide, the courses that in principle would be taught in person will now be transformed into distance



9 UNODC. *Covid-19*: UNODC warns of greater risks for victims of human trafficking. May 2020. Available at: www.unodc.org/lpo-brazil/pt/frontpage/2020/05/covid-19-unodc-alerta-para-maiores-riscos-para-vtimas-do-trfco-de-pessoas.html. Accessed on Jun. 13, 2020.



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courses¹⁰. For this reason, seeking to expand its scope and reinvent itself in the pandemic, training is being carried out through internet platforms, such as Meet and Zoom, which are intended to expand to the road sector, which started to receive a greater volume of passengers as a result of the crisis. humanitarian crisis that hit the Venezuelan people.

The Liberdade no Ar project is an initiative of the Labor Prosecution Service and has a partnership with the United Nations Office on Drugs and Crime (UNODC), International Labor Organization (ILO), International Organization for Migration (IOM), Brazilian Association of Defense of Women, Children and Youth (Asbrad), Brazilian Airport Infrastructure Company (Infraero), and the National Bureau of Justice, being open to joining, as we believe that the fight against human trafficking is a struggle for all of us.



10 FÁRIA, Flávia; YUKARI, Diana. *Coronavírus provoca redução de 90% dos voos no Brasil, mais que média global*. São Paulo: Folha de S.Paulo, Abr. 21, 2020. Available at: www1.folha.uol.com.br/mercado/2020/04/coronavirus-provo-ca-reducao-de-90-dos-voos-no-brasil-mais-que-media-global.shtml. Access in: Apr. 22, 2020.



IMMIGRATIONS AND REFUGEE: PROJECTS
CARRIED OUT BY THE MPT IN SÃO PAULO
TO PROMOTE RIGHTS AND PREVENT
VIOLATIONS.

Ana Spinelli¹
Christiane Vieira Nogueira²
Gustavo Tenório Accioly³

São Paulo, known for welcoming migrants from all parts of Brazil and the world. People in search of work, better, or other living conditions and who, over the years, since the beginning of the last century, have been leaving their marks, their descendants, occupying neighborhoods, maintaining and mixing customs, cuisines, traditions and existences.

It is estimated that there are about 2 million immigrants currently residing in the municipality, having enrolled 361,459 people between 2000 and 2019 alone, according to the National Migration Registry.⁴



- 1 Journalist working at PRT 2 Communication Advisory.
- 2 Labor Prosecutor based at PRT 2 headquarters.
- 3 Labor Prosecutor at the Office of Labor Prosecution in the municipality of Barueri.
- 4 Data contained in the Thematic Atlas: Observatory of Migrations in São Paulo and Observatory of Metropolises – International Migrations, Macrometrópole Paulista, Metropolitan Regions and Administrative Regions / Rosana Baeninger; Natália Belmonte Demétrio; Joice Domeniconi (coord.); Lúcia Bógus; Luis Felipe Aires Magalhães; Ana Cecília Cossi Bizon; Roberta Peres; Catarina von Zuben; Gustavo Accyoli; Christiane Vieira Nogueira; Tatiana Bivar; Fábio Fedrizzi Custódio (coorgs.) – Campinas, SP: Center for Population Studies Elza Berquó – Nepo/Unicamp, 2020.



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Consequently, the greatest number of violations of the rights of people in an immigration or refugee situation also occur here. Among these rights, those of the world of work.

Many times they find themselves in a position of greater vulnerability, either because they are undocumented, because they do not speak the Portuguese language or do not have any support network, they end up more exposed to exploitation and disrespect. These violations can reach the height of submission to conditions analogous to those of slavery or human trafficking, in addition to discrimination and prejudice of all kinds.

Countless denunciations reach the Labor Prosecution Service (MPT), both at its headquarters (Regional Labor Prosecutor of the 2nd Region, located in the capital) and at the Attorneys of the Municipalities of Greater São Paulo (São Bernardo, Guarulhos, Mogi das Cruzes, Barueri and Santos). They are dealt with in accordance with Brazilian law, with the opening of investigative procedures, the possibility of signing Terms of Conduct Adjustment (TAC) and filing of Public Civil Actions (ACP), if necessary. The MPT's performance, however, is not restricted to the repressive sphere, nor is it exhausted in the judicial domain.

The Labor Prosecution Service has a fundamental role in promoting rights, inducing public policies, defending democracy and building a free, just and solidary society, following the contours outlined by the 1988 Constitution.

In a theme as complex and multidisciplinary as the reception and inclusion of immigrants and refugees in Brazilian society, as well as the protection of their most essential rights, the actions of MP members could not be



restricted to the plan of repression of illicit acts, under penalty of fail entirely.

In this issue, the dialogue with the communities and groups involved, the participation in state and organized civil society forums and debates, the promotion of awareness and sensitization campaigns, the collective construction and the demand for compliance with public policies become even more fundamental.

In this sense, the MPT, in addition to acting in defense of violated labor rights and guaranteeing work in dignified conditions for immigrants and refugees, also carries out activities aimed at promoting rights and preventing violations, in the ways described above, but also carrying out and cooperating with actions, projects and institutional or promoted campaigns with values resulting from fines for noncompliance with TACs and from convictions or agreements in lawsuits. Destinations of this kind follow the precepts contained in the Law of Public Civil Action and determinations of the National Council of the Labor Prosecution Service, when they determine that the indemnities for the damages of collective nature are destined to the recovery of the injured assets.

The article intends to expose some of these campaigns and projects, which have been carried out within the scope of the Regional Labor Prosecutor (PRT) of the 2nd Region in recent years, specifically those that involve, directly or indirectly, the issue of the work of immigrants and refugees, be it promoting their inclusion, or seeking to prevent their exploitation.



1) ALLOCATIONS AIMED AT STRUCTURING AND ACTIVITIES OF STATE OR NON-GOVERNMENTAL ENTITIES THAT WORK WITH THE ISSUE OF IMMIGRANTS AND REFUGEES

There are several cases of fines for noncompliance with TACs or amounts resulting from convictions or agreements in actions filed by the MPT that were intended for projects involving the structuring or maintenance of entities working to defend the rights of immigrants and refugees, as well as the activities for them developed.

As an example, we cite the indemnities resulting from a judicial agreement in an action that dealt with the rescue of workers found in a situation analogous to that of a slave, in a large construction work at Guarulhos International Airport. After an audience with the participation of Coetrae/São Paulo (State Commission for the Eradication of Slave Labor), including the indication of the projects and entities to be contemplated, amounts were allocated to the following entities, among others: Casa do Imigrante – Missão Paz, Cedich (Center for Human Rights and Citizenship of Immigrants), Asbrad (Brazilian Association for the Defense of Women, Children, and Youth), CDVDH (Center for the Defense of Life and Human Rights Carmem Bascarán) and CPT (Pastoral Land Commission). Values were also sent to Verbo Filmes (Missionaries of the Divine Word), for the production of a video on human trafficking and slave labor, for the holding of the National Encounter of Coetraes, which took place in São Paulo and was organized by its state commission and for legal assistance for immigrants provided by the Mackenzie University Model Office in partnership with the Federal Public Defender's Office.



Another example is that of CIC DO IMIGRANTE, opened in December 2014, under the coordination of the Secretariat of Justice and Defense of Citizenship (SP), with the support of various destinations arising from the work of the MPT. The Immigrant Service Center is a place that concentrates services such as training and language courses, issuing foreigners' registration, banking inclusion, and issuing a work card for immigrants. The objective is to concentrate all the services necessary for the reception and regularization of immigrants who arrive in São Paulo in a precarious situation, thus preventing them from being exploited.

2) GIFTBOX

The campaign took place in two stages, in December 2014 and in July 2015, lasting, respectively, fifteen days and one week. In the first phase, it was installed at Viaduto do Chá and Parque do Ibirapuera; and, in the second, in front of the Municipal Theater.

It was an itinerant and interactive exhibition, which consisted of a giant gift box that symbolized the way traffickers deceive their victims with false promises, simulating the process of enticement. Upon entering the box, people, attracted by messages outside it, found the report of someone who was trafficked and placed in a situation of sexual exploitation, labor, domestic servitude, in addition to other situations such as illegal adoption of children, organ trafficking, etc. A short documentary about the action was produced.

The objective was to stimulate the debate on human trafficking and slave labor in the daily life of society, by



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raising the population's awareness and awareness, in order to increase prevention and knowledge about the problem.

The regional coordinators of the National Coordination of the Eradication of Slave Labor (Conaete) of PRT 2 (São Paulo) and PRT 15 (Campinas) promoted the project, in partnership with Comtrae (Municipal Commission for the Eradication of Slave Labor).

3) #SOMOS LIVRES CAMPAIGN

A campaign launched in January 2016, in partnership with MPT/Conaete, Conatrae (National Commission for the Eradication of Slave Labor) and participating entities, such as ILO, CPT, Repórter Brasil).

Focused on prevention and information on contemporary slavery, it was launched at an event with the presence of Kailash Satyarthi, Nobel Peace Prize 2014, and on social networks with the hashtag #somoslivres. It was based on a survey conducted by Ipsos, demanded by Repórter Brasil and the ILO, which identified that most Brazilians did not know how to answer clearly what was a situation of slavery. The survey also pointed out that 27% directly stated that they did not know what the topic was about.

The objective was to draw attention to the seriousness of the problem of slave labor in Brazil, in addition to fighting against changes proposed in bills at the time (if approved, they would make the definition of slave labor more flexible in Brazil and facilitate the occurrence of new cases.).



4) FASHION EXPERIENCE BRAZIL

Also launched in early 2016, due to the National Day to Combat Slave Labor (celebrated on January 28), promoted by MPT/Conaete in partnership with the NGOs 27million and Stop the Traffik.

It consisted of a concept store installed for a week on Avenida Paulista, which drew attention to unmissable prices. When people entered, they came across a sewing workshop exposing the precarious conditions that many workers are subjected to in different regions of the world and in Brazil. In the environment, the visitor found video monitors displaying images and data referring to different stages of the textile chain, from plantations and extraction of raw materials to the making and disposal of fabrics.

It aimed to educate and make consumers aware of situations similar to slavery and the hidden environmental impacts in the fashion industry

5) Primer on Labor Rights for Immigrants

Launched in September 2016, carried out by Conaete of PRT 2 with the support of Cáritas.

In Portuguese, French, Spanish, and English, the primer alerts about the exploitation of foreigners by companies that use slave labor. The reader can also find information on accidents at work, types of employment contract, unemployment insurance, thirteenth salary, moral harassment, among others. It seeks to clarify Brazil's labor



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rights to immigrants who come here to live, often fleeing poverty and wars in their home country.

It was distributed to several entities that work with immigrants and refugees and continues to be printed in PRT2 and other Regional Labor Offices and sent to reception centers. It has already undergone two updates, considering changes in labor legislation.

6) #NÃOSOMOSESCRAVOSDAMODA PROJECT

It continued the #somalivres campaign, with the goal of shedding light on, clarifying, and making society aware of the issue of slave labor in Brazil, this time specifically in the area of fashion. Promoted by MPT (PTM de Barueri and GT human trafficking/Conaete) in partnership with Conatrae, it took place in October 2018, in a historic mansion located on Avenida Paulista.

Its installation addressed the issue of slave labor in fashion, as well as two daily debate cycles, with the participation of experts and artists, which were broadcast live via social networks and with extensive media coverage. The space also housed the exhibition by photographer Chico Max and the sale of handcrafted products produced by immigrants. A video manifesto was recorded by several artists and Labor prosecutors, which was widely reproduced on the internet. The event received an audience of 6,505 visitors.



7) BROCHURE “Em quem você confia” – against human trafficking

Launched in July 2019, the brochure tells stories of people subjected to human trafficking for the purposes of sexual exploitation or slave labor. The stories, fictitious, but close to the real, are of a trans person who is unable to disengage from prostitution, a woman who travels to another country with the promise of a job and falls into the trafficking network; and a seamstress who comes to Brazil and ends up being subjected to slave labor in a sewing workshop. Accompanies a list of reporting channels. It exposes in a simple and direct way how human trafficking happens, making alerts so that the reader knows how to protect himself and report. Aimed especially at people who are at risk of being subjected to human trafficking or who are in this situation and coordinated by the Working Group on human trafficking (WG human trafficking), which is part of Conaete.

8) ALL PROJECT AGAINST HUMAN TRAFFICKING

Project carried out in July and August 2019 by the MPT (PTM of Barueri and GT human trafficking/Conaete), in partnership with ONU Brasil, Unicamp, CPT and Repórter Brasil. It had four stages.

Initially, professionalization and training courses were developed, in the areas of beauty and makeup, sustainable and inclusive fashion, music and technology, for people who have already been through situations of trafficking or potential victims. Each group was made up of immigrants, refugees, transsexuals and women victims of marginaliza-



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tion, with the aim of including them through dignified work, strengthening self-esteem and reducing socioeconomic vulnerability.

Then, action was taken on social networks (Onda Azul), on the World Day to Combat human trafficking (July 30), encouraging the exercise of citizenship and the denunciation of this atrocious and silenced crime. There was also the publication of a video manifesto recorded by the singer Ivete Sangalo.

The project ended with a photographic exhibition of women, trans women, refugees, and immigrants in the labor market and a theatrical presentation inspired by real cases of trafficking faced by the Labor Prosecution Service, in addition to the delivery of the certificate to the students of the courses.

In addition, the website www.somosmaioria.com.br was developed, which has the profile with the professional skills of students who participated in the courses and who are looking for dignified job openings, but who are a constant target of discrimination in our society.

9) PUBLICATION OF THE ATLAS ON MIGRATIONS IN PARTNERSHIP WITH UNICAMP/NEPO

Based on the MPT partnership (in this case, based on allocations made by PRT2 prosecutors and the work of the human trafficking/Conaete WG), two Atlas on International Migration were published and one is in press. They are: Atlas of International Migration in the Northeast Region (2019), Atlas of International Migration in the Macrometró-



pole Paulista (2020) and Atlas of International Venezuelan Migration (forthcoming).

The Atlas retrieves different databases to compose the scenario of international migrations in the 21st Century. Accessing this information, the sociodemographic profile and the municipalities where the immigrants and refugees currently living in the country reside is essential to support the development of public policies and to prevent the exploitation and disrespect of the rights of these groups due to their situations of vulnerability.

The period of social isolation in which we find ourselves, due to the covid-19 pandemic, demanded the elaboration and development of specific projects based on this scenario, considering the worsening of social inequalities and poverty. In the same way, other actions had to be changed and adapted to new formats due to the impositions of the current moment. Next, such projects.

9) MÁSCARAS PROJECT

Developed, in April and May 2020, by MPT (PTM of Barueri and GT human trafficking/Conaete) in partnership with Unicamp, with support from UNHCR/UNHCR and UNFPA.

The context brought about by the covid-19 pandemic demanded even greater concern with historically vulnerable groups, with regard to income generation and disease prevention.



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The campaign aimed to stimulate production through the creative economy, to guarantee social distance with the use of domestic sewing machines and the strengthening of dignified work.

The handmade masks made of African fabrics were made by immigrants, refugees, and transsexual people, who were severely affected by the situation imposed by the pandemic.

A total of 10,000 masks were produced, which were distributed in institutions that work to defend people in situations of vulnerability or exclusion, such as Casa Florescer, Casa 1, Paraisópolis Community and Missão Paz.

There was the support of several artists and digital influencers in publicizing the campaign on social networks, generating new orders and orders for the workers involved.

10) Projects in direct or indirect partnership with the NGO Palhaços Sem Fronteiras

The initial forecast of the projects was to be carried out in person, with performances by the entities involved. With the covid-19 pandemic, it was necessary to readjust the format and videos have been produced that are compatible with the target audience and with the objectives to be achieved. The partnership with the MPT took place through prosecutors based in PRT 2 and occurred either directly, through specific destinations for carrying out the activities, or indirectly, through the demand of entities that work with



the issue of immigrants and refugees and were looking for new ways of communication.

The activities will be carried out between March and December 2020 and are divided into four projects: Palhaças sem Fronteiras, Fronteiras da Cidade, Infinitas Peripécias (a partnership with Asbrad) and The Game as a Pedagogical Tool (a partnership with Cami).

In all of them, there is a concern with the construction of spaces so that laughter can emerge as an element of affective restoration; and this, as a basis for social transformation, with the necessary adaptations for each public and objective related in the projects. Also, using laughter and play to maintain mental health and relieve the stress of isolation. Also mentioned is the need for activities by artists, who are helpless in this pandemic moment. The videos are short, in a format compatible with the dissemination through the WhatsApp application, and deal with the themes focused on each project, as well as themes related to the pandemic and social isolation. The last project has slightly different objectives.

In Palhaças sem Fronteiras, three presentations were made and, with the pandemic, nine videos were created to be shared. The videos address themes related to the current situation of women, their specificities and difficulties during isolation. The focus is on strengthening self-esteem and preventing and combating domestic violence.

The Fronteiras da Cidade project foresaw presentations with circus numbers, music and clowning, for populations affected by social exclusion in areas of housing occupation. It also envisaged show presentations that tell the story of



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four refugee clowns, designed specifically for this audience. A face-to-face presentation was held at Ocupação Queixadas. Due to the quarantine, the presentations will be in the form of videos designed to reach the largest number of people.

Infinitas peripécias is an audiovisual series within the Projeto Criança Migrante, in partnership with Asbrad. The videos will cover topics related to hospitality, empathy and migration, their specificities and difficulties, in a comical and poetic way.

Finally, the project O Jogo as a Pedagogical Tool aims to train 15 adults from Cami to work with people in situations of refuge and displacement. Games from the universe of clowning and the methodology of the theater of the oppressed, developed by Augusto Boal, will be used. There is a lot of power in the combination of techniques, which can be transmitted in a fun and committed way, with the aspiration of being a tool for political, social, and aesthetic work, contributing to social transformation.

12) FACES & SUSTENTABILIDADE PROJECT

From the economic and social crisis generated by the covid-19 pandemic, the Labor Prosecution Service (PTM of Barueri and GT human trafficking/Conaete), Unicamp and United Nations agencies (ILO, UNFPA, and Unaid) joined forces to launch the Faces & Sustainability campaign, with the objective of offering work, income and food opportunities to people belonging to historically vulnerable groups, considered potential victims of human trafficking and slave labor.



The campaign consists of creating a sustainable inclusive chain along the lines of the 2030 UN agenda, which is based on economic growth, social justice, and environmental equity and goes through the following steps:

a) Organic food is purchased from small rural producers in the Parelheiros region, which, in the face of the pandemic, are unable to dispose of their production, with much waste.

b) Professional training and culinary work for women victims of marginalization, transgender women, immigrants and refugees who will be for 2 months in training and preparing a thousand lunch boxes a day, highlighting that the participants' uniforms and disposable masks were made by Bolivian immigrants who have already suffered degrading working conditions; African bandanas and fabric masks were made by migrants and refugees, stimulating the creative economy; in addition to t-shirts made by a company that employs people from the prison system.

c) Finally, the delivery of lunch boxes with nutritious and organic food is made by refugees with daily dialogue with community leaders in three communities: Paraisópolis – Travinhas; Vietnam Community – Vila Santa Catarina and Brasilândia – Jardim Paraná to help fight hunger and social isolation.

The projects described have achieved or have been achieving their objectives, which, directly or indirectly, concern the protection and promotion of fundamental rights of immigrants and refugees.

MPT's participation in these actions, whether coordinating, in partnership, or supporting the institutions



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that work on the theme, is nothing more than the fulfillment of its constitutional mission, contributing to the inclusion and eradication of inequalities and acting, in a democratic way, and collective, for the construction of a free, just and solidary society.



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duties and the Brazilian Judicial Protection System; irregular documentation; among other violations.

In this scenario, the Labor Prosecution Service (MPT), through the Office of Labor Prosecution in the municipality of Boa Vista/RR, in fulfillment of its constitutional mission to defend unavailable social and individual interests, has not remained inert.

In addition to its necessary repressive and investigative institutional function, the Labor Prosecution Service in Boa Vista/RR acted in a proactive and promotional manner, alongside indispensable partner institutions and in the gap of state public policies, as an articulator and social transformer through the Aciso project (Civic-Social Action) – International Migrants and the World of Work: knowing and exercising their rights and duties and the Awareness Campaign (spots) “The universal language is respect”.

For their legacy, Aciso 2017 and the Awareness Campaign (spots) received recognition from the National Council of the Labor Prosecution Service (CNMP), having been awarded 1st place in the CNMP 2018 Award in the Social Transformation category.



1. Aciso (Civic-Social Action) – International Migrants and the World of Work: knowing and exercising their rights and duties

In December 2017, in partnership with several institutions, the MPT articulated the Civic-Social Action (ACISO) – International Migrants and the World of Work: Knowing and Exercising your Rights and Duties.

Aciso 2017 sought to inform the Brazilian population, migrants and refugees about their labor rights and duties in Brazil, as well as possible channels for reporting violations. The International Labor Organization, SRTE-RR, the Brazilian Air Force, the Federal Public Defender's Office of the Union, the Federal University of Roraima and the Union of Workers in the Construction and Furniture Industry of Roraima joined the MPT for its realization.

The activities started with a welcome breakfast and a well-deserved tribute to the International Volunteer Day. During the program, migrants, refugees and Brazilians took turns between various simultaneous activities (sensitive listening, health care, laboratory tests, vaccination, legal guidance, child recreation, etc.) and a circuit of mini-courses with a varied theme: dignified work, labor rights and duties, recruitment-denunciation-rescue, unionization, migratory regularization and psychological support.

More than 150 people benefited from Aciso 2017. During the event, several referrals were made to the health network for treatment of diseases detected in the action. Subsequently, there was an increase in the number of complaints in the MPT, in the Labor Court and in the SRTE-RR



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regarding labor violations. As a result of the event, there was also a rapprochement between public and private entities that work on migratory issues.

Given the positive impact of Aciso 2017, the project continued in 2018. With the objective of combating xenophobia and promoting the socioeconomic integration of migrants and refugees in Brazilian society, Aciso 2018 had as its theme: Brazilians and Venezuelans: It is Time to Inform and Integrate.

In the 2nd edition, in addition to the partner institutions of the previous edition, 12 more entities joined the MPT: UNHCR, Brazilian Army, Senac-RR, Sesi-RR, State Forum of Garbage and Citizenship of Roraima, Rotary-RR, Cáritas-RR, Fireflies, Friends of the Smile, Terra-Viva Waste Pickers Association, Global Waste Pickers Association Reusable Materials and Decameron.

To ensure access to qualified information, lectures were given on child labor, the sexual exploitation of children and adolescents, human trafficking, migration and the world of work, the sustainable use of water and the correct disposal of dirty water, solid waste, and the impacts on the environment, control and regularization of the migratory situation, entrepreneurship and sustainability (permaculture practices), emotional aspects in the adaptation process in a migratory situation, and oral hygiene.

As an incentive to the productive inclusion of the population in social vulnerability, through the qualification, workshops were offered to make Christmas trees and to manufacture sustainable toys and craft items with glass, paper and PET bottle.



Together, the participants of the event had various services at their disposal, such as rapid HIV, syphilis, and hepatitis tests; dental and medical care in several specialties; fluoride application; vital signs measurement; legal advice and assistance; resumes; work card issuance; quick massage; and haircuts.

With double the population benefited, Aciso 2018 potentiated the protagonism and autonomy of Brazilians, migrants, and refugees in situations of vulnerability.

2. Awareness Campaign (spot) “The universal language is respect”

The Labor Prosecution Service in Roraima and the Federal University of Roraima (UFRR) produced a radio campaign with the objective of sensitizing the Roraima population to welcoming migrants, countering the oppressive, discriminatory, and xenophobic local reactions of the extremely vulnerable Venezuelan population., which so much needs to be welcomed.

The campaign entitled “The universal language is respect” was developed within the scope of Audiojournalism II, from the Social Communication course at the Federal University of Roraima, in partnership with the Labor Prosecution Service and the integrated media project Somos Migrantes from UFRR.

Four radio spots were produced with reports of real experiences of people who migrated both within Brazil’s borders and who came from other countries here, in an attempt to create empathic ties through the short stories.



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With that, the objective was to convey the message that, after all, “we are all migrants”. The messages conveyed in the spots were:

Law is the universal language.

1° We are women and they told us that we could not vote. We are black and said that we were born to be slaves. We are from Maranhão and they said that this land was not ours. We are Venezuelans and they say that we cannot migrate. What separates us are imaginary limits. Respect is the universal language. A campaign against xenophobia, from the Labor Prosecution Service and the Social Communication course at the Federal University of Roraima.

2 I am Jaqueline, from São Paulo, and I am a military man in Roraima. My name is Onogifro de Matos and I came from Guinea-Bissau, I have lived in Boa Vista for 5 years. I'm Harlinis, Venezuelan, and I study at the Federal University of Roraima. We are migrants and our language is respect. A campaign against xenophobia, from the Labor Prosecution Service and the Social Communication course at the Federal University of Roraima.

3 People saying “We are all Migrants” in English, Spanish, Warao, and Portuguese. What separates us are imaginary limits. Respect is the universal language. A campaign against xenophobia, from the Labor Prosecution Service and the Social Communication course at the Federal University of Roraima.

4 My name is Leila Baptaglin, I am a public servant and I came from Rio Grande do Sul. I'm Mathaus Sammer, I came from Maranhão



and I'm a freelancer. Hello, my name is Fabíola Colmenarez and I am a journalist. Now I work as a maid and I have a new opportunity. Regardless of their origin, workers' rights are equal. A campaign against xenophobia by the Labor Prosecution Service and the Social Communication course at the Federal University of Roraima.

The radio audios (spots) were produced under the coordination of prof. dr. Maurício Zouein (coordinator of the UFRR Social Communication/Journalism Course) and guidance by Prof. Dr. Antônia Costa da Silva, containing the following technical file: Production: Ayan Ariel; Voiceover and Editing: Luan Selfsh; Direction: Tainá Aragão; Script: Tainá Aragão and Vitor Martins; Voices (voiceover): Fabíola Colmenarez, Marília Mesquita, Édellen Aquino, Ariene Lima, Onogifro de Matos, Rafaela de Oliveira, Pedro Ribeiro, Leila Baptaglin, Harlinis Yorjeth, Mathaus Sammer, male representative of the warao, female representative of the warao.

The phrases contained in the audios are broad, and the target audience can be extended to the population of any state in the federation. There was a concern not to cut out content aimed at the population of Roraima, including considering the policy of interiorization of Venezuelan migrants from Roraima to other states of the federation.

The campaign was produced in radio spots to provide greater broadcasting, since radio is a means of communication that reaches more distant populations, in addition to the possibility of broadcasting on social networks, such as WhatsApp.



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Initially, the campaign was broadcast on the radio stations in Roraima and Amazonas, aiming to sensitize society to the need to respect the human rights of all migrants and refugees.

As the Labor Prosecution Service has high respect in the community, the campaign was publicized for free in the media.

Subsequently, the campaign had the support of Ascom-PGT, which made it possible to disseminate it to 146 radio stations, of which 33 were commercial, 104 community, 9 educational; reaching 141 cities and 18,268,011 inhabitants³. The campaign was extended beyond Roraima and Amazonas, being broadcast in several states of the federation, such as CE, PE, SP, RS, SC, MG, PR, RJ, GO, MS, BA, TO, PB, PI, MT, RN, ES, etc. The campaign was also run in other countries, such as the USA and Paraguay.



MPT'S PERFORMANCE IN SANTARÉM IN WELCOMING VENEZUELAN INDIANS OF THE WARAO ETHNIC GROUP

Tatiana Costa de Figueiredo Amormino¹

1) Reception of the warao in Santarém

The warao – Venezuela's second largest indigenous population – have been moving to Brazil more intensively since 2014, due to the economic crisis that is plaguing the country of origin.

The displacement of the indigenous warao occurs by land to the cities of Pacaraima (border with Venezuela) and Boa Vista, in Roraima, and to Manaus, in Amazonas. From Manaus, the transfer takes place by river, especially to the cities of Santarém and Belém, in the state of Pará, as shown in the map below².



Famílias (CAAF), special social protection equipment of high complexity, which is maintained by the Municipal Secretary of Labor and Assistance of Santarém (Semtras).

CAAF welcomes the adult/family public in a situation of social vulnerability and promotes actions, such as health and care for children and adolescents, access to public services and withdrawal of documents (shelter protocol, Work and Social Security Portfolios (CTPS), in line with the National Social Assistance Policy and Humanitarian Policy for the Reception of Migrant Peoples.

CAAF's technical work team includes a social worker, psychologist, pedagogue, social caregivers, security guards, security support, conservation assistants, driver, nutritionist, sociologist.

2) Performance of the Office of Labor Prosecution in the municipality of Santarém

The Labor Prosecution Service (MPT) of Santarém⁵ has been monitoring the reception of the warao in the municipality of Santarém since the arrival of the first indigenous people in September 2017.



5 In October 2017, the Promotional Procedure No. 000253.2017.08.003/8 was established at the Office of Labor Prosecution in the municipality of Santarém, under the 4th Office. Initially, with the title of Labor Prosecutor Raphael Lins and Cavalcanti, the 4th Letter was authorized by the Labor Prosecutors Carlos Alberto Lopes de Oliveira and Greice Carolina Novais de Souza Ribeiro, and is currently owned by the Prosecutor who signs this article.



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Public hearings were held at the Labor Prosecution Service in the municipality of Santarém, with the participation of Labor Prosecutors and representatives of public bodies and civil society entities.

In Joint Recommendation No. 2 of 6/25/2018, the Federal Prosecution Service (MPF), the Federal Public Defender's Office (DPU) and the MPT, after a joint on-site visit to the shelter where the indigenous immigrants were welcomed, made recommendations, under the terms of art. 6º, XX, of Complementary Law nº 75/93, to the City Hall of Santarém, the State of Pará, the State Indian Foundation and the Funai Coordination of Santarém, as well as the Federal Government.

Furthermore, the MPT, through the reversal of amounts resulting from fines for non-compliance with the Terms of Adjustment of Conduct (TAC) and from convictions or agreements in lawsuits, supports projects aimed at preventing precarious labor relations and migrant child labor., especially that carried out in streets and public places, considered one of the worst forms of work for children and adolescents, according to Convention No. 182 of the International Labor Organization (ILO) and Decree No. 6,481/2008.

2.1) Project Nonakitane Yakeraja Jakitane

Accordingly, the Office of Labor Prosecution in the municipality of Santarém/PA invested resources in the Nonakitane Yakeraja Jakitane project, which means, in the warao language, "In search of a better future", of the Municipal Secretariat of Labor and Social Assistance of Santarém (Semtras).



The promotion of artisanal work aims to empower the warao Indians to overcome the situation of social vulnerability, enabling the generation of income, as well as disseminating the warao culture to society.

The project, developed at the Casa de Acolhimento, favors the construction of individual and collective autonomy, in addition to giving prestige to female protagonism, which contributes to reducing the permanence of women with children on public roads.

The products developed by the indigenous people are sold at the Handicraft Center of the Municipality of Santarém (Cristo Rei), in addition to being publicized at fairs, such as the one held in a mall in Santarém, in May 2018, and the VII Paraense Handicraft Fair, FESART, which took place in the capital Belém in November 2019.



Photography: Ascom Santarém⁶



2.2) Emergency Education in Hosting Project

Due to the pandemic of the new coronavirus (covid-19), resources were invested in the emergency project Education in Reception, carried out by the Strategic Actions to Combat Child Labor (Aepeti), with a team linked to Semtras.

The project benefited 94 Venezuelan children and teenagers from the warao ethnic group sheltered in the Casa de Acolhimento, who received materials for educational activities.

3) Conclusion

The Labor Prosecution Service of Santarém has been following the welcoming of Venezuelan Indians since the beginning of their arrival in 2017, as well as establishing partnerships for reversing amounts resulting from fines for noncompliance with the Terms of Adjustment of Conduct (TAC) and convictions or agreements in lawsuits for employability projects and promotion of the rights of children and adolescents of the warao ethnic group.

The performance is in line with the resolute performance of the Brazilian Labor Prosecution Service, aiming at the realization of the fundamental rights and guarantees of immigrants (arts. 127 and 129 of the 1988 Constitution of the Federative Republic of Brazil; Letter from Brasília 2016).

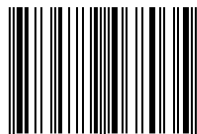




Ministério Público do Trabalho



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