

International Human Rights Law and International Refugee Law: the primacy of human rights and the contemporary tensions of migratory policies

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If the refugee represents such a disquieting element in the order of the nation-state, this is so primarily because, by breaking the identity between the human and the citizen and that between nativity and nationality, it brings the originary fiction of sovereignty to crisis. (AGAMBEN, 2015, p. 31)

The UNHCR (ONU, 2018, p. 2) recorded 70.8 million people forcibly displaced worldwide, of which 25.9 million are refugees. Forced displacement is itself characterized as a violation of human rights that undermines the right to personal integrity, property, personal freedom, freedom of expression and belief, and the right to life. It occurs mainly at the interstate level, leading to disputes that have been configured in different ways due to temporality, territorial and geopolitical limits, and agreements and pacts signed by nations before the international community.

What distinguishes contemporary diasporas is the potentiality and intensity of displacement, which quantitatively defies agreed upon asylum and refuge solutions, and in qualitative terms call into question the extent of responsibility-sharing to protect refugees. The problem raised by the factual issue of refuge also reinvents historical narratives and systematically subvert processes of domination seen as unfinished by many people: forced displacements exacerbate the demand for true termination of imperialist, exploratory and racially marked policies against underdeveloped countries, mainly against the geographical south; disclose social cleavages between countries; question the dynamics of market, trade and production that fall unevenly on historically expropriated continents.

At this juncture, international human rights law faces an extremely intense challenge: new diasporic processes uncover the tensions between international refugee law and international human rights law, and intensify the challenges posed by international refugee law to the sovereigns states.

Some issues are most dramatic in the spectrum of refuge policies, such as the recurrent disrespect of countries to the principle of *non-refoulement* (ONU, 1951). The displacement system currently takes place through collective migrations, and states specific obligations are often disregarded due to insufficient resources, xenophobic actions, or lack of public policies, like (i) not reject immigrants at the border and allow the asylum application; ii) do not return immigrants; iii) recognize *prima facie* migrants in cases of massive flows of displaced populations; iv) not criminalize irregular migration; v) promote access to fair and efficient eligibility procedure with respect to due process of law; vi) grant international protection if the applicant meets the definition of refugee; vii) restrictively interpreting the exclusion clauses; viii) adapt procedures to children's needs; ix) guarantee equal rights (INTER-AMERICAN COURT, 2018).

Another central issue is the challenge presented in refugee child cases. The special situation of children 's vulnerability requires specific reception procedures from countries, aiming at holistically protecting the best interests of the child (INTER-AMERICAN COURT, 2013, páar. 218). In the midst of these specific duties, there is the state obligation of maximum preservation of the family unit, promotion of the child's autonomy in the eligibility procedures and better adaptation of the environment to the child, considering their emotional ties and their culture.

Among the procedures of refuge can cause many shades of violations of human rights, it is of utmost importance to question the effectiveness of migratory policies and the concrete availability of resources made feasible by the international community, in a cooperative and collaborative way, for the advancement of human protection of refugees. It is equally nuclear to tense the construction of long-term policies for the reception and integration of refugees, striving for the imperative to defend human rights, and always listening to people in the migratory process about their crucial demands and needs.

References

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