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Environmental displacement: an analysis based on the dignity of the human person

Deslocados ambientais: uma análise com base na dignidade da pessoa humana

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Abstract

Considering that the occurrence of environmental disasters is an increasingly frequent reality, we seek to present a new situation of human mobility: the environmental displacement, since the degradation and deterioration of the environment can gain proportions in order to invade the survival and subsistence of individuals or communities in their places of origin. Such a situation seriously compromises the way of life adopted and can be understood as a violation of human rights, so that it becomes a legitimate subject of interest for the international community. However, what is seen about human displacement from environmental causes is a normative void.

Keywords: Environmental displacement; Dignity of human person; Environmental disasters.

Resumo

Considerando que a ocorrência de desastres ambientais é uma realidade cada vez mais frequente, busca-se apresentar uma nova situação de mobilidade humana: o deslocamento ambiental, pois a degradação e deterioração do meio ambiente pode ganhar proporções de modo a inviabilizar a sobrevivência e subsistência de indivíduos ou comunidades em seus locais de origem. Tal situação compromete gravemente o modo de vida adotado, inclusive pode ser entendida como violação de direitos humanos, de modo que se converte em tema legítimo de interesse da comunidade internacional. Entretanto, o que se vê sobre o deslocamento humano por causas ambientais é um vazio normativo.

Palavras-chave: Deslocados ambientais; Dignidade da pessoa humana; Desastres ambientais.

1. Introduction

Living with the certainty that we will leave a better world for our descendants becomes increasingly utopian, considering that in the contemporary societies individual values prevail, stimulated by the concept of development based on economic growth (FRANZOLIN; ROQUE, 2017, p.68).

A society of risk is revealed (BECK, 2010, p 57), which announces complex environmental problems to the international community, often demonstrating the insufficiency of legal mechanisms that are able to cope with this new reality.

Therefore, structured challenges arise in the analysis of individuals who are forced to move from their origin places, often with no prospect of returning, evading from places that no longer offer subsistence conditions due to environmental disasters or degradation. These are victimized people whose hands are tied, facing the lack of specific legal protection in international[1] - and even local - laws, since they do not fall under the conventional status of refugees[2].

Thus, using the deductive methodological procedure through bibliographic research of articles, books, doctrines and international documents, without the intention to exhaust the topic, this article proposes to present reflections on population displacement due to environmental factors in the light of the person's dignity, especially for identifying an interdependence between Human Rights and Environmental Law.

2. A necessary methodological premise: conceptual delimitation of disaster and the society of risk

The contemporary ongoing growth and economic development, driven by the awakening of innovation, technology and new knowledge, boosts new business activities, new products and new needs.

[1] Environmental Law has its origin in the International Law, which is responsible for the renewal of that law branch and for the creation of many environmental protection principles. From 1960 an increasing awareness of environmental problems spread out among International States. Since then, International Environmental Law has been promoted with several international events and documents in search of a global regulation of the environment (CRUZ, 2006, p. 9-10).

[2] According to Beurier (2010, apud SILVA, DUARTE JÚNIOR E ARAÚJO, 2017, p. 26) “esses migrantes forçados não têm um estatuto, não se beneficiam de qualquer proteção específica, que seja juridicamente reconhecida”. T.N. “these forced migrants do not have a Statute, they do not benefit from any specific protection, which is legally recognized”. Freely translated from the Portuguese version by the translator.

However, the advance of technology increasingly reflects in nature, in society and in the person's own situation, according to Ulrick Beck (1998, p. 26). In other words, it is what the author calls a civilizing self-threat (BECK, 1998, p. 28), typical of the society of risk. What is worth mentioning is that articulating the society of risk with disasters, capturing the teachings of Daniel Farber, refers to aspects related to compensation and the development of resilience. In addition, the author points out that the disaster also demands other aspects from the observer, such as risk planning and calculation, safety issues, acts of nature, deficiencies of nature and other effects (FARBER, 2019, p. 28).

In addition, given the magnitude of the undertakings and the way the human being starts to manipulate and want to control nature, it compromises the very sense of civilization, hence the concern with the displaced. In other words, as Delton Winter de Carvalho (2015, p. 21) clearly explains, the serious accidents and events that cause social and environmental impacts on communities, awaken the study of disasters because they can lead to the most varied developments. One of the social impacts that we can notice is the displacement of people, which is precisely what is studied and what is addressed in this article.

This perspective helps to understand that, if at first disaster was seen as a divine phenomenon and if in a second moment, disaster was perceived as a demonstration of the power of nature, in the contemporary context, the situation of social vulnerability gains visibility (CARVALHO, 2015, p. 21). Thus, disasters are also associated with population density, the increasing human action derived from the industrial society and environmental degradation, among other factors (FREITAS, 2014, p. 25).

As Beck (1998, p. 57) points out, the process of industrialization and modernization has brought catastrophic consequences since the 19th century, such as scarcity, misery and the destruction of natural bases of life. These are increasingly associated with a wide sort of actions of men in nature, thus being able to have a greater or lower impact on life and society.

Furthermore, according to the Civil Defense Glossary, disaster is defined as the result of adverse events, natural or man-made, in a – vulnerable – ecosystem, causing human, material and/or environmental damage and consequently economic and social losses (GLOSSARIO DE DEFESA CIVIL, p.57)[3]

[3] *T.N. Freely translated from the Portuguese version.*

3. Environmental displacement: an identity under construction

A few decades ago, degradation and environmental disasters, especially those associated with climate change[4], made rise a new cause of population flow (GONZÁLEZ, 2013, p.17-18), [5]different from those of political, social and economic reasons. Due to anthropocentric or natural factors, individuals, groups and/or communities are forced to move temporarily or permanently abandoning their places of origin, sometimes crossing the borders of their own countries (RAMOS, 2011, p.19).

Thus, migratory flow derived from impacts and changes in the environment is a new line of human mobility – environmental crisis – competing with mobility derived from economic, political and sociocultural aspects; therefore, it identifies a human dimension (RAMOS, 2011, p.19). This situation is due to events related to the degradation and deterioration of the environment, causing human displacement, such as the Chernobyl nuclear disaster[6], affecting 6 million people, of which more than 300,000 were evacuated from their homes (CARVALHO et. al., 2018, p. 712).

This fact is proven to be a good example of a humanitarian crisis that arose due to an environmental disaster[7]. In other words, it is a situation, among many, that pushes

[4] "Climate change is a major contributor to current migratory flows. According to a report by the Internal Displacement Monitoring Center (IDMC), in 2014 there were 19.3 million climate refugees in the world. Between 2008 and 2015 there were an average of 26.4 million displaced persons per year, which represents almost one person per second". *T.N. Freely translated from the Portuguese version.* Moreover, millions of people, all over the planet, are forced to abandon their land and take refuge in other countries, generating a diaspora without precedents. Violence, hunger or human rights violations, among others, are the reasons to take refuge. Today, moreover, climate change has provided a new kind of pariahs, of wanderers, of refugees: the environmental refugees. *T.N. Freely translated from the Spanish version*. Original text: "millones de personas, en todo el planeta, se ven forzadas a abandonar su tierra y refugiarse en otrospaíses, generando una diáspora sin precedentes. La violencia, lãs hambrunas o la violación de los derehoshumanos son, entre otros, los motivos que llevan al refugio. Hoy, además, el cambio climático, hapropiciado um nuevo tipo de parias, de errantes, de refugiados: los refugiados ambientales" (BRAVO, 2013, p. 12).

[5] Ernani Contipelli points out that there must be a causal link in order to talk about environmental displacement. In brief, the environmental disaster must be recognized as a factor that has contributed to the forced environmental migration within the territory of the State or beyond its political borders (CONTIPELLI, 2018).

[6] "On April 26, 1986, at 1:23min58, a series of explosions destroyed the reactor and the building of the fourth block of the Chernobyl Electric Power Plant (CEA), located very close to the Belarus border (...). After Tchernóbil, the country lost 485 villages: seventy of them are buried underground forever. War mortality – referring to World War II – was one in four Belarusians; today, one in five lives in contaminated territory (...). The explosions launched $50x10^6$Ci of radionuclides in the atmosphere, of which 70% fell over Belarus: 23% of its territory is contaminated by radionuclides with a density greater than 1 Ci / km² of cesium-137. As a comparison: Ukraine had 4.8% of its territory contaminated and Russia 0.5% " (ALEKSIÉVITCH, 2016, p. 9-10) (Spelling in the original). T.N. *Freely translated from the Portuguese version*.

[7] Based on the teachings of Cláudio Tadeu Cardoso Fernandes, Érika Pires Ramos indicates that the next armed conflicts will be related to environmental issues, either to defend or secure natural resources, or for safer places (RAMOS, 2011, p. 34). Furthermore, the effects of climate change threaten international peace

human displacement and consequently boosts conflicts between States in the search for safer places or even in the intense race for scarce natural resources[8].

The Chernobyl disaster has become a global problem – see the case of the import of milk and its derivatives from Europe by Brazil: in 1986, the Federal Prosecution Service and the São Paulo State Prosecution Service in a joinder of parties filed a civil suit to prevent the commercialization of those products due to the risk of contamination by radioactivity [9]– considering that in addition to registering high levels of radiation in some European countries, it has reached countries in Asia and North America (SVETLANA, 2016, p. 11), raising global inquiries about the proportion that environmental damage can reach and the protection of the – human – rights of the individuals who are affected, as well as the victims who are forced to move.

Thus, it is clear that environmental disasters – catastrophes – have been motivating a population displacement, which can even be understood as a clear violation of Human Rights (LUCHINO; RIBEIRO, 2016, p. 895), since their impacts put life – or survival – of the affected individuals in danger, thus arising what part of the doctrine has called "environmental refugees"[10]. In fact, the United Nations Environment Program – UNEP – defines:

> Environmental Refugees are those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked

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and security – which had its concept softened to include non-military threats, such as the environmental – since it can trigger economic and social conflicts between countries (Ibidem, p 41).

[8] In 1995, the scientist Norman Myers has already pointed out that the issue of environmental refugees would be included among one of the greatest crises of humanity since environmental problems generate political, economic and social problems, giving rise to conflicts and violence, which in turn demand immediate responses from the international community to maintain security (RAMOS, 2011, p. 43).

[9] The public civil suit aimed at prohibiting the import, sales, commercialization or availability of milk and its derivatives from the European Common Market, which contained signs of radioactive contamination after the nuclear accident. In a 1st instance sentence, delivered by the 26th Federal Court in São Paulo, the prohibition was determined, considering that the rights to life, physical integrity and health have constitutional protection, therefore, they must be protected. Furthermore, there is no certainty as to the effects of consuming milk and its derivatives contaminated by Cesium 134 and Cesium 137. Therefore, the product could not be offered to the population even if free of charge and even less without the information about what it is being consumed and the subjected risks. This decision was maintained in TRF 3 in judgment of the Civil Appeal 0937212-35.1986.4.03.6100/SP (LEX MAGISTER).

[10] The term "environmental refugee" became popular after a report of the same title carried out by Essam El-Hinnawi within the scope of the United Nations Environment Program in 1985. Since then, its use has been extended, at a doctrinal level, to make reference to those people forced to move from their place of origin, temporarily or permanently, due to environmental degradation, either due to natural causes or human action that endangers their existence or seriously affects their quality of life. T.N. *Freely translated from the Spanish version*. Original text: "el término "refugiado medioambiental" se popularizó tras un informe del mismo título realizado por Essam El-Hinnawi en el ámbito del Programa de Naciones Unidas para el Medio Ambiente en 1985. Desde entonces, se ha extendido su utilización, a nivel doctrinal, para hacer referencia a aquellas personas obligadas a desplazarse de su lugar de origen, de forma temporal o permanente, por a degradación medioambiental, bien sea por causas naturales o por la acción del hombre, que ponga en peligro su existencia o afecte gravemente a su calidad de vida" (GONZÁLEZ, 2013, p. 19-20).

> environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life. (UNHCR TEAM, 2013).

However, based on the 1951 Refugee Convention – UNHCR, which deals with refuge, the inadequacy of the term "environmental refugees" is notorious, as this document is not intended to protect environmental displacement, being limited to forced population displacements as a result of World War II, referring to persecuted people who are forced to leave their residence for reasons of race, religion, nationality, social groups or political opinion[11].

In March 1996, analyzing Article 1 of the 1951 Convention, the European Union pointed out the subjective and objective elements based on political and social issues (GONZÁLEZ, 2013, p.21), not including, however, migrants due to environmental disasters within the scope of the current regulatory framework. Likewise, the 1967 New York Protocol relating to the Status of Refugees, which expanded temporal and geographical aspects on refuge, was able to include the legal discipline for this new group of forced migrants (SILVA; JÚNIOR; ARAÚJO, 2017, p. 24).

Thus, considering that the present legislation is unable to include victims who move due to environmental disasters, debates on the meaning and scope of the expression "environmental refugees" evolve. Ramos (2011, p. 20) states that these debates are far from reaching consensus or uniformity. Furthermore, this expression does not include both environmental migrants leaving their countries of origin and internally displaced persons.

Therefore, in this text it was decided to use the expression "environmental displacement" (LUCHINO; RIBEIRO, 2016, p.895-896) in the broad sense in order to deal with individuals who are forced to move to avoid damage caused by an environmental disaster. The term acquires as a distinction criterion the external mobility and the internal mobility, as it is understood that the essential aspects of the term "refugee" mentioned above are restrictive, as they are not even adapted to guarantee the protection of refugees in general.

[11] "(...) Article 1, C of the 1951 Convention stresses that the persecution and/or the well-founded fear of persecution is essential to the definition of the legal institute of refuge. It also indicates that its generating reasons are linked, exclusively (*numerus clausus*), to the reasons of race, religion, nationality, social group or political opinion of the individuals, therefore, climate changes and/or natural disasters are absent among these restricted hypotheses" (BIAZATTI; PEREIRA, 2018, p. 170). T.N. *Freely translated from the Portuguese version.*

Thus, due to the definition given by the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, the existence of a normative gap related to environmental displacement is irrefutable, especially for those people who cross a political boundary of a country (LUCHINO; RIBEIRO, 2016, p. 893). Therefore, it is necessary to examine whether it is sufficient to expand or adapt the present legislation on refuge to ensure effective international protection for the environmental displacement.

3.1 The challenge – and the need – of a legal framework

The lack of legal support (SILVA; JÚNIOR; ARAÚJO, 2017, p. 23) and the misconception of the terminology "environmental refugees" are aspects that pervade the displacement due to environmental disasters, which ends up hampering the legal recognition of this new class of migrants in an international scope (CONTIPELLI; SAAD, 2018).

Moreover, on climate migration, Contipelli (2018) considers that the terminology used to categorize environmental migration does not adequately reflect the complexity of the displacement situation. In fact, the multiplicity of terms hinders the scientific understanding of individuals that fall under the category of environmental migrants, also preventing an international recognition that guarantees effective protection. In addition, the author recognizes that classifying them as refugees can lead to divergences with mechanisms, criteria and concepts already established in the international legislation attributed by the 1951 Convention. It may even demand efforts that go beyond humanitarian assistance with the restructuring of the global governance system (RAMOS 2011, p. 68-69).

Therefore, given that environmental exodus will reach around 200 million people in 2050 (RAMOS, 2011, p. 22.), displacement is a much more complex situation than a simple matter of the definition of the term itself – refugees or displacement. For instance, it generates new legal situations that need to be regulated by the international community. Namely, it is necessary to develop a specific regulatory framework at an international and national level (CONTIPELLI, 2018).

Regarding that, depending on the dimension that the environmental damage takes, the national State is responsible for managing it and for protecting its inhabitants.

Thus, an internal environmental displacement. On the other hand, environmental impacts can go beyond geographical limits, making groups and individuals cross the territorial limits of their State in search of shelter, in order to guarantee subsistence and survival. In this case, there will be an external environmental displacement, for which there is no international protection or regulation (LUCHINO; RIBEIRO, 2016, p. 900).

As a result, issues are raised on the enforcement of alternative sources based on adaptations of international mechanisms, to guarantee a proper protection for the environmental displacement. On this matter, Silva, Duarte Júnior and Araújo (2017, p.25) recall that, although there is a legislative inadequacy on the situation of the environmental displacement at an international level, there are documents such as the 1984 Cartagena Declaration on Refugees which point out the need to soften the concept of refugees in order to include victims of other types of population displacement for economic reasons, natural disasters, human rights violations, among other.

Conversely, for the authors, such normative texts would not be able to "automatically guarantee full protection to the environmental displacement, as their recognition still depends on each State"[12] (SILVA; JÚNIOR; ARAÚJO, 2017, p. 25).

Therefore, considering that environmental migration is increasingly common, providing a scenario of risks and threats to human life, it is essential to develop a specific regulation to be defined by international law which recognizes individuals and groups in situation of risk due to causes that are not related to conflicts or persecution, that is, aiming to regulate the situation of the victims of environmental disasters, the creation of new agencies and institutional protection mechanisms.

To fill the gap in the international law regarding the situation of environmental displacement in the States, Vieira and Cavedon discuss the Draft Convention on the International Status of Environmentally-Displaced Persons, from Limoges, France, which

> aims to contribute to guarantee the rights of the environmental displaced and to organize their reception and eventual return to their places of origin. (...) Recognizes as common rights for all environmental displaced: 1) the rights to information and participation; 2) the right to assistance and help; 3) the right to water and to subsistence food aid; 4) the right to housing; 5) the right to health care; 6) right to juridical personality; 7) the right to respect for the family; 8) the right to education and training; 9) right to subsistence through work (VIERA; CAVEDON, 2013, p. 94)[13]

[12] T.N. *Freely translated from the Portuguese version.*
[13] T.N. *Freely translated from the Portuguese version.*

Furthermore, in addition to providing specific rights for temporary and permanent displaced persons, this Draft Convention foresees "an administrative and organized structure for the implementation of the Convention, especially for the creation of a World Agency for Environmental Displacement [14]" (VIERA; CAVEDON, 2013, p. 94).

Therefore, the Draft Convention on the International Status of Environmentally-Displaced Persons serves as a parameter for the development of a specific legislation that regulates the situation of the environmental displacement, capable of defining the scope of protection, the creation of agencies and clarifying the rights and duties among the victims of environmental displacement and their host countries and the duty to provide assistance.

4. Brief approaches on environmental displacement and human rights

A storm can cause homelessness and interrupt the daily dynamics of thousands of people. Similarly, the inadequate accumulation and disposal of solid waste without treatment can become a public health issue, in addition to compromising the integrity of the environment due to its high pollution potential (MILARÉ, 2014, p. 1180). Such examples indicate the existence of a convergence point – and interdependence – of environmental protection and human rights. Accordingly, Vieira and Cavedon (2013, p. 82), show that "The exposure to the risks and effects of ecological disasters can be understood as a violation of human rights[15]", they even consider that the environmental displaced are in a special situation of vulnerability since the episodes of environmental disasters are not equally distributed, affecting individuals, groups and communities differently.

Thus, elements such as poverty can determine the distribution of environmental costs, as it interferes with the ability of individuals to prevent and protect themselves from harm, even comprising human mobility (VIERA; CAVEDON, 2013, p. 83- 84) – after all, not everyone has the purchasing power to evade immediately in order to seek protection in the face of an environmental disaster.

[14] T.N. *Freely translated from the Portuguese version*.
[15] T.N. *Freely translated from the Portuguese version*.

Undoubtedly, vulnerability involves not only economic aspects, but also technical, political and social aspects, as well as the ability of a group of individuals or community to adapt, absorb, recover and respond to an environmental disaster (RAMOS, 2011, p. 56).

Therefore, environmental protection and human rights work together to provide better conditions for life, since the adoption of a legal-constitutional framework that considers the protection of both social and environmental rights in the same legal-political project upholds human development (FENSTERSEIFER, 2011, p. 327). Namely, economic, cultural and social development takes place only in a healthy environment (FRANZOLIN; ROQUE, 2017, p. 79).

Nevertheless, each area followed its own legal regulation. Thus, the international human rights legislation[16], initially with the 1945 Charter of the United Nations proposal, which intended to ensure the protection of human dignity – proposing international cooperation, enabled the development of international rules and the creation of institutions that would guarantee a minimum list of rights. The 1945 Charter also covered the protection of an individual's well-being, while environmental legislation focused on the protection of the collective well-being (BOSSELMANN, 2010, p. 73-74).

Thus, after the Second World War, with the recognition of fundamental freedoms through the 1948 Universal Declaration of Human Rights, the international regime for the protection of human rights emerged. Since then, the understanding that "No State can exempt itself from the fundamental obligation to protect an individual's life and dignity [17]" has been materialized (BOSSELMANN, 2010, p. 76).

In another perspective and concomitantly, International Environmental Law related to various themes was brought to light – themes such as damages resulting from environmental disasters, for instance, oil spill at sea and nuclear accidents, which

[16] The establishment of humanitarian law, the League of Nations and the International Labour Organization are the first milestones in the internationalization process of human rights, as they determined the scope of international obligations to be guaranteed or implemented collectively, transcending the exclusive interests of the contracting States (PIOVESAN, 2012, p. 180-182). However, the consolidation of international human rights law emerged in the mid-twentieth century in the post-war period, when human beings became superfluous and disposable, at a time when a logic of destruction prevailed and the worth of the human being was abolished. It is then necessary to reconstruct human rights as an ethical paradigm capable of restoring the reasonable logic (Ibidem, p. 184). "The need for more effective international action for the protection of human rights spurred the process of internationalizing these rights, culminating in the creation of an international systematic norm for human rights protection, enabling to hold a State accountable in an international scope when national institutions appear to fail or neglect the task of protecting human rights "(Ibidem, p. 185) T.N. *Freely translated from the Portuguese version.*

[17] T.N. *Freely translated from the Portuguese version.*

followed the Second World War (LEITE, 2015, p. 228). Since then, the regulations of international law have contributed to the protection of the environment, especially with the creation of guidelines and the renewal of environmental law[18].

However, it was only from 1972, with the United Nations Stockholm Conference on the Human Environment, that there was a greater international awareness and initiatives on the environment itself, as before the regulations had much of an economic approach (CRUZ, 2006, p. 10). With the Stockholm Conference, the international community outlined a relationship between human rights and the environment (VIERA; CAVEDON, 2013, p.86).

Subsequently, the 1992 Rio Declaration on Environment and Development made an important contribution in attributing the environmental dimension to human rights, since its Principle 1 determined that "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature".

Thus, the understanding that "The environment must not deteriorate to such an extent that the right to life, the right to health and well-being, the right to family and private life, the right to property and other fundamental rights are seriously compromised[19]" (BOSSELMANN, 2010, p. 77). Therefore, the environmental protection has become a condition for the enjoyment of human rights.

As shown by Vieira and Cavedon (2013, p. 89), "the international systems for the protection of human rights can be set up as a space for access to justice by victims of ecological catastrophes and to repair the human rights violations suffered by them[20]". This role gains more relevance when facing a normative gap, such as with the legal regulation of the environmental displacement.

Notably, the innovative role of the environmental jurisprudence of the European Court of Human Rights – ECHR – stands out. Over time, the ECHR has been collaborating with the development of a concept of the right to the environment as a human right, with a dynamic and evolutionary interpretation, when responding to violations of rights of the European Convention on Human Rights due to adverse environmental causes. It is

[18] According to Morato Leite (2015, p. 228) "International Environmental Law operationalized the need to preserve the environment, editing international multilateral conventions and declarations that served as a basis for the development of internal environmental legislation in several countries". T.N. *Freely translated from the Portuguese version*.

[19] T.N. *Freely translated from the Portuguese version.*

[20] T.N. *Freely translated from the Portuguese version*.

the so-called right to environmental quality of life[21], considered as a reinforcement and way of realizing other human rights (STIVAL; VARELLA, 2017, p. 443).

Thus, that Convention – which was not initially designed to provide specific environmental protection – is being indirectly used as a foundation for the defense of the environment, since the related decisions of the Court highlight the duty to prohibit environmental interference when the damage affects the health and quality of human life (STIVAL; VARELLA, 2017, p. 445).

The trials carried out by the ECHR in the Guerra and Others v. Italy and Oneryildiz v. Turkey cases are examples of the environmental protection provided by the Convention.

In the first case, the plaintiffs lived near a fertilizer factory, which had its ammonia gas purification tower exploded, contaminating the air with chemical pollutants and leading several people to hospitalization. The Court then considered that the State did not fulfill its obligation to guarantee the victims' right to respect for a private and family life, since environmental pollution affected the well-being of individuals and prevented them from enjoying their homes (STIVAL; VARELLA, 2017, p. 451).

In the second case, due to an explosion of methane produced by the decomposition of waste near the municipal garbage dump in Ümraniye, the Court recognized the responsibility of the Government of Turkey. The decision was based on the violation of the right to the protection of life – and to good quality of life – and the violation of the right to property (STIVAL; VARELLA, 2017, p. 4457).

Accordingly, such examples represent a connection between the environment and the protection of human life, simply by identifying the dignity of the human person in one of its aspects, as will be shown next.

[21] This is a revolutionary jurisprudence since the European Convention does not expressly grant environmental protection itself. Thus, contributing to the creation of a subjective right to the environment or the right to environmental quality of life as an international human rights law. Therefore, it represents a connection between the right to private and family life, the right to health, the right to well-being and the prohibition of inhuman and degrading treatments, which are expressly granted in the ECHR (STIVAL; VARELLA, 2017, p 443 -446).

4.1 Human dignity in its ecological dimension

Piovesan (2012, p. 175-176) argues that the foundation and the nature of human rights are based on historicity, whereas it is a human invention in a continuous process of creation and reconstruction, being the result of a space for struggle and social action, in the search for human dignity.

In this regard, "International Human Rights Law stands in the sense of safeguarding the value of the dignity of the human person, conceived as the foundation of human rights"[22] (PIOVESAN, 2012, p. 176-177). Nevertheless, what is the dignity of the human person[23]?

Although previously explored in an ethical context by Kant[24], the expression "dignity of the human person" is legally considered a recent historical fact, which begins to be examined from 1945 with its introduction in the Preamble to the United Nations Charter – "dignity and worth of the human person". Since then, the expression has been understood as an undetermined legal concept in the legal field, used mainly in constitutional law as a legal principle, having normative and axiological features, as human dignity is the value of the human person (AZEVEDO, 2002, p. 91).

As shown by André Carvalho Ramos (2015, p. 74), "The origin of the word 'dignity' comes from dignus that features what has honor or importance. With St.

22 T.N. *Freely translated from the Portuguese version*.

23 According to Antonio Junqueira de Azevedo (2002, p. 91-92), there are two conceptions of the human person that support the idea of one's dignity: 1. the insular conception that considers human dignity as an individual autonomy or self-determination. In this conception, man and nature do not meet, being subject and object respectively. Here lies the insufficiency of the insular conception: the ignorance of the value of nature. Another insufficiency is its narrow, subjectivist feature, since it reduces the *plenitudo hominis*, removing from the human being the recognition of its fellow, with the ability to dialogue and its spiritual vocation. Thus, this conception is anthropocentric and subjectively narrow, as the human person's dignity becomes "quality of life" to be subjectively decided (Ibidem, p 95); 2. the monist conception is founded on man being integrated with nature, being a special participant in the vital flow. This conception is based on the ability to leave oneself and recognize an equal in another being, using language, dialogue and in one's vocation for love, as a spiritual surrender to others. Here, man is a part of nature and it is not the only intelligent being and enabled to need and want, nor the only one endowed with self-awareness (Ibide, p. 91-92).

24 André de Carvalho explains that "para Kant, tudo tem um *preço* ou uma *dignidade*: aquilo que tem um preço é *substituível* e tem equivalente, já aquilo que *não admite equivalente*, possui uma dignidade. Assim, as coisas possuem preço; os indivíduos possuem *dignidade*. Nessa linha, a dignidade da pessoa humana consiste que cada indivíduo é um fim em si mesmo, com autonomia para se comportar de acordo com seu arbítrio, nunca um meio ou instrumento para a consecução de resultados, não possuindo *preço*"(RAMOS, 2015, p 74). For Kant, everything has a price or a dignity: what has a price is replaceable and has an equivalent, whereas what does not admit an equivalent has a dignity. Thus, things have a price; individuals have dignity. Similarly, the dignity of the human person consists in that each individual is an end in itself, with autonomy to behave according to one's discretion, never a means or instrument for achieving results, having no price. T.N. *Freely translated from the Portuguese version*.

Thomas Aquinas, human dignity is recognized as an inherent quality in all human beings, which separates us from other beings and things[25]". Furthermore, based on the teachings of Ingo Wolfgang Sarlet, he concludes that human dignity "Human dignity consists of the intrinsic and distinctive quality of every human being, which protects oneself from all degrading treatment and horrendous discrimination, still ensuring minimum material conditions of survival[26]" (RAMOS, 2015, p. 74).

Therefore, the dignity of the human person is an inherent attribute of all human beings, a value that is identified as a fundamental legal principle (AZEVEDO, 2002, p. 96) and its concept is in a continuous process of development and creation (AZEVEDO, 2002, p. 75). However, it is necessary to examine the elements that qualify it, that is, the negative element that prohibits the imposition of offensive treatment, degrading or hateful discrimination on human beings and the positive element that consists in guarding the existence of minimum material conditions for survival (RAMOS, 2015, p. 75).

Furthermore, when characterizing human dignity, Azevedo (2002, p. 100) concludes that:

> In fact, the human person is characterized by participating in the magnificent vital flow of nature – it is its widest class. The human person distinguishes from all other living beings by the ability to recognize others, to dialogue and mainly for the capacity to love and the open potential to the absolute – it is the specific difference: the conception of the human person founded on life and love; c) with this anthropological basis, the dignity of the human person as a legal principle presupposes the categorical imperative of the intangibility of human life and leads to the following precepts, in hierarchical sequence: 1) respect for the physical and mental integrity of people; 2) attention to the minimum material provisions for the exercise of life; and 3) respect for the minimum conditions of freedom and equal social coexistence.[27]

Therefore, human dignity is based on the recognition of the intangibility of life. Furthermore, its precepts are purely the combination of the respect for life and the human being's capacity to dialogue and to recognize oneself in the other, combined with natural, material and cultural conditions.

Human dignity must be identified based on these precepts, allowing an analysis in its various aspects. For instance, when examining the Socioenvironmental State, Sarlet and Fensterseifer (2010, p.12), identify an ecological dimension to add to the

[25] T.N. *Freely translated from the Portuguese version*.
[26] T.N. *Freely translated from the Portuguese version*.
[27] T.N. *Freely translated from the Portuguese version*.

normative content of the principle of the dignity of the human person, as both degradation and environmental risks significantly compromise individual and collective wellbeing, as happens with the displacement, since many victims

> Have their fundamental rights violated such as the right to life, security, freedom, equality and rights related to an adequate standard of living, at a minimum, such as the right to food, housing, clothing, health, education, work, religion, culture, personal documentation, their properties and assets and to the cultural being of people. In other words, they are people who lose their dignity coexistence [28] (LUCHINO; RIBEIRO, 2016, p. 892)

Consequently, the condition of the environmental displacement must be recognized as a pure affront to the dignity of the human person in order to at least enable a normative text that brings protection to victims of environmental disasters and, in its absence, that the protection be built up based on the legislation that aims to protect the dignity of the human being.

5. Responsibility and duty of States to the environmental displacement

The greatest penalty imposed on a State is the degradation of its environment and, consequently, the impossibility to access its natural resources. However, it is undeniable that facing an environmental disaster, States have obligations bound from the international commitments that they have agreed on, related to the environmental protection – and its repercussions – and to the protection of human rights, since these matters are intrinsically interconnected, as previously examined (SILVA; JÚNIOR; ARAÚJO, 2017, p. 35).

Therefore, despite the lack of a legal framework for the protection, cooperation and assistance and that also regulates the duty and accountability of States in the face of human displacement due to environmental causes, an immediate response is crucial – even if not permanent – since it is necessary to create a normative text specific to the environmental displacement. In short, that response would be to understand environmental displacement as a violation of human rights, using existing international documents as a basis, such as the ECHR has done to hold States accountable for environmental damage that affects its population.

[28] T.N. *Freely translated from the Portuguese version*.

Thus, in the process of internationalizing human rights, the United Nations was created as an international organization with The 1945 Charter of the United Nations, aiming an international cooperation. Therefore, as the State submits itself to this document and to other International Laws that regulate relations between States, international liability derives from international cooperation. On this aspect Piovesan (2012, p. 192) states that:

> The creation of the United Nations, with its specialized agencies, marks the emerging of a new international order, which establishes a new model of conduct in international relations, with concerns that include the maintenance of international peace and security, the development of friendly relations between States, the adoption of international cooperation in the economic, social and cultural fields, the adoption of an international standard for health, the protection of the environment, the creation of a new international economic order and the international protection of human rights[29]

These objectives have guided relations between States at an international level since 1945. Consequently, although yet unwritten, one should recognize the duty and obligation to provide and request humanitarian assistance and cooperation between States in the face of possible situations of disasters in the pursuit of the affirmation of human rights, as they defy several fundamental rights such as the right to life, housing and the right to be free, among other rights (SILVA; JÚNIOR; ARAÚJO, 2017, p. 39), that is, they strike at the expense of the human dignity.

Therefore, as the concept of human dignity expresses the idea of protecting an individual beyond the borders of a country, States have the responsibility to protect their nationals and their assets from the impacts of environmental disasters, as well as to cooperate mutually at an international level to guarantee the implementation of fundamental rights (SILVA; JÚNIOR; ARAÚJO, 2017, p. 41).

The idea of mutual assistance between States derives from the reading of item 5 of article 2, Chapter I, of the Charter of the United Nations: "All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, [...]" (CHARTER OF THE UNITED NATIONS, 1945). Therefore, all Member States have duties and obligations to each other, including assistance, insofar as a State is affected by an environmental disaster and cannot manage it by itself.

In fact, this determination is also supported by environmental legislation, for example, the Principle 21 of The Stockholm Conference on the Human Environment

[29] T.N. *Freely translated from the Portuguese version*.

(STOCKHOLM DECLARATION ON THE HUMAN ENVIRONMENT, 1972) expresses the duty of States to provide mutual assistance in the face of environmental disasters. That is, States have the right to exploit their own resources, ensuring that the related activities do not harm the environment beyond their sovereignty. Therefore, in a given territory, in case of a possible damage to third parties caused by the exploitation of natural resources inappropriately, the State has the duty to repair the damage and also to compensate victims (SILVA; JÚNIOR; ARAÚJO, 2017, p. 35-36).

Many times, the economic activity of a given State ends up causing environmental damage in other States as it happens with the environmental risks caused by climate change due to global warming. In other words, because of its production processes, industrialized countries are seen as the most responsible for the emissions of greenhouse gases, while developing countries are subject to the same environmental risks caused by climate change regardless of having contributed – or not – to the emission of these gases (FENSTERSEIFER, 2011, p.326).

Even if this understanding is not applied, another solution that could base the responsibility of States in the face of environmental displacement would be the application of customary international law[30] in the absence of a specific international rule that regulates that situation, aiming to provide protection and assistance to victims.

In other words, this solution follows the Nuremberg Trials, which, in the face of atrocities to human life during the holocaust, contributed to the consolidation of the logic of limiting national sovereignty and the recognition that individuals have their rights protected by international law. The Trials prosecuted and criminally condemned individuals who contributed to Nazism based on violations of international custom, since such atrocities were not considered crimes at the time they were committed due to the lack of legislation of transnational value (PIOVESAN, 2012, p. 190).

Therefore, until the development of an international legal basis that regulates human displacement due to environmental reasons, one of the solutions that appear to be viable is the application of international custom to promote the protection of the environmental displacement.

[30] "International custom is effective *erga omnes*, applying to all States, unlike international treaties, which only apply to States that have ratified them" (PIOVESAN, 2012, p. 189). T.N. *Freely translated from the Portuguese version*.

5.1. Brief notes on internal environmental displacement

The 2009 Kampala Convention is the legal framework for the regional and local environmental displacements. The Convention is the first international treaty focused on the protection and assistance of persons internally displaced because of natural disasters (CONTIPELLI, 2018).

The preamble of the Convention expresses the consciousness of African government authorities on the gravity of the situation of internally displaced persons as a source of instability and tension, suffering and human vulnerability of the environmentally displaced (2009 KAMPALA CONVENTION).

Thus, considering that the rights of the internally displaced are safeguarded and find protection in normative instruments of human rights and international humanitarian law, African governments have committed to develop an appropriate legal framework for the protection and assistance to victims of environmental disasters (2009 KAMPALA CONVENTION). In short, this normative instrument established a legal framework based on solidarity, cooperation and support among the Member States of the African Union (CONTIPELLI, 2018).

In like manner, internal environmental displacement is also a reality in other countries such as in Brazil, that has been facing displacement situations due to environmental disasters, despite constitutionally guaranteeing the protection of the environment even as a fundamental right to stimulate human development (FRANZOLIN; ROQUE, 2017, p. 78).

In fact, the refugee situation in Brazil has recently gained sub-constitutional support with the Law no. 13,445/2017 (Migration Law), which came into force with changes aimed at improving the situation of people migrating from other countries to Brazil because of natural disasters, human rights violations etc.

If on the one hand, that law had the merit of scoping the recognition of the vulnerability of environmental immigrants by expressly laying out the concession of a temporary visa in the event of humanitarian reception for stateless persons or nationals of any country in a situation of environmental disaster[31], on the other hand, it deserves

[31] According to article 14, para. 3 of Law no. 13,445/2017 "The temporary visa for humanitarian reception may be granted to the stateless person or to the national of any country in a situation of serious or imminent institutional instability, armed conflict, major calamity, environmental disaster or serious violation

at least two assessments. First, it makes no distinction between immigrants in situations of serious or imminent institutional instability, armed conflict, environmental disaster etc. Therefore, it could refer to the assumption of categorizing the refugee in a general manner. As mentioned along this article, this idea seems inadequate given the peculiarity of the expression "refugees".

Secondly, it had no power or intention to provide protection for the Brazilian nationals themselves, who were victims of displacement due to environmental causes. This fact is unacceptable as there are cases of internal displacement as already mentioned, such as the Mariana disaster in Minas Gerais, Brazil. The disaster happened in November 2015, following the rupture of the Fundão Dam, a property of Samarco Mineração SA mining company. The magnitude of the disaster led to environmental, economic and social impacts.

Due to its outlines, Kokke (2018, p. 781-782) evaluates that the Mariana dam disaster, was until that moment one of the worst disasters in the world, with the launch of 34 million cubic meters of tailings in water bodies and into the environment as a whole. The author continues by stating that it dumped several pollutants that initially covered 55 km (approx. 34 miles) of watercourse, and later into the Doce River, advanced on more than 663 km (approx. 412 miles) of watercourse. Furthermore, based on data from the Brazilian Institute of the Environment and Renewable Natural Resources, the author highlights the loss of 19 human lives, the destruction of Bento Rodrigues community, the isolation and water shortage of inhabited areas, the displacement of the affected population, weaknesses over socioeconomic activities, psychosocial stress and disorders of the population and localized displacement (KOKKE, 2018, p. 782).

Not only the environmental disaster caused by Samarco forced the compulsory displacement of people, but also led to "living in an urban environment that is distinct from the place of residence and, still, with no perspective of when they will have the right to manage their own lives, inducing hopelessness, affecting the health of most of those impacted"[32] (LIMA, 2018, p. 15).

After the episode, the communities not only present themselves as displaced, but also, trying to compensate for the damages, the many entities and companies

of human rights or of international humanitarian law, or in other cases according to regulation". T.N. *Freely translated from the Portuguese version*.

[32] T.N. *Freely translated from the Portuguese version*.

involved, are unable to restore the situation of those communities – now displaced – to the existential situation in which they were adapted. That is, the environmental disaster resulting from the rupture of the dam, affected riverside communities, peasants, indigenous groups and quilombola communities[33], affecting their territory, "as a source of social, economic and cultural reproduction"[34] (Andréa Zhouri et al, apud LIMA , idem, p. 24).

In spite of the difficulty of reestablishing full reparation, there are entities involved with the goal of seeking compensation agreements for families affected in Mariana, notably being a different process from other situations in regions equally affected by the same accident (FUNDAÇÃO RENOVA, 2019). However, it should be noted that the analysis of indemnities is not the purpose of this article.

Not being enough, another disaster happened on January 25, 2019: the rupture of a dam under the responsibility of Vale mining company, in the city of Brumadinho in Minas Gerais (G1, 2019). With the rupture of the dam, 259 people died and several are missing – so far, 11 people (G1 Minas, 2020). The numbers of this tragedy will be object of a new further study.

Therefore, the disasters that occurred in Brazil revealed to the world the vulnerability of the Brazilian legal framework related to the protection of individuals who are in a situation of internal environmental displacement and the management of environmental disasters. They also revealed that the development of a legal framework that regulates an environmental disaster risk management and their consequences, for instance, environmental human displacement, is something imperative for Brazil.

6 Concluding remarks

The purpose of this article was to present some reflections on human displacement due to environmental causes and how this situation can be identified as a violation of the dignity of the human person. Consequently, it is a violation of human rights, since individuals are forced to move from their places of origin because they are no longer able to fulfill their basic needs due to an environmental disaster.

[33] "In Brazil, the expression 'Quilombola communities' is close to the concept of Maroons, that united free Africans during slavery by English Colony of Americas and Caribbean" (NUNES; MOURA, 2016, p.203)
[34] T.N. *Freely translated from the Portuguese version*.

However, it came to the attention that the lack of a specific legislation makes it difficult to protect the victims who are forced to move in search of safer places, because a given location is no longer sufficient to guarantee subsistence with dignity.

Thus, it is essential to create a normative text aimed at the situation of the environmental displacement through existing documents that can be used as models, such as the Draft Convention on the International Status of Environmentally-Displaced Persons drawn up in Limoges, France.

Finally, considering the urgency of the depicted facts, an immediate response is necessary, namely to consider the situation of the environmental displacement as a violation of human rights in order to hold States accountable, as the ECHR has done through a dynamic and evolving interpretation of the European Convention on Human Rights, contributing to the protection and development of the concept of the right to the environment as a human right, in a way that the right to the environment operates in the realization of other human rights.

Tradução

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