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The closure of the Brazilian-Venezuelan border during the covid-19 pandemic: international law analysis of ordinance no. 120 of March 2020

O fechamento da fronteira do Brasil com a Venezuela em resposta à pandemia do covid-19: análise da portaria nº120 de 17 de março de 2020 com base no direito internacional

Luiz Sales do Nascimento[1]

[1] Universidade Católica de Santos, Santos, São Paulo, Brasil. E-mail: luiz.sales@unisantos.br. ORCID: https://orcid.org/0000-0001-6854-4539.

Rosilandy Carina Candido Lapa[2]

[2] Universidade Católica de Santos, Santos, São Paulo, Brasil. E-mail: roselapa@outlook.com. ORCID: https://orcid.org/0000-0001-5753-0334.

Victor Augusto Mendes[3]

[3] Universidade Católica de Santos, Santos, São Paulo, Brasil. E-mail: victor-me@outlook.com. ORCID: https://orcid.org/0000-0002-9441-8904.

Vanessa Vasques Assis dos Reis[4]

[4] Universidade Católica de Santos, Santos, São Paulo, Brasil. E-mail: vanvasques@hotmail.com. ORCID: https://orcid.org/0000-0003-2234-3576.

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Abstract

This study investigates how Regulatory Ordinance No. 120 of March 17, 2020, reflects the constitutional principles and international treaties recognized by Brazil. This Ordinance is a non-statutory regulation to fight COVID-19 seeking to prohibit the entry of people from Venezuela during this pandemic. This deductive investigation assumes that this measure is not supported by the national and international migration laws incorporated by Brazil. The legal justifications the act used as arguments were found to be inconsistent with the formal requirements for the act itself as per the Brazilian legal framework. Verification of its legal and technical justifications showed a lack of legal, scientific, and empirical support, turning the Ordinance into a target of criticism by Civil Society organizations. In light of national and international law, the analysed instrument can be considered in breach of international technical guidelines for administering vulnerable migrant influxes as is the case of Venezuelans in Brazil.

Keywords: COVID-19; Refugees; Venezuela; Borders; Forced migrants.

Resumo

Este estudo tem como objetivo investigar como a Portaria nº 120, de 17 de março de 2020 reflete os princípios constitucionais e tratados internacionais reconhecidos pelo Brasil. A presente portaria é apresentada como medida infralegal de combate ao COVID-19 buscando proibir o ingresso de pessoas oriundas da Venezuela. A investigação dedutiva parte do pressuposto de que a portaria não se sustentaria frente às legislações migratórias nacionais e internacionais incorporadas pelo Brasil. Constatou-se que as justificativas legais apresentadas pelo ato infralegal apresentara inconsistências com as exigências formais para o referido ato. Verificou-se que as justificativas jurídicas e técnicas apresentadas pela portaria carecem de lastro legal, científico e empírico, tornando a medida alvo de críticas pela sociedade civil. Considerou-se que, frente ao direito nacional e internacional, o fechamento realizado pelo instrumento infralegal analisado vai de encontro às orientações técnicas para administração de fluxos de migrantes vulneráveis, que incluem Venezuelanos no Brasil.

Palavras-chave: COVID-19; Refugiados; Venezuela; Fronteiras; Migrantes forçados.

Introduction[1]

The main objective of this investigation is to study Regulatory Ordinance No. 120 of March 17, 2020 in light of the constitutional principles and international treaties recognized by Brazil. This non-statutory ordinance is a regulation set forth to fight COVID-19. It mainly seeks to prohibit - and by extension discourage - the entry of refuge seekers and forced migrants from Venezuela. The approach herein adopted is deductive, as it is assumed that this measure is not supported by the national and international migration laws internalized by Brazil. The methods employed are mainly based on subsumption in a legal-empirical approach informed by International Law empirical research methods.

It is relevant to contextualise the situation in Venezuela, a country that has traversed worsening social-economic collapse since 2014 (HUMAN RIGHTS WATCH [HRW], 2016). Since then, more than 4,5 million inhabitants were forced to leave the country, escaping hunger, violence, and lack of access to basic infrastructure, health and social support and welfare systems (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES [UNHCR], 2020). It is estimated that between 4% to 6% of the population emigrated from the country, considering the 32 million number from the 2017 census (INTERNATIONAL ORGANIZATION FOR MIGRATION [IOM], 2019). Most of the emigrants, between 1,4 and 2 million, went to Colombia (MÉDECINS SANS FRONTIÈRES [MSF], 2019). More than 260 thousand Venezuelans are estimated to live in Brazil, mostly arriving through the Pacaraima border city, in the Brazilian state of Roraima located 230km from the state capital Boa Vista (VALÉRIO, 2019).

Three main groups characterize contemporary Venezuelan migration flows towards Brazil, according to migratory conditions and statuses. Most Venezuelans arriving in Brazil receive temporary resident visas based on the humanitarian reception article, Article 14, Paragraph I, item C of the 2017 migrations law (BRASIL, 2017); henceforth, the first group.

The second group is composed of refugees of which 37.000 are recognized by Brazil based on the amplified protection understanding defined by the regionally-

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covering Cartagena Declaration (1984), in which severe and generalized human rights violations are included as a reason for refuge recognition (BRASIL, 1997; CONECTAS, 2020). Until October 2019, Brazil had 120 thousand refuge requests from Venezuelans in analysis by the National Committee for Refugees – CONARE (BRASIL, 2020a).

Lastly, the third group composes the profile of those who frequently cross the borders to purchase and move goods between both countries, to receive medical treatment, and to meet family, in a daily estimated flow of 200 to 600 people.

Amid the escalation of the situation, the Brazilian Government during Michel Temer's administration structured in 2016 a response plan to the humanitarian emergency called *Operação Acolhida* (Operation Welcome).[2] The Operation grew and became a positive example of humanitarian response in the world. It was a task force composed of several Governmental and Non-Governmental Institutions.[3] Together, they structured the administration of shelters, triage stations, human rights protection actions, and support to immigration regularization efforts in consonance with public services from governmental institutions. The Brazilian army provides logistical workforce (BRASIL, 2020b).

This positive example of humanitarian response became threatened by Ordinance No. 120 of March 17, 2020, which allowed the closure of the Brazilian-Venezuelan border on March 18, 2020, justified by allegations of public calamity and sanitary emergency due to the COVID-19 pandemic (PORTAL O TEMPO, 2020). The Ordinance is a non-statutory regulation in Brazil Law. This means it is not based on legislative action since it is an executive action derived from the interpretation of the relevant statutes – i.e., the laws cited by the Ordinance itself.

This research investigates what is provided and cited as legal justification in Ordinance 120/2020 and the Brazilian internal legal framework, which encompasses the international humanitarian commitments undertaken by the country in the form of International Treaties and Conventions.

[2] The English name for Operação Acolhida used in UNHCR's documents and by Brazil's Ministry of Defence itself is "Operation Welcome", but it can also be interpreted as "Operation Shelter" or "Operation Reception".

[3] For example, the United Nations High Commissioner for Refugees (ACNUR), the International Organization for Migration (OIM), and the United Nations Educational, Scientific and Cultural Organization (UNESCO), which act in partnership or finance humanitarian projects of local organization.

1. RECORD OF VENEZUELAN MIGRATION FLOW TO BRAZIL BETWEEN 2012-2019 AND THE ORDINANCE NO. 120/2020 REGARDING BORDER CLOSURE DUE TO THE PANDEMIC

The first migratory waves from Venezuela were composed by those with resources for travelling, i.e., those wealthier enough to afford international travel, mostly middle-class families and individuals who emigrated to Spain and other European countries (NIKOLAU, 2016; FRANCE24, 2019). Data shows that most of Venezuelan population do not have conditions for such expensive travels, which would otherwise be a privilege, as most are currently living in precarious economic conditions, suffering from the lack of basic goods, medicine, food, and overly reliant on governmental and non-governmental aid (HUMAN RIGHTS WATCH [HRW], 2016). Those with even fewer resources are the ones who composed a considerable part of Venezuelan flows to Brazil in 2019-2020, and are predominantly people in a situation of high social vulnerability (FUNDAÇÃO GETÚLIO VARGAS [FGV], 2020, p.88). That is, most with some resources already left the country already, remaining only the highly vulnerable - with even fewer resources - composing most of the groups starting to leave in numbers since 2019.

The State of Roraima has one of Brazil's lowest HDIs and the lowest GDP per inhabitant in the country (UNITED NATIONS DEVELOPMENT PROGRAMME [UNDP]; 2018; INSTITUTO DE PESQUISA ECONÔMICA APLICADA [IPEA], 2020). Roraima is at the forefront of this humanitarian emergency. The majority of Roraima's population works for the public sector, and there are not many formal jobs since industrial activities are scarce in the region (CHAVES, 2018). Thus, *Operação Acolhida* focuses its efforts on the administration of new migrants, directing them towards other Brazilian states with better employment and socioeconomic integration prospects (BRASIL, 2019).

When the influxes from Venezuela became even more massive in 2015, due to an increased scarcity of goods, the Government of Roraima requested the closure of the border, alleging infrastructural collapse, mainly because of the rise in demand for local healthcare in an already weakened state (JUNQUEIRA e NEVES, 2018, n.p.). However, measures adopted toward border closure were suspended by a Supreme Court (STF) ruling (SUPREMO TRIBUNAL FEDERAL [STF], 2018), and also declared unconstitutional by the Public Ministry.

On that occasion, border closure was considered unjustifiable for naturally occurring difficulties arising from the reception of refugees and forced migrants since the most straightforward solution would also be the most inhuman: closing the doors. This solution would be equivalent to "closing one's eyes and crossing one's arms," as written in the ruling by a court's minister (WEBER, 2018). Besides, the Supreme Court (STF) minister at the time, Rosa Weber, conceived that border administration measures could not contradict commitments from international treaties undertaken by Brazil (COELHO, 2018).

Groups continued to relocate since 2015, given the continuous collapsing processes in the Venezuelan state, forcing people to choose between living precariously, dying, or crossing the border in search of better living conditions. Thus, *Operação Acolhida* has been attempting to expand dedicated shelters for vulnerable migrants to cater to those that begun occupying abandoned buildings in Roraima since 2018 (COSTA, 2019)

The COVID-19 pandemic represented new challenges for *Operação Acolhida* and its workers. The highly vulnerable individuals' part of the post-2019 Venezuelan migrant flows include people from designated risk groups of the disease, namely the elderly and people with comorbidities, which compose the highest casualties' percentage from COVID-19 (NEW YORK CITY HEALTH e WORLD'O'METER, 2020). Without proper sanitary protocol compliance, they may not only be infected but also potentially carry the virus between countries.

The World Health Organization characterized COVID-19 as a pandemic on March 11, 2020 (WORLD HEALTH ORGANIZATION [WHO], 2020). With the global rise in case numbers, countries that receive Venezuelans began gradually restricting border flow, as is the case with Colombia (NORWEGIAN REFUGEE COUNCIL [NRC], 2020).

Roraima is one of the Brazilian states with the least number of COVID-19 cases. However, the entire northern region is in particular vulnerable for having fewer ICU beds and an infrastructure considered precarious to fight the pandemic. Venezuela started registering cases by the end of March when its borders with Brazil had already been closed to forcibly displaced migrants as well as other migrants (MELIMOPOULOS, 2020).

Ordinance No. 120 of March 17, 2020 (BRASIL, 2020c), a non-statutory instrument, determined the temporary closure of the Venezuelan-Brazilian border

following Technical Note No. 01/2020. The former was emitted on the same date by the National Sanitary Surveillance Agency (ANVISA), which recommended the interruption of access of Venezuelan migrants to Brazil due to COVID-19. The Government justified the measure as necessary to meet the Risk Reduction Law no. 13.675/2018 (BRASIL, 2018) and Ordinance no. 356 of March 11, 2020 (BRASIL, 2020d).

To avoid non-compliance to the ordinance's provisions, the Government established the disqualification of refugee requests from those who perform irregular entry into the national territory as a sanction. Furthermore, it also stipulates immediate deportation to their original States, as well as civil, administrative, or penal accountability for offenders (BRASIL 2020c, 6th Art.). These penalizations strengthen the presuppositions for illegality since this makes the Ordinance infringe upon the principles of the laws it cites and others in the Brazilian legal framework, as is demonstrated throughout this article. To demonstrate these findings, it is essential to explain the methods and theoretical backgrounds used in the analysis.

2. METHODOLOGICAL AND THEORETICAL ASPECTS OF THE RESEARCH

For the analysis of Ordinance No. 120/2020, the research methods in this work follows the perspectives of Baylis (2010) on empirical research in international law, that is, an empirical-legal approach. Legal qualitative data is compiled and analysed to confront preconceived notions based on the adopted premise, which, in turn, is elaborated according to the main research questions. The main research question is; how do the measures enforced by Ordinance No. 120/2020, reflect – or don't – the constitutional principles and international treaties recognized by Brazil? The empirical-legal approach draws considerations from legal data such as applicable past rulings by the Brazilian Supreme Court, as well as non-legal data, such as considerations from Specialized Civil Society Organizations. The legal approach is justified because non-statutory measures, such as Ordinance No. 120/2020 are subordinate to the Constitution and the Brazilian legal framework, including the international norms it incorporates, and by being an executive instrument it is related to the linkage between law and the practicality.

To support the arguments herein made, the presented legal data is extracted from the internal regulation, legal trials, and international law instruments recognized in the Brazilian framework. Complementary data without legal attribution comes in qualitative and quantitative formats, namely sources from journalistic media, socioeconomic data regarding migration flows, an specialized report written by several Non-governmental Civil Society Organizations, and data about the origin of the first infections of COVID-19 in Brazil.

Critical and relativistic understandings are adopted due to their usefulness for Human Rights research and the study of legal perspectives in the Brazilian legal framework. That is, by considering that standards and values are relative to the specific culture they arise from, the relativistic perspective is informative as a methodological foundation for this work given that Human Rights treaties are created from the beliefs of the culture, or cultures, that participated in the creation of such rules.

According to this relativistic understanding, if standards set by an international framework conflict with local values and internal norms, they can be rejected – and that is observed in practice when a country, invoking its sovereignty, accepts a treaty with reservations understanding that some of its passages or articles are incompatible with its legal framework, or even when a country later denounces the entirety of a treaty. Otherwise, when wholly accepted and wholly incorporated in the internal legal framework of a signatory country, considerable acceptance of the created rules in the international systems can be understood, as is the fact with the international human rights norms cited in the Brazilian context based on what is herein surveyed (STEINER, et al, 2007, p.370-373).

Additionally, even if international norms are not formally rejected in part or entirely, they can find barriers of political nature imposed on their enforceability, given the current cultural *ethos.* It must be considered that national-states are not monolithic; the official positions of a central government may not necessarily reflect local customs in all its encompassing states or regions. This is especially true in the case of Brazil, which is culturally diverse and continental in its geographical extension.

Within this approach, the internal acceptance of international norms is understood beyond their internal incorporation. Likewise, drawing evidence from other national legislations, it is found that they reiterate the principles set forth by

international Human Rights norms. In other words, closing the border for everyone – regardless of humanitarian concerns – conflicts with international norms which are not only approved and recognized in the Brazilian framework but are also compatible and reiterated in its constitution and other legal instances. Namely, the principles of respect to human dignity are reaffirmed in the Brazilian Constitution, the Convention Regarding Refugee Status incorporated by its internal framework, the 2017 Brazilian Immigration Law, the Brazilian Law of Risk Reduction, and finally, the very own State of Roraima Constitution (RORAIMA, 1991). It is essential to mention that the legal framework in Brazil follows a hierarchical structure in which the Constitution lies at the top, followed by federal, state, and municipal laws, respectively.

In terms of disaster risk reduction and response to humanitarian emergencies, foreseeability can be understood as a key point for good governance, which supports risk reduction (AHRENS e RUDOLPH, 2006). Thus, structuring the "rules of the game" is one of the directive contributions of the legal framework (ROSS, 2008). In other words, laws directly contribute to risk reduction by structuring expectations and guiding collective actions in times of crisis. In the present case, it can be said that expectations established by the Brazilian legal framework and the international law instruments incorporated in it, instead of being used as a basis for action in turmoil periods, were put aside in the humanitarian context presented by Venezuelan migrations in the State of Roraima and the new international context imposed by the COVID-19 pandemic. This is evidenced by the Ordinance herein analysed since the acts it provides do not seem to be in line with the legal framework, and the laws it potentially breaks are used as justifications for the act itself.

3. ANALYSIS OF ORDINANCE NO. 120/2020 DATA AND ITS CONNECTION WITH INTERNATIONAL LAW AND DOMESTIC LEGISLATION

Identifying if the governmental action that affected refugees and forcibly displaced migrants' human rights is legitimate from a legal standpoint demands of a study of the viability of Ordinance 120/2020 according to Humanitarian and International Human Rights Law perspective. Subsequently, it is necessary to understand the internal reasons

for the Brazilian Government to close its borders to refugees and forcibly displaced migrants through a non-statutory regulation, as well as to analyse the foundations used to justify this measure.

International law, intending to avoid legal conflicts, indicates the prevalence of International Law over Internal Law. Thereby, the Brazilian State could not invoke its own Federal Constitution to evade compliance with an International Act to which it was subscribed. Brazil agreed with this principle by signing and ratifying the Vienna Convention on the Law of Treaties (1969), internalized through the 7.030/2009 Decree by which, according to Article 27, "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty" (ORGANIZAÇÃO DAS NAÇÕES UNIDAS [ONU], 1969).

Hence, although a situation of normative conflict may occur, the most favourable norm to human beings must prevail. This approaches the presuppositions observed by Jubilut and Martuscelli (2019, p. 863), which comprehends ethical actions as the core for guaranteeing human dignity in moments of crisis and is considered a foundational perspective in International Humanitarian Law.

However, in the Brazilian legal system, there is no legal anticipation of the normative status of international conventions and treaties – that is, there is currently no law or ruling stating the validity of an International Convention before its legal internalization. Thus, “the dialogue between international law and state law, in the current developmental stage of the former, is only viable through its constitutionalization’, or internalization (NUNES e NASCIMENTO, 2017, p. 417. Indeed, International treaties and Conventions on Human Rights can become equivalent to the constitutional norm only after the processes set by Constitutional Amendment No. 45 of 2004, which added the 3rd paragraph to the 5th article of the Brazilian Constitution.

The Constitutional Amendment No. 45 of 2004, indicates the validity of all international treaties and conventions versing on Human Rights if they are approved in each legislative house by two turns, with a qualified quorum, they become equivalent to constitutional amendments, incorporating aforesaid international legislations to the constitution of the Brazilian State.

Treaties and conventions on Human Rights that entered the Brazilian Legal Framework before Amendment No. 45 of 2004, according to the peaceful jurisprudence

of the Supreme Court, now have the status of supralegal norms, that is to say below the Constitution but at a hierarchical level superior to all other normative species. Thus, past international norms acquired a supra-legal character as defined by Judicial Precedent from the Supreme Court on December 3, 2008, Extraordinary Appeal no. 466.343-1 / SP, and on February 2, 2009, Habeas Corpus judgment 94935 / SP (PELUSO, 2008; BRITTO, 2009).

In this regard, fundamental laws stemming from Conventions and Treaties referring to forcibly displaced migrants and refugees, which were ratified by Brazil before Constitutional Amendment No.45 of 2004, can be interpreted as supralegal norms in the Brazilian legal framework. This protects the beneficiaries of these norms and cannot be suppressed by an ordinance that would be contrary to humanitarian principles and is, in addition, hierarchically inferior in the legal system (BRASIL, 1988; MAZZUOLI, 2011). As such, the priority of the norm most favourable to human beings must count. Additionally, according to the legal perspectives of Araújo (2011), the legal framework is turned toward Human Rights protection by placing the human being as the International Law paradigm. As such, these norms cannot be simply interpreted as matters of State.

As the STF explicitly manifested distancing from legal positivism on the ADI 595-ES judging in February 2002, a single concept cannot be conferred to the Federal Constitution, for there are a series of possible meanings generating the theoretic development of a “Constitutionality Block”. According to this “block” of understandings, submitted norms to the STF must be analysed in accordance with the very spirit it animates, beyond written rules and explicit or implicit principles in the normative body of the formal Constitution (STF, 2002).

In this manner, the STF may confront norms hierarchically inferior to the Constitution based on the principles and precepts from the Constitutionality Block, through letters or people listed in Article 103 of the Federal Constitution. It may even revoke them when they disrespect such constitutional principles also based in the international Accord and Treaties approved and ratified by the country, which in this conception include the "Constitutionality Block."

In this legal context, Ordinance 120/2020 may be analysed regarding its exceptional and temporary country entrance restriction of foreigners from the

Bolivarian Republic of Venezuela. Constitutionally, given Articles 20, 2nd Paragraph, and 22, XV of the Constitution (BRASIL, 2019), the border strip belongs to the Union, and thus the President of the Republic is responsible for legislating regarding emigration, immigration, entry, extradition, and foreign expulsion cases.

However, no norm, even from the presidency of the republic, can disrespect constitutional principles or international norms properly incorporated – primarily when they affect human rights. With this considered, this specific determination of temporary closure of the Brazilian-Venezuelan border conflicts with the fundamental objectives inserted in the Article 3rd, items II and IV, of the Federal Constitution, namely: constructing a fair and solidary society, and promoting the general good without prejudice for origin, race, sex, colour, age, or whichever other forms of discrimination, and harms the Human Rights prevalence principle reigning the international relations of the country according to Article 4, II of the Constitution, which states Brazil must adopt international relations based on principles (BRASIL, 1988).

Brazil recognizes principles related to Human Rights and Humanitarian Law in specific articles of the 1988 Federal Constitution, considering the right to human dignity as one of the foundations of the democratic Rule of Law and as in leading its international relations through the prevalence of Human Rights. Thus, immediate applicability of rights-defining norms and fundamental securities are established, and in fact, anticipates a different status for the incorporations of treaties, which may verse on such rights (BRASIL, 1988).

In the specific legal context of Ordinance 120/2020, Brazilian Law for fighting COVID-19 is one of the laws cited (BRASIL, 2020e). This law establishes the right of information for people affected by the emergency regarding their own and their family health status and full respect "to human dignity, human rights, and fundamental liberties of people" (BRASIL, 2020e). This law still demands that the proposed measures be exclusively determined based on scientific evidence and analyses on the strategic health information that has not been presented by the Government. Additionally, the ANVISA No. 1/2020 technical note is not available for public consultation. This note is, according to Ordinance 120/2020, one of the central documents justifying the closure of the border. The lack of transparent communication precludes public information access to the adopted methods in the elaboration of the Ordinance and this has been indicated

in writing by non-governmental, or Civil Society Organizations entities recognized for their actions toward human rights protection in Brazil (CONECTAS, 2020).

In the note presented by the Civil Society Organizations concerns were listed regarding the harms to essential humanitarian activities in the border, and possible violations to the fundamental rights of people in a vulnerable situation caused by discriminatory and distinguished treatment conferred to Venezuelans as well. With the referred measure, not only recognition of refugee situation is affected, but also the imposition of restrictions instead of measures directed toward prevention and additional care in the first reception (CONECTAS, 2020).

The operational convergence of Humanitarian Law and International Human Rights Law could be observed in the specific case of the Brazilian border with Venezuela, in which several humanitarian services were provided, such as humanitarian aid and assistance to access specific rights like the issuing of humanitarian visas, refuge seeking, child protection, among other actions. These seem to be, as referred to by Cançado Trindade, "inspired in common principles which "join and interrelate them" in primary considerations of humanity, forming a comprehensive international system with specific sectors of protection for the human person (CANÇADO TRINDADE, 1997, p.59-64).

In this manner, the adoption of a physical barrier for border closure infringes directly on the universal principle of the right to protection of the human person. In the sphere of specific rights, the International Refugees Law is an example in which the Convention Relating to the Status of Refugees (1951) and the Protocol Relating to the Status of Refugees figure as principal instruments. In Latin America, the Cartagena Declaration (1984) expanded the classical definition of the term refugee, recognizing that severe and generalized violations to human rights justify the concession of refugee status (BRASIL, 1997).

The Ordinance referred above prescribes complete border closure or the disqualification of refuge requests from people entering illegally. Contrary to that, Article 31 of the 1951 Convention stipulates that irregular entry and permanence of persons originating from States where justified fear of persecution is observed must not be punished by the State of destination (BRASIL, 1997). The only acceptable hypothesis for the disqualification of refuge requests resides in the possibility of the applicant has committed crimes against humanity (BRASIL, 1997, Article 3rd, III). In this sense, any

action of the states exceeding what is prevised may incur a violation of the right of the forced immigrant for proper legal process toward refugee condition recognition.

Thus, facing the pandemic scenario declared by the World Health Organization and the immediate response from some States through restrictive legal mechanisms on immigrant entry, the United Nations High Commissioner for Refugees (UNHCR) emitted a document toward reinforcing international commitments undertaken even in a sanitary emergency (UNHCR, 2020). In the document, the UNHCR aims to advise countries from adopting measures that may preclude access from refugees or other people who intend to obtain asylum or specific nationality without concrete evidence of health hazard, and especially without protection measures against their returning, characterizing discrimination and offense to the principle of *non-refoulement.* The document still stresses that States may adopt testing strategies and isolation in safe places, facilitating border management control regarding the entry of people in a vulnerable situation.

Furthermore, it is necessary to elicit that in a first moment the Federal Government did not prohibit sea cruise ships circulation (CANCIAN e RESENDE, 2020) and international flights, including those originating from countries with declared outbreaks since February, like Italy for example, (CORREIO DO ESTADO, 2020) highlighting the contradictions in federal actions and selectivity toward the reception of foreign visitants or migrants.

This situation presents that the Staff of Brazil Ministers, which were responsible for public health and safety, prohibited Venezuelan entrance to the country through Ordinance 120/2020 under the allegation of lack of control over the pandemic and infrastructural collapse of the health system. However, more than a week after the publication of Ordinance 120/2020 , the country was allowing foreign luxury yachts and touristic ships to dock with authorization to disembark passengers without observance to safety norms as attested by the *Agência Brasil*, a national public news agency run by the Brazilian government itself, which reported the disembarking of seven people from the Costa Fascinosa transatlantic Ship at the Santos Port on March 28 2020, of which two tested positive for COVID-19 (ALBUQUERQUE, 2020).

Prohibition of free transit for the ship's crew in the city of Santos, in the state of São Paulo, was only secured through an injunction presented by the federal judge

Alexandre Berzosa Saliba after a request from the Municipal Prosecutor's Office. Still, the magistrate followed humanitarian principles in allowing the disembarking of the crew for medical assistance, care which was not observed by Ordinance 120/2020 regarding Venezuelans finding themselves on the country's border strip with Venezuela.

Such contradictions elicit doubts regarding the adopted measures of neutrality throughout the pandemic since the perpetrated actions were not consonant with the legal arguments justifying the Ordinance itself, as has been demonstrated by the data gathered and analysed

CONCLUSION

Even if the border strip belongs to the Union, with the President of the Republic being responsible for regulating cases on foreign emigration, immigration, entry, extradition, and expulsion, no internal mechanism can disrespect constitutional principles or international norms duly incorporated by Brazil, especially when dealing with Human Rights.

Evidence herein analysed supports the conclusion that the closure of the Brazilian border with Venezuela through Ordinance 120/2020 constitutes an explicit violation of humanitarian law, for it interrupts the continuity of assistance offered to all forced migrants under the conception of protection for the human person. These commitments were absorbed in the domestic legal framework and considered by the 1988 Federal Constitution as prevalent in case of legal conflict, factors that went unobserved in the elaboration of the Ordinance.

Therefore, indications of political interests could be perceived as the basis for the actions by the Brazilian Government in prioritizing the closure of the border with Venezuela, which did not even figure amid localities with major COVID-19 outbreaks until then. Such normative action also contrasts with the permission for the docking of yachts and touristic ships, as well as the reception of flights originating from other countries during the same time frame without equal concern for local population contagion or health system overload, a concern that was presented towards Venezuelans.

The Ordinance was also ascertained to infringe on legal mechanisms of international and regional scopes specific to refugee protection by criminalizing entry of Venezuelans into the national territory due to humanitarian reasons, disqualifying refuge requests, and by considering immediate deportation as a sanction. These are a clear violation of the *non-refoulement* principle, which states the non-deportation of a person to their original state without the proper legal process for refuge requesting, ample defence, and due process. These border closure measures, in these terms, also have the potential to increase vulnerabilities by stimulating other forms of border crossings and, potentially, human trafficking routes.

Likewise, it is shown that the norm did not allow for the possibility of entrance into the country by those people finding themselves on the border between Brazil and Venezuela in severe health conditions to seek critical and decent medical assistance.

Finally, the Ordinance and its mechanisms, conflict with the very laws it cites, such as the Law of Risk Reduction No. 13.675/2018, the Ordinance no. 365/2020 of the Ministry of Health, and the Law No. 13.979/2020 for fighting COVID-19, which seek respect towards human rights, prioritization of vulnerable groups, and the adoption of transparent scientific criteria on actions informed by data and research. Additionally, the public inaccessibility of technical note no. 1/2020 of ANVISA, considered a central component to justify the border closure, precluded civil society organizations from observing the methods and criteria utilized for its formulation, fomenting doubts regarding its use for political ends.

Hence, it was possible to verify, and reasonable to conclude that Ordinance no. 120/2020 is harmful to constitutional principles, directly affecting the more vulnerable immigrant groups which depend on humanitarian aid offered by *Operação Acolhida*. It is hoped that the insights provided in this research make room for future investigations on humanitarian actions, public resources administration, and crisis response in Brazil during COVID-19 or and related migratory contexts.

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Sobre os autores

Luiz Sales do Nascimento

Civil Public Prosecutor of the Public Ministry, State of São Paulo, Doctor in State Law (PUC-SP), and professor at the Post-Graduate Program in Law at the Catholic University of Santos. Leader of the Research Group on Constitutional, Environmental and International Regimes and Guardianships. E-mail: luiz.sales@unisantos.br. Currículo Lattes: http://lattes.cnpq.br/5585248986676203.

Rosilandy Carina Candido Lapa

Rosilandy Carina Candido Lapa: B.A. In International Relations, M.A in International Law, and Ph.D in International Environmental Law at the Catholic University of Santos (CAPES scholarship). She is a member of the Sérgio Vieira de Mello Academic Chair from the same Institution and member of the Research Group on Constitutional, Environmental and International Regimes and Guardianships. She has volunteered with the National Committee for Refugees (CONARE-SP). Researcher in the field of Human Rights, with a focus on Forced Migration and Statelessness. E-mail: roselapa@outlook.com. Currículo Lattes: http://lattes.cnpq.br/5585248986676203.

Victor Augusto Mendes

Victor holds a B.A. in International Relations and an M.A. in International Law from the Catholic University of Santos, completed in 2016 and 2017-2019, respectively. His research interests lie in International Law, International Migrations, and International Relations. Victor is a member of the research group on Constitutional, Environmental, and International Regimes and Guardianships at the Catholic University of Santos and is also a member of the Sérgio Vieira de Mello Chair within the same institution. He has volunteered with the National Committee for Refugees (CONARE-SP) and contributed to a humanitarian project focused on separated and unaccompanied children during Operação Acolhida in Roraima/RR (Brazil). You can contact Victor via email at victor-me@outlook.com or view his Currículo Lattes at http://lattes.cnpq.br/3174513788384507.

Vanessa Vasques Assis dos Reis

Vanessa Vasques holds a Bachelor of Laws and an M.A. in International Law from the Catholic University of Santos, completed in 2000 and 2017-2019, respectively, as well as a Bachelor's degree in Speech-Language Pathology from the Lusíada University Center (1995). She is a University Professor and Researcher with a focus on Education, Citizenship, and Human Rights. Vanessa participates in the Research Group on Constitutional, Environmental, and International Regimes and Guardianships at the Catholic University of Santos and is also a member of the Sérgio Vieira de Mello Chair within the same institution. You can contact her via email at vanvasques@hotmail.com or view her Currículo Lattes at http://lattes.cnpq.br/8563004886314688.

Os autores contribuíram igualmente para a redação do artigo.