

Revista de
**Direito Econômico e
Socioambiental**

ISSN 2179-8214

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REVISTA DE DIREITO ECONÔMICO E SOCIOAMBIENTAL

vol. 9 | n. 3 | setembro/dezembro 2018 | ISSN 2179-8214

Periodicidade quadrimestral | www.pucpr.br/direitoeconomico

Curitiba | Programa de Pós-Graduação em Direito da PUCPR



The urban integration of refugee migrants in the light of the justice concept of Amartya Sen

*A integração urbana de migrantes de refugiados à luz do
conceito de justiça de Amartya Sen*

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Received: 05/02/2018

Recebido: 02/05/2018

Approved: 02/16/2019

Aprovado: 16/02/2019

Abstract

This article proposes an analysis of the current situation of refugee migrants and their relationship with countries that seek as a place of protection, from the perspective of urban integration in the light of Amartya Sen's ideas on justice and freedom. The identification of

Como citar este artigo/How to cite this article: CASIMIRO, Ligia Maria Silva Melo de; COSTA, Andréia da Silva. The urban integration of refugee migrants in the light of the justice of Amartya Sen. **Revista de Direito Econômico e Socioambiental**, v. 9, n. 3, p. 96-118, set./dez. 2018. doi: 10.7213/rev.dir.econ.soc.v9i3.23806.

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concepts such as refugee issues, asylum for the international legal community and the issue of urban densification caused by migration to urban spaces, compose the arguments about the complexity of reception and integration policies, refugees, clearly at a disadvantage with local citizens. The text proposes that the provision of access to urban life should allow the development of the capacities of refugee migrants through fair, equitable and concrete opportunities to satisfy demands, respecting their cultural characteristics, to guarantee freedom in an effectively substantive way.

Keywords: *Migrants; urban integration; refugees; development; freedom substantive.*

Resumo

Este artigo propõe uma análise da situação atual dos migrantes refugiados e sua relação com os países que buscam como um lugar de proteção, na perspectiva da integração urbana à luz das ideias de Amartya Sen sobre justiça e liberdade. A identificação de conceitos como a questão dos refugiados, o que é o asilo para a comunidade jurídica internacional e a questão da densificação urbana causada pela migração para espaços urbanos, compõe a argumentação sobre a complexidade que caracteriza as políticas de acolhimento e integração, solicitando que sejam reconhecidas as condições em que se encontram os refugiados, claramente em desvantagem com os cidadãos locais. O texto propõe que a oferta de acesso à vida urbana deve permitir o desenvolvimento das capacidades dos migrantes refugiados por meio de oportunidades justas, equânimes e concretas de satisfação das demandas, respeitando suas características culturais, para garantir a liberdade de maneira efetivamente substantiva.

Palavras-chave: Migrantes; integração urbana; refugiados; desenvolvimento; liberdade substantiva.

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1. Introduction

The flow of migrants across the borders of the world is increasing and increasing. In the midst of this human mass in transit, there is a group of people who stand out because of their peculiar vulnerability - the refugees. Refugees are classified by the specialized doctrine as forced migrants, as

human beings who leave their country of origin against their will because of persecution, war and serious violations of their human rights.

In that sense, one of the major challenges facing the international community, especially the host States, is to harmonize the protection of the human rights of refugees arriving in their territory, with the control of their borders, the protection of their citizens and at all costs of this involuntary accumulation in cities. Reflecting the issue of refugees from this perspective - reception X border control, a serious mistake is made, since refugees are necessarily regarded as a "problem" which requires an effective and urgent solution from the countries.

One of the measures taken by the host countries is to develop public policies specifically devoted to the reception of refugee migrants. Such policies provide for "durable solutions" to promote a peaceful coexistence between nationals and foreigners who, at first, are just passing through, as is the case with refugees.

Integration, as it involves inserting refugee aliens into the local social dynamics to which they belong in a provisional way, is one of the solutions sought by the recipient states. Initially, the intention to integrate refugees locally is promising, especially where, in theory, countries predict that refugees will be guaranteed access to the labor market, public health and education services, housing, and respect for their culture, religion, language, belief, etc. However, in practice, what has been observed is a process of assimilation, marked by the lack of participation of the refugees in the planning, construction, implementation and evaluation processes of the public programs and policies devoted to them.

This article proposes to analyze the process of urban integration of refugees in the light of Amartya Sen's theory of justice, which argues that a person's good life is closely related to his capabilities, freedoms and opportunities. From this perspective, taking into account the reality experienced by the refugees in the host countries, the integration process made them subject to a situation of disadvantage compared to the lives of local citizens, conform them to an urban model of prescribed life, whose elaboration did not count on its participation, completely annulling its freedoms of choice, its conveniences and its capacities.

2. Migrations and new subjects of rights in the international context

Nowadays, it's getting easier to get moving. This is because, first, relations between States, which are considerably closer, are enabling a greater interaction of information, data, images and also people; second, because everything around us has developed to make the flow between borders possible and intense. New information technologies have emerged on the world stage by promoting a rapid connection between extreme points of the great global village. The means of transport modernized and multiplied with the help of technological advances, so that more people can cross national territorial boundaries, meet new spaces and different cultures.

The advent of this cross-border world has positive aspects, but it has also brought about, with its complexity, the aggravation of old problems, such as social stratification (TEDESCO, 2012, p. 27). Thus, a new segregating element - that is the possibility of migration - emerged, the elite of modern society, called by Zygmunt Bauman, in his work *Globalization - the human consequences*, as the elite of mobility (BAUMAN, 1999).

It is easy to see that the possibility of leaving the place did not happen equally for all people, being a privilege, as a rule, of the few, who must rise the distances of the globalized world at a speed and a frequency previously not imagined (BAUMAN, 1999, p. 16; 19; 24).

Thus, it should be pointed out that this global social re-stratification, which has as a dividing line a new freedom of movement, is accompanied by other globalizing processes such as those perceived, for example, in the redistribution of privileges and deprivations, wealth and poverty, resources and impotence, power and lack of power, freedom and restraint (BAUMAN, 1999). The consequences of this globalization and issues related to the rights of migrants and the posture of the affected States, positively or negatively, with the intensification of migratory flows, has been the subject of discussions among the countries, but many of them are concerned with issues sovereignty and other political aspects, and few others sensitized with the realization of the rights of the population in transit (TEDESCO, 2012, p. 28).

Thus, there are those who are incapable of migrating, being subject to ending their impotent days in their localities; those who migrate at will and who, therefore, integrate this elite of mobility; those who, even without the conditions to move, use illegal mechanisms to make their personal aspirations of citizens of the world real; (economic migrants) and those who

forcibly migrate because they have no other option (internally displaced persons because of armed conflicts, environmental disasters, human rights violations and refugees).

Forced migrants are all those who do not freely and voluntarily choose to migrate; on the contrary, they are forced to leave their countries (refugees or refugees) for reasons beyond their control (fear of persecution, violation of rights, danger to life). or to be marginalized in border areas, within the territorial limits of their nation of origin (internally displaced persons) (JUBILUT, 2010, p. 281).

The distinction between voluntary and forced migrants is of paramount importance and, therefore, must be known to public agents who think, design and implement public policies focused on human mobility. Identify who are the actors / subjects of this process, know what they need, the reasons that made them migrate, who is responsible - or not - for them, what their demands are and what violations of rights they support or support etc., are aspects to be considered by the States of destination and of nationality in their decisions and in the adoption of security and/or humanitarian measures.

Although it is recognized that in certain situations, receiving migrants in their territory may represent a serious risk to their host countries and their citizens, who already suffer from a shortage of resources and opportunities for work and income, that, in the case of refugees, the granting of asylum reverberates with the idea of justice. Such a group of foreigner¹ is protected at the international level, mainly by the 1951 Convention of the United Nations, known as the Refugee Statute, as well as by its 1967 Protocol, and nationally, by the Brazilian Refugee Law - Law n. 9.474 / 1997 and by the new Law of Migration - Law 13.445/17 and by the device that regulates it, Decree n. 9.199/17.

The option of the present study by these subjects is justified by the peculiar and historical situation of vulnerability that such people present in the global scenario and that put them in a different situation, and therefore more serious and urgent, before the other migrants. Such people migrate forcibly, have no place in the world, and need shelter so that they can survive and develop as human beings, being able to develop aspects of their lives that they value most.

¹ In principle, a foreigner is anyone who does not possess the nationality of the State in whose territory he is located. By exclusion, then, doctrine traditionally defines the foreigner as being non-national, whether he has another nationality or is stateless (RAMOS, 2010, p. 721).

A number of countries have been developing their migration policies, with particular attention to refugees because of their particular vulnerability; however, the right to asylum, which many claim to be granted, is far from meeting contemporary standards of justice. The aim of this article is to examine the right of asylum in the perspective of local integration² of forced migrants in a refuge situation in the light of Amartya Sen's concept of justice, which is not based on the equitable distribution of resources, nor on the principle of maximum happiness (utilitarianism), much less on merit, freedoms and human opportunities.

Amartya Sen, in his book *The Idea of Justice*, while considering the importance of institutions, argues that principles of justice should not be defined in relation to them, "but rather to the lives and freedoms of those involved" (SEN, 2011, p. 14.). For him, "justice is fundamentally connected to the way people live and not merely to the nature of the institutions that surround them." (SEN, 2011, p. 12.)

3. Brief considerations of refugees and the impacts of its achievement by cities in destination countries

As said, among the migrants, refugees stand out because they enjoy special international protection because of their peculiar state of vulnerability. The refugee is vulnerable, first because he is forced to migrate, and secondly because his displacement represents a desperate measure of preservation of his life and his freedom. He has to flee his country to get rid of persecution and, as a rule, does not even have the protection of his own State and therefore needs to be protected by the international community, otherwise he will be sentenced to death or life of exclusion (ACNUR, 2014).

Under the 1951 Convention, any person who:

[...] fearing persecution on grounds of race, religion, nationality, social group or political opinion, is outside the country of his nationality and can not or, because of such fear, does not wish to avail himself of the protection of that country and is outside the country in which he had his

² The process of local integration is "highly complex and challenging, especially as it is configured as multidimensional. Several spheres deserve to be considered, among them: social, cultural, ethnic, religious, economic, political, psychological, space". (MOREIRA, 2014, p. 89)

habitual residence as a result of such events, can not or, because of such fear, does not want to return to him (ONU, 1951).

By the above concept, whenever there is a well-founded fear of persecution, having the above mentioned motivations (racial, religious, nationality, social group or political opinions), leading a person to leave his country of nationality and cross borders, being without the protection of his State or not being able to use it, will be in front of a person in the situation of refuge. Such people, leaving their localities, leave not only their nation, their origins, but also their families and friends, their goods, their life projects, their culture, their religion and their temple, their ideologies and their struggles. To ask and obtain asylum in another State, to be welcomed and included socially, to have made possible its cosmopolitan social citizenship³, to live multi-cultural and intercultural with the host citizens is what they most need and represents (or at least should represent) an opportunity for a dignified life and the exercise of their human rights.

Asylum consists of “[...] la protección que un Estado brinda en su territorio, o en algún otro lugar bajo el control de alguno de sus órganos, a una persona que la solicita.” (MONGE, 2012, p. 25). Therefore means reception, care, protection and, according to its legal nature, can be an institution or a right. As an institution, asylum is considered as a practice / use / action of States vis-à-vis the international community, which reflects certain stability and homogeneity; As a right, asylum is, from the point of view of the State, the authority that the asylum has to grant to foreigners in its territory, and, from the perspective of the applicant, asylum is the human right to achieve such protection in the country of origin (MONGE, 2012).

It is important to register, as this is a peculiar question to be addressed in the research, that the reception and reception of foreigners impact in various aspects (economic, political, cultural, social, etc.) in the receiving countries, which, obliged to make the welcome. However, this (the host)

³ Adela Cortina explains the following: "Therefore, to be a good citizen of any political community today, it is necessary to satisfy the ethical requirement to have as a reference the citizens of the world. This requirement will not be satisfied only through education, or with the adoption of legal measures, but with the change of the international order at several levels. In political economy, without going further, with the universalization at least of social citizenship, because the goods of the Earth are social and no human being can be excluded from them. [...] recognition of social citizenship is condition sine qua non in the construction of a cosmopolitan citizenship that, because it is just, makes all men feel and know themselves as citizens of the world." (CORTINA, 2005, p. 202, 210)

position is in line with the international human rights movement⁴ that emerges on the world stage, and there is now a clear understanding that States need to be made available to provide international humanitarian aid because they are forced or not) human beings and because they live on the same planet as their citizens.⁵ According to the United Nations High Commissioner for Refugees (UNHCR) REPORT 2016,⁶ the number of forced migrants is growing every year, which justifies the undertaking of global efforts.⁷

Some countries have emerged as receiving states in this scenario. Some of them are motivated by the humanitarian sentiment that permeates the context of international relations since the end of the First and Second World Wars, which are the milestones of the world's refugees because they have caused the displacement of millions of Europeans (HOBBSAWM, 1995, p. 58); others are interested in the production of wealth and willing to exploit the workforce of foreigners, who are good workers, otherwise they will not deserve the assistance of foreign countries (BROWN, 2011, p. 146).

Brazil, therefore, has been demonstrating, over the years, a certain commitment in the reception of migrants, especially refugees, and this behavior is one way of expressing their commitment to human rights, according to the Federal Government, through the Ministry of Justice.⁸ Thus,

⁴ Several authors, such as Ana Maria D'Ávila Lopes, Antônio Augusto Cañado Trindade, Alberto Amaral Júnior, Flávia Piovesan and Ingo Wolfgang Sarlet make considerations about this movement. (LOPES, 2012; TRINDADE, 2006; AMARAL JÚNIOR, 2003; PIOVESAN, 2006; SARLET, 2004).

⁵ Hospitality means the right of a foreigner not to be treated hostilely by the fact that he has reached the territory of others. He may repulse him if repulsion is not the cause of the ruin of the newcomer; but as long as the stranger remains peacefully in place, it is not possible to harass him. ... men cannot spread to infinity through the globe, whose surface is limited, and therefore must mutually tolerate their presence, since originally no one has a better right than any other to remain in a certain place of the planet (KANT, 2010, p. 59-60).

⁶ Organ created in December 1950 to work more closely with the realities experienced by forced migrants.

⁷ During the first half of 2016, UNHCR offices reported the new displacement of at least 3.2 million individuals. This included some 1.5 million refugees and asylum-seekers, who have fled to another country, and about 1.7 million people newly displaced in their own country. The number is approximately one-third lower than in the same period last year, when 5 million were newly displaced. With regard to internal displacement, however, the figure for the reporting period is likely an underestimate, as some countries for which a significant number of newly displaced could be expected from the operational data references, such as Iraq and Syria, reported no new internal displacement (UNHCR, 2016).

⁸ According to Paulo Abraão, Brazil faces three specific challenges for creating a broad and universal political base based on the universal human rights of immigrant groups in the country. The first concerns standards such as the updating of national immigration laws, the internalization of international treaties and agreements, and the harmonization of rules, in particular to establish a non-discriminatory legal culture. The second challenge includes the definition of a field of institutional competences aimed at integrating immigrants in all its aspects: economic, social, cultural and productive. The third challenge is

it can be seen that some efforts are being undertaken by the Brazilian State, such as the adoption of public policies of reception and integration, the structuring of sectors of the Public Administration to take care of problems related to refugees, and also the operationalization of changes in the legislation, with a specific focus on caring for these people.

When analyzing the text of the Brazilian legislation that deals specifically with the refuge in Brazil, what is Law no. 9474/97, it can be seen, in its art. 1º, that the national concept is broader than that provided for in the 1951 Convention, thus, under the Cartagena Declaration (1984), the situation of stateless persons and persons leaving their countries of origin nationality due to a serious or widespread violation of human rights. Thus, according to Law n. 9.474 / 97:

Art. 1o. Any individual shall be recognized as a refugee who:

I - due to well-founded fears of persecution on the grounds of race, religion, nationality, social group or political opinion, is outside his / her country of nationality and is unable or unwilling to accept the protection of that country;

II - not having a nationality or being outside the country where he had his habitual residence before, can not or does not want to return to him, due to the circumstances described in the previous section;

III - due to the serious or widespread violation of human rights, he is forced to leave his country of nationality to seek refuge in another country. (emphasis added)

The legislation also lays down three durable solutions (repatriation, local inclusion and resettlement), whose promotion is one of the main functions of UNHCR at the international level and of CONARE in the Brazilian context. The implementation of such measures ends up provoking the guarantee of other rights, such as the right to non-refoulement, health, education, non-penalization for irregular entry into Brazilian territory, documentation (national registration of foreigners, work and social security card, personal data, passport), free and decent work, free transit through the territory, non-discrimination, permanent residence, family reunion and free exercise of their religion.

to establish a commitment to social participation and monitoring the formulation of policies and programs for migrant groups living in Brazil (AMORAS, 2013).

In general, a migration policy should provide for rights and duties for migrants, their families, States (of origin and host) and the society of the country and its nationals (CERNADAS; FAVA; MORALES, 2009, p. 131). It is essential to note the impacts that this reception of refugees causes in the host country and its citizens, especially considering three aspects - labor market, cultural diversity and equal access to social services. This is because, although it is understandable that refugees should be guaranteed the full opportunity for human development in the host country, it is undeniable that this foreigner can often pose a threat, since he is one more labor market, schools, hospitals and so many other social spaces.

When discussing a public policy aimed at the population seeking refuge, whether at local, regional or international level, there will always be a division between those who debate: some will defend the idea of closing the borders based on the risk that the terrorism has been causing to the sovereignty and the security of the State and in the impact that this "invasion" in mass causes in the society that welcomes; others will rescue the whole situation lived by the non-citizens and without rights in an attempt to humanize their speech and raise public awareness for the exclusion and global warning that the migratory crisis is, above all, a humanitarian crisis.

This is undoubtedly one of the main problems to be faced by international subjects - trying to view refugee migrants not as a "problem" or as a strange enemy, but as full subjects of rights and that has much to contribute to the broad progress of any society. Migration policies play a key role in shifting this paradigm and must be built in accordance with international guidelines that require States to respect and respect the human rights of all people equally, without discrimination and without distinction of any kind, indispensable, the full and free human development.

4. Integration as a performance of justice

At a time when issues such as globalization, universalization of rights, construction of universal citizenship, interculturality, pluralism, constitutional supremacy, sovereignty, prioritization of human dignity and human development and effective international protection of human rights are in evidence, if it is necessary analyze the domestic law of the States, as well as the public policies that have been built and implemented.

With regard to the population in transit, the Brazilian State appears integrated in the global scenario and admits to adopting a policy of border flexibility and commitment to the humanitarian cause, opting, in the case of refugees, for local integration⁹ as their main lasting solution.

In order to understand this Brazilian position, it is enough to remember that with the advent of the Federal Constitution of 1988, a jump in the constitutionalisation of human rights in Brazil occurred, through a greater and more effective institutionalization of the fundamental rights and guarantees. And not only that, Brazil intensified its participation in the international scene of human rights protection, signing international humanitarian diplomas, internalizing these rights and committing themselves to them in the internal and external plane (PIOVESAN, 2007, p. 24-25).

Human rights, with the advent of the 1988 Constitution, assume a prominent position in the legal order of the country, serving as reference values and criteria of validity, projecting its premises, due to its dignifying function, throughout the legislative body, legitimizing it and grounding it. These rights are still radiated in the conduct and decisions of those under Brazilian jurisdiction, that is, all Brazilian citizens and all public agents must base their actions and relations on respect for human dignity (CANOTILHO, 2003, p. 125).

In this way, both the Legislative, Executive and Judiciary Branches should undertake joint efforts and commitments to the realization of such rights in the lives of their holders. In this "new" legal order, with due regard for the particular circumstances of each case, every person subject to the legal authority of the Brazilian State is entitled to the fundamental rights and guarantees recognized by the constitutional text, including foreigners, in a situation of refuge or not (RAMOS, 2010, p. 725).

With this, talking about the right to the city, the right to housing that is appropriate to its social and cultural needs (CASIMIRO; MORAES, 2017, p. 452), as well as urban mobility, health, education and urban services is not out of date with the issue of immigrants. The provision of international treaties to which Brazil is a signatory allows all necessary reference to promote and protect vulnerable populations.

⁹ According to UNHCR, the solution of local integration is to grant all refugees access to mechanisms for cultural, social, economic, community, labor, legal and educational insertion that allow self-sufficiency and the effective enjoyment of fundamental rights in the country of refuge. (ACNUR, 2014).

However, it is urgent to analyze whether, in fact, Brazilian and international legislation, as well as Brazilian public policies dedicated to the protection of this minority group¹⁰ - the refugees - are in line with the contemporary vision of the foreigner, recognizing them as the most basic right of all - the right to have rights, brought by Hannah Arendt.¹¹

Nowadays, it is dangerous to analyze the citizen, holder of rights, as an individual attached to a locality, a territory, a nation, disregarding, therefore, that the concept of citizenship has undergone transformations in order to adapt it to this new society, universal and globalized. Thus, the question of the concept, limits and exercise of citizenship must therefore guide the political actions of every State that is willing to receive and integrate socially the refugee foreigners.¹²

Studying Brazil's public policies on refugees is fundamental because, first, although Brazil still has an inexpressive role as a receiving State (of the 16.5 million refugees in the world, only 9.077 are in Brazil) (UNHCR, 2016), its political actions have been referenced by its protagonism. However, such indications are not in line with current reports on the situation of Syrian refugees on Brazilian soil.¹³

¹⁰ Foreigners in refugee status may be considered a minority group because, according to the concept of Éliida Séguin, "[...] minorities are thought of as a numerically inferior contingent, as groups of individuals, distinguished by a distinguishing feature of the other inhabitants of the country, being smaller in relation to the population of this." (SEGUIN, 2001, p. 9).

¹¹ The calamity of those who have no rights does not stem from their deprivation of life, freedom or the pursuit of happiness, equality before the law or freedom of opinion - formulas designed to solve problems within certain communities - but from the fact that they no longer belong to any community. Their distressing situation does not result from the fact that they are not equal before the law, but that there are no more laws for them; not of being oppressed, but of no one else who is interested in them, if only to oppress them (ARENDR, 2012, p. 402).

¹² The construction of a democratic state requires not only the recognition and protection of its cultural diversity, but also the implementation of special mechanisms capable of guaranteeing to the minorities the full exercise of their fundamental rights. After all, the State should not only guarantee coexistence, but must also ensure coexistence among all members of its society. [...] In the twenty-first century, mankind still has a chance to overcome the mistakes of the past. It is with this concern that not only the recognition / respect of the other is proposed, but the need to promote the dialogical interaction between the different cultures, a presupposition of humanity's own aggrandizement (LOPES, 2012, p. 79).

¹³ As the situation deteriorated, Brazil began to be considered a possible destination, a land of opportunity, an open and growing country that could shelter the victims of a bloody war that has killed more than 100,000 people. After the humanitarian asylum, Brazil seems even brighter for these refugees. Arriving here, however, the reality is not so easy. In order to obtain asylum, it is necessary to wait for the assistance of the Federal Police, which can take months because of the amount of requests. After the request, the refugee receives a provisional card, and then can work to maintain himself. The challenge, then, is to find a job speaking little or no Portuguese at all. Until then, the Syrian refugee needs to count on the goodwill of the Brazilians. Most end up going through charities, which help in the documentation process, but are unable to provide housing and food. In São Paulo, where more than a third of the 134 (134) refugee requests were made, the largest aid comes from the Syrian community. Often this contact

The recorded reports and the news reports indicate a situation of abandonment, bureaucratic embarrassment, cultural disrespect, discrimination and xenophobia, unhealthiness and disrespect for human rights (LOUREIRO, 2014).

Thus, on foreign soil, which may or may not be the Brazilian, refugees are subject to all kinds of difficulties ranging from incomprehension of the language to the precariousness of life in society, and this is marked, as a rule, by denial of rights, including the right to citizenship, discrimination, insecurity and exclusion and social marginalization.¹⁴

Recognition of refugee status is an important step in this process of local integration and coexistence. Hanna E. Brown of the University of California, analyzing the legal status of refugee in the United States warns that “Legal status determines not only how long an individual can remain in the United States but also under what conditions, doing what work, and receiving which social and economic supports” (BROWN, 2011, p. 144).

Granting asylum does not just mean opening borders. Contrary to what has been practiced in Brazil and contrary to national regulations that provide for the integral and humane reception of refugee migrants, the right to asylum has three important facets: the rights to seek, receive and enjoy asylum (MONGE, 2012).

Seeking asylum is a complex act and means the right of every refugee to leave their country, to enter and be fostered in another, to remain on foreign soil without the risk of being returned (non-refoulement) and to have all measures guaranteed necessary to fulfill their refugee status. Receiving asylum, in turn, constitutes receiving authorization to remain on foreign soil, having guaranteed human coexistence and treatment. Finally, enjoying asylum gives the right to enjoy it and, as a consequence, is not subject to measures that alter its peaceful stay in the host country.¹⁵

takes place through mosques or Christian Orthodox churches. The Brazilian mosque, for example, has already sent 20 Syrians who came to them to furnished apartments or temporary jobs. (LOUREIRO, 2014).

¹⁴ The category of refugee carries within itself the notions of transitoriness, temporality and temporality. Refugees are between the country of origin and the country of destination. In moving between the two universes, they occupy a marginal position, both in terms of identity, culture and society, based on the lack of full membership as members of the receiving community and on the bonds introduced by codes shared with the community of origin; and in legal terms, by failing to exercise, at least temporarily, the status of citizen in the country of origin and to carry refugee status in the receiving country (MOREIRA, 2014, p. 87).

¹⁵ El disfrutar el asilo igualmente conlleva asegurar la consecución de soluciones duraderas por parte del país de asilo y también de la comunidad internacional, a través de alternativas para la integración local o el reasentamiento, respectivamente. En efecto, es importante reiterar que la protección de los refugiados

Refugee migrants' reports of the precariousness of life and work in the host country are increasingly common, with frequent declarations of lack of participation and institutional protection, disrespect, marginalization and discrimination on grounds of origin and nationality. And it is because of these injustices that it is sought to analyze whether in fact the international and national guidelines for local integration of refugees are on the right track. For this, the theory of justice of Amartya Sen, which, unlike the older theories, is not part of virtue, but of human freedom and capabilities, will be analyzed succinctly.

Amartya Sen says that in order to construct a theory of justice one must choose an informational focus, that is, one must decide in which world characteristics the scholar should concentrate to judge a society and evaluate its justice or injustice.¹⁶

From the standpoint of capacities, a policy of local integration of refugees to be fair must ensure that refugees are free to say and do what they want and what they value, that is, they must be free and able to live their culture, speak their language, practice their religion, choose the job and / or study they prefer to do, as Sen explains (SEN, 2011, p. 267).¹⁷

Thus, while other theories of justice focus on aspects such as virtues or even livelihoods, the theory of justice that addresses capabilities transfers the focus of the means (objects of convenience, such as income or goods that a person can own, often considered as the main criterion for measuring human success) to the opportunity to satisfy the ends and substantive freedom to achieve those ends.

tiene como objetivo final la búsqueda de soluciones duraderas que permitan que la persona recobre un sentido de normalidad en su vida, en condiciones de seguridad y dignidad (MONGE, 2012).

¹⁶ [...] in the approach to capabilities individual advantage is judged by a person's ability to do things that he or she has reason to value. With regard to opportunities, one person's advantage is considered less than another's if he has less capacity - less real opportunity - to accomplish the things he has reason to value. The focus here is the freedom a person really has to do it or be it - things that they can value doing or being. Obviously, it is very important for us to be able to do the things we value most. But the idea of freedom is also about being free to determine what we want, what we value, and, ultimately, what we choose to choose. [...] The capacity approach is a general approach, focusing on the information on individual advantage judged in relation to opportunity rather than a specific "design" of how a society should be organized (SEN, 2011, p. 266).

¹⁷ [...] the capacity perspective is inevitably interested in a plurality of different characteristics of our lives and concerns. The varied achievements of human functioning that we can value are very diverse, ranging from being well nourished or avoiding early death to taking part in community life and developing the ability to follow plans and ambitions linked to work. The capacity in which we are interested is our potential to perform various combinations of functions that we can compare and judge with each other in relation to what we have reason to value. [...]. (SEN, 2011, p. 267)

The freer the individual and the greater the number of opportunities for choice, the easier it is to consider him as living a good, advantageous life relative to his peers. The idea of ability, according to Amartya Sen, is oriented to the "real ability of people to choose to live different types of life at their fingertips".¹⁸

By making a comparison, taking into account the current process of reception / assimilation of refugee migrants in the world, it is clear that these people are at a disadvantage compared to nationals / citizens. So much so that the issue of refugees is on the agenda of the main global discussions as a matter of priority, it is nevertheless posed as a serious and urgent global problem. At present, all states suffer serious reception impacts and are criticized for their migration policies; Likewise, most refugees face serious difficulties in terms of local integration and / or resettlement, as well as bureaucratic obstacles to the formalization / regulation of their refugee status. As pointed out, the issue of refugees is treated as a "problem" that demands a solution on the part of the States and it is in this aspect that the process of local integration approaches a process of assimilation (MOREIRA, 2014, p. 88).

The lack of participation of refugees in the processes of designing, implementing and evaluating programs and policies aimed at refugees is a serious problem and requires more critical analysis. In general, refugee protection and protection agencies (recipient states, human rights agencies such as UNHCR and non-governmental organizations) think and articulate solutions to them without considering them as stakeholders in this process, without recognizing them as actors who are capable of deciding on aspects

¹⁸ [...] the ability to choose between different affiliations in cultural life may be of personal as well as political importance. Let us consider the freedom of immigrants from non-Western countries to retain parts of the cultural traditions and ancestral lifestyles that they value even after they have reestablished themselves in a European country or in the United States. This complex question cannot be adequately assessed without distinguishing between doing something and being free to do so. One can construct a significant argument in favor of immigrants being free to retain at least some elements of their ancestral culture (such as their religious worship, or loyalty to native poetry and literature), if they value these things after compare them with the patterns of behavior prevailing in the country where they are established, and often after seriously considering the country's rationale for different practices. However, the importance of this cultural freedom cannot be seen as an argument in favor of someone seeking their ancestral lifestyle whether or not they have reasons to choose to seek it. The central question in this argument is the freedom to choose how to live - including the possibility of incorporating elements of their ancestral cultural preferences if they so wish - and cannot be turned into an argument in favor of always seeking patterns of behavior independently that you enjoy doing these things or you have reasons to keep these practices. (SEN, 2011, p.271-272).

that directly affect their lives. This undermines the local integration process.¹⁹

Thus, taking into account the justice theory that addresses the capabilities worked by Amartya Sen, it is clear that the process of local integration of refugees adopted by the vast majority of recipient states, such as Brazil, instead of protecting and including, they are subject to a condition of disadvantage, inasmuch as they experience a process of assimilation in which they are not free to think about and choose what is best for their life, nor are they free in their individual actions.

In analyzing poverty as a deprivation of capacities, Amartya Sen brings the concept of real poverty, stressing that poverty can be more intense than the data regarding a person's income and material wealth. According to the author, a person can be rich in resources, but if he is deprived of his abilities, he will hardly have a good life. In the case of refugees, they suffer from both poverty and resources.

The active participation of refugee migrants, ensuring them the freedom to choose fully from the opportunities that arise in their lives, is fundamental for ensuring a just and quality life. Amartya Sen (2011, p. 388-389) argues that:

The success of democracy does not consist in merely having the most perfect institutional structure that we can conceive. It depends inevitably on our patterns of actual behavior and the functioning of political and social interactions. There is no possibility of entrusting matter to the "safe" hands of purely institutional virtuosity. The functioning of democratic institutions depends on the activities of human agents who use opportunities for reasonable attainments.

¹⁹ [...] the integration is taken by the specialized literature mainly in terms of its practical or functional aspects. Based on the idea that refugee status implies the right to protection, aspects related to the provision and access to social services are developed to enable the integration process (such as housing assistance, language learning, education, access to the work, etc.). However, for them, so-called 'functional' integration must be connected to other dimensions, such as the wider interaction of refugees in the host society and full participation in their various spheres. The functionalist perspective on integration suggests that refugees should be integrated into existing integration programs or policies in the recipient country. They are expected to conform in a prescribed manner. Such an expectation may jeopardize the possibilities for choice, empowerment and the very development of refugees, who have no voice in the process of determining their well-being and life chances. In addition, the conditions for the integration of refugees also presuppose a welcoming and receptive reception society - which is not always true (MOREIRA, 2014).

5. Final considerations

Public policies appear to states as a kind of plan of action, which should include all activities, their objectives and, above all, the basic principles that should guide them. They are thus the main instrument of a State to organize and make concrete its commitments to the most relevant issues of its society.

A migratory State policy, therefore, is a public policy that must observe the dictates under which the country is structured, the urban design is defined, as well as consider the principles and rules that underlie its legal order and its positions and decisions, adopted both domestically and internationally. A public policy must be directed at the public affected by the problem it works on. A migration policy, for example, should provide for rights and duties for migrants, their families, States (of origin and of host) and the society of the country and its nationals.

A public migration policy that allows the inclusion of people in urban centers, in order to be effective, should work for the target audience, based on their capacities, interests and life reports, which help in inclusion. In the case of reception policies for refugee migrants, it is imperative that an adjustment be made to the needs, interests and capacities of this population, as well as to the challenges it faces in the new country it inhabits, since it is usually in a situation of high vulnerability, which demands from the State a peculiar protection and not, on the contrary, the application of restrictive, controlling, restrictive measures of rights and freedoms, promoting disadvantages of discrimination.

A fair refugee reception policy should, in the light of Amartya Sen's understanding, guarantee its free and full participation and insertion in the city, in a way that hinders any initiative that tries to subject it to a process of local assimilation and that withdraws opportunities to choose and do what really suits him in urban or even rural space.

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