



Rental assistance for victims of domestic violence: a benefit for extreme vulnerable women in the municipality of São Paulo/SP, Brazil

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Abstract:

The study deals with the granting of a monthly rental assistance to women victims of domestic violence in the municipality of São Paulo/SP, Brazil. It proposes reflections on the agent condition, protective security, and substantive freedom in Amartya Sen's theory. It adopts the deductive approach to conduct the research and analyzes data from the Municipal Secretariat for Human Rights and Citizenship about this assistance benefit in the period of April to June 2021, to point out the bottlenecks and the contributions of this public policy, even more important in pandemic. It addresses the problem of knowing whether the rental assistance gives the conditions for the victim of violence to enjoy substantive freedom, protective security, and the agent condition, as proposed by Sen. It concludes that rent-aid is a relevant instrument to promote substantive freedom and protective security, as temporary monthly transfer of income to afford housing is integrated with programs that focus on professional qualification, income generation, and insertion of women in the labor market which brings about conditions for financial autonomy of the victim of domestic violence and enhances the expansion of the capabilities set and female empowerment.

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Keywords:

Rental Assistance, domestic violence, municipality of São Paulo/SP, Amartya Sen, COVID-19.

Resumen:

El estudio trata sobre la asignación de una ayuda mensual al alquiler a mujeres víctimas de violencia doméstica en el municipio de Sao Paulo/SP, Brasil. Propone una reflexión sobre la condición de agente, la seguridad protectora y la libertad sustantiva de la teoría de Amartya Sen. Adopta el enfoque deductivo para desarrollar la investigación, y analiza los datos del Secretariado Municipal para Derechos Humanos y Ciudadanía relativos a dicha ayuda del período de abril a junio de 2021, para señalar los atascos y las aportaciones de esa política pública, de especial importancia durante la pandemia. Aborda el problema de saber si la ayuda al alquiler proporciona las condiciones para que la víctima de violencia goce de libertad sustancial, seguridad protectora y la condición de agencia, tal como lo propone Sen. Se concluye que la ayuda al alquiler es un instrumento importante para promover la libertad sustancial y la seguridad protectora, ya que la transferencia mensual temporal de ingresos para posibilitar la vivienda está integrada con programas que se centran en la cualificación profesional, la generación de ingresos y la inserción de las mujeres en el mercado de trabajo, lo cual crea condiciones para la autonomía financiera de la víctima de violencia doméstica y realza la expansión de las capacidades y del empoderamiento de la mujer.

Palabras clave:

Ayuda al alquiler, violencia doméstica, municipio de Sao Paulo/SP, Amartya Sen, COVID-19.

1. INTRODUCTION

Domestic violence against women is a serious problem that requires public policies to create conditions for the victim to move away from her aggressor. In Brazil, the municipality of São Paulo/SP responded to this problem with the Municipal Law n°. 17,320 of 03/18/2020, regulated by the Decree n°. 60,111 of 03/08/2021, and the Ordinance SMDHC n°. 28 of 04/07/2021, which ensured temporary payment of rental assistance in the monthly amount of R\$ 400.00 (approximately US\$ 80.00) for women victims of domestic violence for a period of up to 12 months.

The Law n°. 17,320 was modified by the Law n°. 17,579, of 07/26/2021, that eliminated the incident report or judicial protective measure as requirements for eligibility to the benefit and created a central of vacancies for emergency reception of women in situation of violence. This adjustment was important, although other bottlenecks in this social protection policy persist: (i) insufficient budgetary allocation; and (ii) detachment of the program from urban housing policies. And the relevance of solving these problems is even greater in the scenario of the pandemic caused by the new coronavirus, in which violence against women has been intensified by the prolonged permanence of victim and aggressor under the same roof, according to data from the United Nations Organization for Gender Equality and Women's Empowerment (UN Women 2020).

The paper considers the theoretical contributions of Amartya Sen related to substantive freedom, protective security, and women's agent condition, based on the works *Inequality Reexamined* and *Development as Freedom*. According to Sen's perspective, there is a close relationship between female empowerment and agency, as well as between the concrete exercise of freedom (substantive freedom) and development, which place women as protagonists of the development process. The research problem is to know whether the rental assistance gives the conditions for the victim of violence to enjoy substantive freedom, protective security, and the agent condition, as proposed by Sen.

Under such ideas, the aim of this study is to examine in which way the rental assistance extends the conditions for the victim to overcome domestic violence. The methodology is based on deductive approach and on data from the Secretaria Municipal de Direitos Humanos e Cidadania (SMDHC) - Secretariat of Human Rights and Citizenship of the municipality of São Paulo/SP on the granting of this benefit in the initial period of implementation - April to June 2021 - to estimate the number of women attended by this rent-aid in that municipality and thus analyze the scope of this public policy in terms of social protection. The choice of the municipality of São Paulo/SP is justified by its socioeconomic relevance in the Brazilian reality, so that its public policies can serve as paradigms for other sub-national state entities.

The paper is structured in four topics. The first one presents the methodological procedures, the approaching used to conduct the research and the sources of data analyzed. The next topic points out the legal framework of the public policy of granting rental assistance to women victims of domestic violence. The following one deals with the preliminary results collected from April to June/2021 and the bottlenecks of the public policy related to (i) access and eligibility, (ii) budget allocation, (iii) detachment of the program from urban housing policies. The last one discusses why the ideas of substantive freedom, agency and protective security matter to the analysis of the rental assistance.

2. METHODOLOGICAL PROCEDURES

Data were collected from the Municipal Secretariat for Human Rights and Citizenship (SMDHC) of the municipality of São Paulo/SP, on the granting of rental assistance to women victims of domestic violence in 2021, to estimate the number of benefits granted in that municipality and, in this universe, to choose the period since the implementation of the aid in April until June, to thus examine the extent of this public policy in terms of social protection.

Considering that the statistical data required are not accessible on the SMDHC's website or on the Transparency Portal of the Municipality of São Paulo/SP, the electronic tool for access to information called Electronic System of Citizen Information (e-SIC) was used to collect the data. The first request for access was filed on 06/29/2021 under number 58967 and answered on 07/19/2021. The second request was filed on 08/14/2021 under number 59991 and answered on 09/01/2021.

The justification for the second request with the same purpose of the previous one, is because answers initially received were inconsistent. It was not clear if in fact they referred to the rent-aid or to the lodging-aid (a pecuniary assistance for temporary housing which

may be for lodging or complementing the rent value paid for women in situation of domestic violence, with identical value - R\$ 400.00/month -, only during the situation of emergency and the state of public calamity resulting from the new coronavirus).

According to the Federal Law n^o. 12,527/2012 and the Municipal Decree n^o. 53,623/2012, and in response to the second request for access to information, the SMDHC's Women's Policies Coordination Office provided answers related to the number of registered beneficiaries, the number of benefits granted, the program to which the aid is linked, and the amount budgeted for its funding.

The next methodology step focused on researching Sen's works as *Inequality Reexamined* and *Development as Freedom*, to analyze how the rental assistance dialogues with the theory of freedom (instrumental freedom and substantive freedom), the protective security and the agent condition, and whether it influences on the emancipation of the victim in relation to the aggressor, in terms of housing, work and income.

3. LEGAL FRAMEWORK OF THE PUBLIC POLICY OF GRANTING RENTAL ASSISTANCE TO WOMEN VICTIMS OF DOMESTIC VIOLENCE

The rental assistance reaches two fundamental social rights ensured by the current Brazilian legal system: (i) the right to housing [art. 6 of the Federal Constitution (FC),¹ art. 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)² and art. XXV, item 1, of the Universal Declaration of Human Rights (UDHR)];³ (ii) the right to social assistance, regardless of contribution to social security (art. 6 and art. 203, item I, of the FC).⁴ Housing and social assistance are contextualized with the requirement of public policies to protect women in situations of violence, a joint responsibility imposed by art. 226, §8 of the FC to the Union, Member States, Municipalities, and Federal District, whose constitutional designs are essentially foreseen in Federal Law n^o. 11,340/2006 (Lei Maria da Penha).

The legal component of a public policy is important because it gives formal and binding expression to the policy, transmuting it to the level of law in order to compose a formal and institutional normative basis. As a government action program, public policy is a legally

¹ "Art. 6 Social rights are education, health, food, work, housing, transportation, leisure, security, social security, protection of motherhood and childhood, assistance to the destitute, in the form of this Constitution" (translated by the authors).

² "Art. 11 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. States Parties shall take appropriate measures to ensure the realization of this right, recognizing, in this regard, the essential importance of international cooperation based on free consent" (Decree no. 591, translated by the authors). The growing normative force of international human rights treaties is a reality in many countries, as Francisco and Messa (2012, pp. 241-275) point out.

³ "Article 25. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control" (Declaração Universal dos Direitos Humanos, translated by the authors).

⁴ "Art. 203. Social assistance shall be provided to those who need it, regardless of social security contributions, and its objectives are: I - protection of the family, maternity, childhood, adolescence and old age" (Constituição da República Federativa do Brasil, translated by the authors).

regulated and coordinated process to achieve socially relevant and politically determined objectives (Bucci 2006).

According to Constitutional, International and Federal law, the legal framework of São Paulo’s municipality for granting temporary rental assistance to women victims of domestic violence, was produced between the years 2018 and 2021, and built on four pillars: (i) Law n.º. 17,320, of 03/18/2020. (ii) Decree n.º. 60,111, of 03/08/2021; (iii) Ordinance n.º. 28/SMDHC, of 04/07/2021; (iv) Law n.º. 17,579, of 07/26/2021.

In summary, the relevant points of this public policy are: (i) beneficiaries: women victims of domestic violence; (ii) purpose: protective measure to provide minimum financial conditions for women victim of violence to leave the place where they are assaulted; (iii) urgency: women assisted by protective measures foreseen in the Lei Maria da Penha; (iv) hypo sufficiency: proof of extreme vulnerability of the woman; (v) amount: monthly payment of R\$ 400.00 (approximately US\$ 80.00, currently) for housing; (vi) temporariness: benefit paid for the period of 12 months (extendable once for an equal period, upon technical justification)⁵; (vii) territorial delimitation: residence of the vulnerable woman in the capital city of São Paulo.

The Decree n.º. 60,111, of 03/08/2021, which regulated the Law n.º. 17,320/2020, was issued on International Women’s Day and described the cumulative eligibility criteria set forth in that legal rule. It is worth remembering that the rent-aid is personal and nontransferable and intended to supplement the family’s expenses for housing purposes.

It is considered “in a situation of extreme vulnerability” a family that meets the income limit set out in the specific municipal legislation and cannot afford housing expenses without harming the livelihood of its members. Women who belong to a family nucleus in which any member is the owner, committed purchaser, concessionaire, or possessor of urban or rural property, are not eligible for the benefit. In case of not proving income, residence and other specific situations through usual documents, the applicant can do it through self-declaration. If a false declaration is detected, the benefit will be canceled, and the fact will be ascertained under the criminal law.

The “domestic violence against women” to be considered is that foreseen in article 5 of the Lei Maria da Penha (Federal Law n.º. 11,340/2006): action or omission based on gender that causes death, injury, physical, sexual, or psychological suffering, moral or property damage. Besides foreseeing aggressor’s actions and omissions, this law set forth protective measures for women.

The Decree n.º. 60,111/2021 admitted a single extension of the benefit for the period of 12 months, upon technical justification issued by the Municipal Secretariat of Human Rights and Citizenship (SMDHC). It was foreseen that inclusions or extensions would be conditioned to the existence of specific and sufficient budget resources to support the public expense. It was prioritized the granting of the benefit to women victims of violence

⁵ We emphasize that the rent-aid is temporary, the reason for its existence is independent of the extraordinary context of the pandemic caused by the new coronavirus, although the encouragement of this permanent public policy of the municipality of São Paulo/SP is even more timely in the dramatic public health situation experienced in the period.

whose children were aged between 0 (zero) and 5 (five) years. Besides monitoring the assisted woman, the SMDHC is responsible for defining the value of the benefit, the conditions of eligibility and the procedures for granting, maintaining, or even canceling the benefit.

As this is a public policy of the municipality of São Paulo/SP and focused on women who do not own property, the Decree n.º. 60,111/2021 ensured the concession of the benefit to women in a vulnerable situation who lives the municipality and whose family member is not the owner, committed purchaser, concessionaire, or possessor of urban or rural property. Although the responsibility of the state is joint, as foreseen in article 226, §8 of the Constitution, it is legitimate for each municipality to limit its public policy to the residents of its territory (although it must cover both urban and rural areas).

If the beneficiary returns to live with the aggressor, or if it is found that the assistance is unnecessary, or if any of the conditions established for its granting are not met, the benefit will be canceled. The inclusion of beneficiaries to the rental assistance must be registered in the SMDHC's own registry, after instruction of administrative procedure, with supporting documents, analysis of the case, technical advice, and authorization of the Secretary of SMDHC.

About a month after the Decree n.º. 60,111/2021, the Ordinance n.º. 028/SMDHC/2021 (Portaria SMDHC n. 28) was issued, on 04/07/2021, by the Municipal Secretariat of Human Rights and Citizenship (SMDHC), which established the value of the rent-aid in R\$ 400.00 per month, intended for women who have income lower than or equal to a quarter of the current minimum wage. The Coordination of Policies for Women (CPW) was responsible for the registration of women victims of violence, through the public social assistance equipment (Casa de Abrigamento Sigiloso, Casa de Passagem, Centro de Acolhida Especial, Casa da Mulher Brasileira, Centros de Defesa e Cidadania da Mulher, Centros de Referência da Mulher and Centros de Cidadania da Mulher).

It is also responsible for initiating the administrative procedure for granting the benefit, as well as accompanying the beneficiary throughout the process and preparing a technical-social advice that includes information on the family structure and socioeconomic status of the woman victim of domestic violence. The professional who provided the first assistance will be in charge of verifying the eligibility conditions of the victim to the benefit, and among other activities, to integrate the actions of the non-domestic violence network in São Paulo/SP.

After the expiry of the 12-month period of the benefit concession, the CPW will promote a new analysis of the case, aiming at the extension of the benefit. It is important to note that the ordinance expressly vetoed the accumulation of rent-aid with lodging-aid, the latter created by the Law n.º. 17,340/2020 and regulated by the Decree n.º. 59,537/2020.

The most recent legal rule on this subject is the Municipal Law n.º. 17,579 of 07/26/2021, originating from the Law Project (PL) 136/2021, which besides creating a central of vacancies for emergency reception of women victims of domestic violence, prioritized the access of those with children between zero and five years old, and rewrote the article 1 of the Law 17,320/2020 to restrict the eligibility criteria to two: (i) request forwarded by

technical advice by the social assistance service teams or emergency protective measure; (ii) income limit set by SMDHC to characterize the situation of extreme vulnerability.

4. PRELIMINARY RESULTS AND BOTTLENECKS OF THE PUBLIC POLICY

Even considering that a sample of only 3 months of results is usually not significant for a conclusive evaluation on the functioning and effectiveness of public policies, the importance of the initial quarter in the context of the pandemic (caused by the new coronavirus) gives different contours to these preliminary numbers, through which it is also possible to identify bottlenecks. Furthermore, the relevance of public policies that combat domestic violence legitimizes the close and permanent monitoring of the execution and effects of the policies.

4.1. PRELIMINARY RESULTS - APRIL/MAY/JUNE/2021

According to the Coordination of Policies for Women (CPW) of the SMDHC, in response to requests for access to information made on the digital platform Electronic System of Information to the Citizen (e-SIC) under numbers 58967 and 59991, the rental assistance is inserted in the Program "Prevention and Protection of Victims of Violence", identified by code 3013 of the Plano Plurianual (PPA) 2018-2021, in the action "Policies, Programs and Actions for Women", under code 4329 of the PPA.

The preliminary results surveyed in the first quarter after the implementation of the benefit - occurred with the edition of the Ordinance n°. 028/2021/SMDHC, of 04/07/2021, referring to the period of April to June 2021 -, pointed that 477 women victims of domestic violence were registered as eligible, and all were contemplated with the concession of monthly amounts of R\$ 400.00 reais, which allows to estimate⁶ the cost with the maintenance of the aid in R\$ 190,800.00 (one hundred and ninety thousand and eight hundred reais) for the month of June/2021.

The amount in reais, provided in the 2021 budget to fund the rental assistance to women victims of violence, was R\$ 2.4 million reais, according to SEI File 6074.2021/0001260-3, of the Coordination of Policies for Women (CPW) of the SMDHC, an amount that covers the number of women registered as eligible (although very close to the total limit). It should be noted that, after two requests for access to information, it was clarified by the SMDHC that the CPW migrated the contingent of beneficiaries covered by the lodging-aid to the rent-aid, when the Law n°. 17,320, of 03/18/2020 was regulated by the Decree n°. 60,111, of 03/08/2021 and the Ordinance n°. 28/SMDHC/2021, of 04/07/2021.

4.2. BOTTLENECKS IN THE PUBLIC POLICY

The initial normative design of this public policy pointed to access and eligibility problems, in principle solved by the Law n°. 17,579, of 07/26/2021 (originated from Bill n°.

⁶ In relation to previous months, it is not possible to estimate the number of benefits granted, as there is no information on the number of applications submitted in April and May 2021.

136/2021), but other problems remain, notably related to budget allocation and to the detachment of the program in relation to urban housing policies.

4.2.1. Access and eligibility

The initial design of the rental assistance had an effectiveness *deficit* in relation to access⁷ and eligibility to the benefit. According to the Law n°. 17,320/2021, besides extreme vulnerability, another condition for granting the rental assistance was the prior requirement of protective measures of the Lei Maria da Penha. It is known that such measures depend on the access of the victim to the Judicial Police, the Public Prosecutor's Office, the Public Defender's Office, or a private lawyer.

This requirement contributed to keeping the victim away from the network of protection and social assistance, as women who did not have access to such institutions to obtain a protective measure, or who chose not to report the aggression to the police authority, for fear of suffering new violence, were ineligible to the rental assistance.

This issue was overcome with the Law n°. 17,579/2021, which eliminated the requirement of an incident report or judicial protective measure as requirements for eligibility to the benefit. In addition, the new law prioritized the granting of aid to women with children between zero and five years old and innovated the protection of victims of violence with the creation of a central of vacancies for emergency reception.

Another worrying aspect of the design of this policy was the centralization of the entire process of analysis and granting of the benefit at the SMDHC, instead of mobilizing a multidisciplinary network of professionals and health and women's assistance equipment in different areas of the city. The Law n°. 17,579/2021 solved this issue by allowing the teams from municipal social assistance services to prepare technical advice.

The adjustments made by the Law n°. 17,579/2021 corrected limitations on access to the public policy and eligibility, and on process flows for granting the benefit, restricting eligibility criteria to the following: (i) request forwarded by technical advice by the social assistance service teams or, alternatively, emergency protective measure; (ii) income limit set by SMDHC to characterize the situation of extreme vulnerability.

4.2.2. Budget allocation

A clear bottleneck in this policy is the insufficient resources in the municipal budget to attend to the target public, especially considering the number of women in São Paulo who have been victims of domestic violence in the last two years⁸. Based on the budget amount

⁷ Access to public policies to combat violence against women is still a present issue, according to the Anuário Brasileiro de Segurança Pública (Forum Brasileiro de Segurança Pública 2021). The difficulty in accessing services and benefits provided by law has worsened in the current context of the COVID-19 pandemic.

⁸ According to the Anuário Brasileiro de Segurança Pública (Forum Brasileiro de Segurança Pública 2021, p. 125), in 2020, in the municipality of São Paulo/SP, 9,572 cases of intentional bodily harm related to domestic violence were registered, while in 2019, this number was 11,403, not counting the cases of femicide related to domestic violence. It is known that there are tens or hundreds of thousands of anonymous victims who are not included in the official statistics of violence against women in the municipality

of R\$ 2.4 million reais, for the period of 12 months, in monthly payments of R\$ 400.00 reais, it is estimated that only 500 women⁹ will be reached with the payment of rental assistance [R\$ 2,400,000.00 / (12 months x R\$ 400.00) = 500 beneficiaries].

In the first quarter since the implementation of the benefit, there were 477 women enrolled in the program, according to the SMDHC, so that if all those contemplated enjoy the payment of 12 installments of R\$ 400.00 reais each, it is estimated that there would be financial availability to grant only another 23 benefits.

It is true that the preliminary data of this policy should be contextualized with the pandemic scenario caused by the new coronavirus, in which violence against women was intensified by the prolonged permanence of victim and aggressor under the same roof (according to data from UN Women 2020), but the natural publicity and longevity of this policy indicate that the amount of benefits supported by the 2021 budget should not meet the demand for social protection, and it is very likely that the budget will need to be increased for future financial years.

4.2.3. Detachment of the program from urban housing policies

The temporariness is an intrinsic feature of the rental assistance, that is, the monthly amount established for housing assistance to women in situations of violence is temporary. If we consider that the minimum wage for 2021 is R\$ 1,100.00, the amount of the rental assistance is not insignificant, because it corresponds to 36.36% of the minimum income of millions of Brazilians, but it is also true that the average cost of housing in the city of São Paulo/SP is the highest among the Brazilian capitals.¹⁰

Thus, the logical tendency is that women benefiting from the rental assistance seek cheap housing, with presumed risks to safety and health, in dicey regions with high crime rates, precarious urban settlements and landslide risk areas.

The housing deficit, which was already a very sensitive problem in the last decades, has had women as protagonists since before the pandemic.¹¹ In the long run, it is not enough to grant a monthly amount for temporary (and precarious) housing, without giving access to

of São Paulo/SP, for reasons that vary from fear of suffering another violence to the victim's state of complete economic dependence on the aggressor.

⁹ The maximum number of 500 women benefited is an estimate for the scenario in which all applicants receive the maximum number of installments of the rental assistance (12 per year). For other scenarios in which some applicants receive the maximum number of installments and others receive less than the maximum, it is certain that more than 500 women can be contemplated with this benefit.

¹⁰ At the beginning of 2021, the average price of the square meter in the capital of São Paulo was R\$ 40.06 (Luiz 2021).

¹¹ The housing deficit estimated for Brazil in 2019 was 5,876 million domiciles, 5,044 million in urban areas and 832 thousand in rural areas (Fundação João Pinheiro 2021, p. 113). It is interesting to highlight that the women are the group most affected by lack of housing. According to João Pinheiro Foundation, the women are responsible for 3,071 million (54,3%) of domiciles with habitation deficit in Brazil: "Another way to observe this deficit is through gender of the person responsible for the domicile. In absolute terms (...) and for Brazil, it is verified, in the component of excessive burden, that the deficit is bigger for the cases whose responsible is woman, with participation of 56,4%. In the component precarious habitation, its percentile participation is also majority, of order 54,9% (...). This situation varies regionally. It is more acute in southeast, where 56% (1,216 million) of the *deficit* domiciles had a woman as responsible, and less accented in north, with 50,4% (342 a thousand) (...)" (Fundação João Pinheiro 2021, p. 35, translated by the authors).

women in extremely vulnerable situations to housing programs that allow them to enjoy housing security.

As a matter of fact, the rental assistance must be reconciled with the budgetary limits of the municipality of São Paulo/SP, which comprises a set of equally important social public policies, even because human needs seem infinite while state financial resources are notoriously finite. But more than expanding access, it is necessary to review urban housing strategies from two perspectives: the first is to understand that the rental assistance is a gateway to the insertion of women in housing policies, as the beneficiary in extremely vulnerable situation could get within a shortly time decent housing through low-cost installments; the second is to seek the social utility of unoccupied urban properties in the central region of the city, considering that the idle state¹² lends itself only to serve individual interests of property speculation of its owners.

The role of the municipality in the conversion of properties designed for commercial use in the city center and which are idle, transforming them into urban popular housing units, must be reinforced in terms of public policy and budget allocation. Insisting on models of popular housing construction in peripheral regions of the city (peripheralization of the low-income population), where land is acquired at low prices, is a strategy divorced from the perspective of social utility of idle properties in São Paulo's city center.

It is necessary to conciliate the social function of urban property with proposals that simultaneously impact on the mitigation of the housing deficit, which fully affects the female population (Fundação João Pinheiro, 2021) and focus on the effective protection of women in situations of domestic violence in the municipality of São Paulo/SP.

5. WHY DOES AMARTYA SEN'S THEORY MATTER? RENTAL ASSISTANCE AND IDEAS ON SUBSTANTIVE FREEDOM, AGENCY, AND PROTECTIVE SECURITY

Amartya Sen recognizes the female prominence in society and, not coincidentally, is considered as the first contemporary feminist economist, in whose works it is possible to establish a relationship between empowerment and agency¹³, and the leading role of women in driving the development process (Comim 2021). In the view of Sen (2010, p. 262):

Women's empowerment is one of the central aspects in the development process in many countries of the world today. Factors involved include women's

¹² According to the Instituto Brasileiro de Geografia e Estatística (IBGE 2010), a vacant dwelling is “a permanent private dwelling that had no resident on the reference date, even if it was occupied later during the period under investigation”.

¹³ It is worthy to refer to Flávio Comim's (2021, n.p.) notes about the term “agency”, for better understanding in this topic: “... it seems to deal with “bank agency” or something along those lines. But in economics it is common because it refers to people in their capacity as people who act. In fact, this expression was popularized by “principal-agent” models, but that has nothing to do with the meaning given by Sen. For him, agency has to do with the freedom of people. We can say that this expression has a narrow sense, associated with the *choice of* people and a broader sense that alludes to their *autonomy*. For Sen, agent “is one who acts and causes change and whose achievements can be judged in terms of their own values and goals (1999, p. 19)” (translated by the authors).

education, their ownership patterns, their employment opportunities and the functioning of the labor market [translated by the authors].

Development, in this context, “requires removing the main sources of deprivation of freedom: poverty and tyranny, lack of economic opportunities and systematic social destitution, neglect of public services and intolerance or excessive interference of repressive states” (Sen 2010, pp. 16-17). The most frequent expressions in Sen’s works to address issues related to freedom, agency and security are “instrumental freedom” and “substantive freedom”; “agent condition” and “protective security”.

Sen’s theory based on the concepts of freedom, agency, and protective security matters for the understanding of rental assistance as a temporary welfare benefit for women victims of domestic violence. The term “freedom” is polysemantic and can be used on various intensities and nuances, which means that it brings together a wide range of meanings in different contexts and reaches a variety of nuances of human thought and behavior. Alongside this, Sen distinguishes between “instrumental freedom” and “substantive freedom”.

While the “instrumental freedom” deals with political freedoms, including civil rights, freedom of political expression, freedom to criticize the authorities, the “substantive freedom” concerns the real opportunity for the individual to enjoy a lifestyle different from others, to have the ability to choose between alternatives and to realize their own goals, this is the freedom to lead the life you value and improve the real choices you have - and not any freedom (Sen 2010).

Sen (2008) considers the agent condition as the possibility of free manifestation of the individual’s potentialities, which makes him/her able to be inserted in the labor market with autonomy. The “agent” is a person who triggers changes and whose achievements can be considered according to the individual’s own values and goals, without depending on an external criterion (Sen 2010).

Comim (2021, n.p.) draws attention to societies where women lack agency, "where their social *status* is low, where they are not independent and are not empowered to exercise their voice". The economist reinforces that the damage caused by a lack of agency impacts not only on women, but also on society, “since women’s independence affects not only how resources are divided within households, but also in society”.

The agent condition allows the individual to earn enough personal income to reach the level of citizen of rights, which means, to become the agent of his own destiny. In addition to being the master of his actions, the agent condition implies success in the totality of objectives and goals pursued by the individual and participation in the construction of the society where he lives, as Sen (2008, p. 103) points out: “The achievement of a person’s agent condition refers to the realization of goals and values that he has reason to pursue, whether or not they are connected to his own well-being”.

In this perspective, the agent condition implies, in the case under analysis, breaking free from the cycle of violence to which the victim was submitted, as through this public policy, emergency shelter, rental assistance and integration into a network of professional training

policies for economic and financial emancipation will be ensured. The agent condition of her own destiny is safeguarded for the woman.

Another idea from Amartya Sen's theory, applied to the examination of this public policy, concerns protective security concept. Essentially, the security referred to is related to the enjoyment of a social safety net that provides temporary assistance during an unfavorable and unexpected period. Besides the welfare component, protective security also has a social security face, so that it ensures that workers receive income in case of involuntary unemployment (unemployment insurance).

Comim (2021, n.p.) summarized the idea of protective security in Sen's theory as follows: "Protective security, in the form of social safety nets, preventing for example a population from falling into poverty as a result of a crisis; concretely, Sen speaks of unemployment insurance and social aid".

The rental assistance is aligned to the idea of protective security advocated by Sen, as it provides to women victims of domestic violence and in situations of extreme vulnerability, a monthly amount to pay for housing for a certain period. It is, therefore, a temporary welfare benefit that contemplates an unfavorable and unexpected period for women victims of violence.

The capabilities set generated from this welfare benefit allows the involvement of the women themselves, no longer as part of the problem, but as responsible for the solution. In Sen's conception, capabilities are closely related to public policies, as capabilities involve "a set of decisive dimensions for the proposition, construction, and effectiveness of public policies" (Kujawa and Zambam 2018, p. 7).

From his point of view (Sen 2010), public policies should produce the effective freedoms for people, increasing their capabilities, especially of women, and for this purpose, public policies act as drivers of the society development, whose reasons for existence are the common good and social equity, as depicted by Zambam and Kujawa (2017, p. 64-65)¹⁴:

The public policy approach, as proposed by Sen, is anchored in the importance of the person and the need to have the conditions for the development of capabilities and act as a citizen in the condition of active agent, in the action of the state as an organizer of policies for human promotion and combating inequalities, in the action of institutions or associations with the purpose of proposing, encouraging and managing in a propositional, participatory and cooperative way the policies aimed at the common good and social equity, the primary reason for their existence (translated by the authors).

How to understand the term "capabilities"? First, capabilities are not the same as capacities, as it may suggests. In fact, they are "conditions for individuals to make choices that are meaningful for their lives and their families" (Zambam and Kujawa 2018, p. 9). In the

¹⁴ In the approach of public policies grounded in the effectiveness of freedoms, Zambam and Kujawa (2017, p. 69) pointed out: "The transformative power of public policies is especially related to its ability to interfere in concrete situations in which people live or to solve those problems that most threaten in the immediate period, so the results of the intended objectives can be measured or perceived in not-so-distant times" (translated by the authors).

highlighted passage below, from the work *Development as Freedom*, Sen (2010, p. 105) defines capabilities as combinations of realizable functionings for a person, a *tertium genus* between capacity and ability:¹⁵

A person's capability consists of the alternative combinations of functionings that are feasible for her to realize. Thus, capability is a kind of freedom: the substantive freedom to realize alternative combinations of functionings (or, less formally expressed, the freedom to have diverse lifestyles). For example, a well-off person who fasts may have the same realization of functioning with respect to eating or nourishment as a destitute person forced to starve herself to the extreme, but the former person has a different 'capability set' than the latter (the former *can* choose to eat well and be well-nourished in a way that is impossible for the latter) (translated by the authors).

And in which way do capabilities matter for substantive freedom? The analysis of Zambam and Kujawa (2018) makes clear that capabilities create conditions for decision-making with concrete freedom, putting people as subjects of rights, active agents of their achievements. The authors consider that capabilities are essential for the exercise of substantive freedoms as people using their capabilities are in conditions to exercise their rights autonomously, accessing good levels of education and information which enables them to evolve in the process of integration, participation, and decision-making in society.

It is not enough to create the rental assistance benefit and implement it. It is necessary to strengthen the freedoms that it promotes, inserting women in situations of domestic violence in a protection network that reaches important dimensions of life: health, work, and income. In Brazil and in the municipality of São Paulo/SP, there is a network of

¹⁵ Flávio Comim (2021, n. p.) draws attention to the use of the term "capability", distinguishing it from "capacity" and accepting the translation into Portuguese as "capacitação": "Formally, 'capability' is the junction of two words: 'capacity' and 'ability'. That is, *capability* deals with the ability that people have in developing their capabilities. This answer makes a lot of conceptual sense, as it makes room for the concept of agency and the notion that people should be able to choose and be lords and masters of their own development and destiny. Philosophically, *capability* is a type of freedom, or rather 'freedoms', as Sen is a pluralist. It is interesting to note that in English he always uses the word *freedom* but not the word *liberty*, possibly to engage with certain interlocutors who also use this same word. But in Portuguese, we do not distinguish these words. For Sen, these freedoms are both instrumental, that is, that you use to achieve other things, and constitutive, that is, that they are important in themselves. Finally, in practical terms, *capability* is a set of functionings, that is, what people can be or do. More precisely, we have to imagine that people have sets of things (which we can call vectors or 'lists', if we want to be very informal) that they can be and do, and that the freedom to choose among these alternative scenarios is what would represent a person's *capability* (...). But what would be the best way to translate it into Portuguese? If *capability* is capacity + ability then, in Portuguese, it would be something like capacidade + habilidade equal to 'capabilidade'? This is a possible translation. Surely better than the translation into Portuguese in Sen's works, in which *capability* is translated simply as 'capacidade', there is clearly something missing in this simplified translation that allows us to differentiate the concept introduced by Sen. Another option, which I have personally favored over the years, is the concept of 'capacitação', as it is different enough from capacidade, highlights the Aristotelian element of action present in the concept and has a flavor unique to us, since only in Portuguese do we have words ending in 'ão'. The important thing, ultimately, is not the specific word you decide to use, but rather, knowing what it means and making good use of it. In the case of 'capacitação' or 'capacitações', remember that there is an element of substantive freedoms that are important not only for what they produce but also for what they are for individuals, and another element that we can call agency, autonomy, choice or even 'protagonism', as Paulo Freire would say" (translated by the authors).

protection and assistance to women victims of domestic violence that varies from the specialized police stations to the social assistance reference centers.

Zambam (2014, p. 53) draws attention in Sen's approach to the strengthening of substantive freedoms from networks of organizations for people to develop their potential and act as agents, being able to choose¹⁶ the functionings that are important to them:

The strengthening of the exercise of freedoms depends substantially on the broad network of organizations, more or less influential, which encourage, sediment and strengthen the improvement of capabilities. With its effectiveness, people have a varied panorama of options, whose functionings make it possible for them to pursue what they consider important to do or be.

Capacities offer a wide network of options and conditions for people to develop their potential and act socially as active subjects, and this dimension characterizes the identity of a person in the same way as it influences the organization of the social structure. This performance usually tense, contributes to the individual improvement and to the conditions of coexistence in society (translated by the authors).

This reflection is of utmost importance the present work, insofar as the support network for women in situations of violence plays a significant role in the reconstruction of the victim's individual, family, work, and social identity, equipping her with conditions for choosing the directions of her own life in an autonomous way, which implies focusing on what she values. As depicted by Sen (2010, p. 29): "Expanding the freedoms that we have reason to value not only makes our lives richer and more unimpeded, but also allows us to be more complete social beings", as the expansion of freedom is the main aim and the main means of development (Sen 2010, p. 10).

The institutional support networks offer a range of services to women victims of violence (shelter, food, health care, promotion of small businesses, documentation, etc.), in order to insert them into programs that focus on professional qualification, employment and income generation, creating conditions for their financial autonomy. The integration of the beneficiary of the rental assistance to this network enhances the expansion of the capabilities set and female empowerment, contributing to the end (or at least the deceleration) of the cycle of violence.

The approach of Amartya Sen's capabilities is useful to refute the criticism about a harmful financial dependence of the beneficiary on the State, as people receive payments as rental assistance to afford housing, which is present in the Laotsenian dichotomy: "teaching to fish" or "giving the fish". Sen considers that the set of functionings "frees people from dependence on goods and paternalistic action of the State or other institutions and strengthens the identity of the person and the conditions for personal and social fulfillment" (Zambam 2014, p. 56). And, in the context of vulnerability and urgency (notably in the

¹⁶ Zambam (2014, p. 56) highlights the relation between conditions of choice and personal conditions: "The conditions of choice that people have for the development of capabilities depend on multiple factors of individual order, for example, the physical and mental conditions and, the influences of the context where they live, particularly the opportunities that society offers to them" (translated by the authors).

context of the pandemic), it is important to both “giving the fish” and “teaching to fish” to women submitted to domestic violence.

The temporary rental assistance is a relevant instrument of public policy, which, if articulated with other programs of the support network for women victims of domestic violence, has the potential to equip the beneficiaries with substantive freedom and make them agents of their own destiny. Far from a definitive solution to the housing problem of the victim, the rent assistance is an important instrument to protect women in the acute phase of exposure to domestic violence, as it safeguards the protective security, substantive freedom and the agent condition in the period when the victim is in a situation of extreme vulnerability (social, psychological and financial).

6. FINAL CONSIDERATIONS

Amartya Sen’s theory of freedoms, already widespread globally, shows signs of its incorporation into the Brazilian portfolio of public policies focused on women empowerment as the main strategy of the development process. Created and implemented by the municipality of São Paulo/SP, the temporary rental assistance for women victims of domestic violence strengthens the essential capabilities for the exercise of substantive freedoms, bringing about agent conditions and protective security advocated by Sen.

This temporary assistance benefit focus on victims of domestic violence in a moment of extreme vulnerability, giving them a monthly amount (R\$ 400,00) to pay for housing for a certain period. It does not solve the housing deficit nor promotes definitive housing, but it is an important instrument to protect women, as it extends the feminine capabilities set and it safeguards the protective security, the substantive freedom and the agent condition in the period in which the victim is in situation of extreme vulnerability (emotional, social and financial).

This rental assistance also contributes to disarticulate the cycle of domestic violence, ensuring housing and allowing the integration of the victim to a network of programs that promotes financial and labor emancipation, safeguarding the protective security and substantive freedom to exercise the agent condition.

Even with data from only 3 months of results (insufficient for conclusive evaluation on the functioning and effectiveness of this public policy), the information from this initial quarter in the pandemic context gives different contours to these preliminary numbers, not least because the relevance of the fight against domestic violence legitimizes the close and permanent monitoring of its executions and their effects.

The partial conclusion possible at this moment is that this assistance benefit established in the municipality of São Paulo not only contributes to safeguarding the fundamental right to housing, but also and especially the fundamental right to life of women in situations of domestic violence and should be used as a paradigm for other public measures at the national and subnational levels.

References

- Bucci, M.P.D., 2006. O conceito de política pública em Direito. *In: M.P.D. Bucci, ed., Políticas Públicas: reflexões sobre o conceito jurídico*. São Paulo: Saraiva, 1-48.
- Comim, F., 2021. *Além da liberdade: Anotações críticas do desenvolvimento como liberdade de Amartya Sen*. *S.l*: Independently Published. [electronic resource].
- Forum Brasileiro de Segurança Pública, 2021. *Anuário Brasileiro de Segurança Pública* [online]. São Paulo: Forum Brasileiro de Segurança Pública, v. 15. <https://forumseguranca.org.br/wp-content/uploads/2021/10/anuario-15-completo-v7-251021.pdf> [Accessed 17 August 2021].
- Francisco, J., and Messa, A. F., 2012. Tratados internacionais sobre direitos humanos e poder constituinte. *In: A.C. Pagliarini and D. Dimoulis, eds., Direito Constitucional Internacional dos Direitos Humanos*. Belo Horizonte/MG: Fórum, v. 1, 241-275.
- Fundação João Pinheiro, 2021. *Deficit Habitacional no Brasil - 2016-2019* [online]. Belo Horizonte: Fundação João Pinheiro. Available from: <https://www.gov.br/mdr/pt-br/assuntos/habitacao/RelatorioDeficitHabitacionalnoBrasil20162019v1.0.pdf> [Accessed 17 August 2021].
- Instituto Brasileiro de Geografia e Estatística (IBGE), 2010. Domicílio vago. *Glossário. Censo 2010* [online]. Available from: <https://censo2010.ibge.gov.br/materiais/guia-do-censo/glossario.html> [Accessed 17 August 2021].
- Kujawa, H.A., and Zambam, N.J., 2018. Conquista da moradia no loteamento Canaã em Passo Fundo, Brasil. *Mercator* [online], 17, 1-15. Available from: <https://doi.org/10.4215/rm2018.e17031> [Accessed 15 August 2021].
- Luiç, W., 2021. Preço médio do aluguel registra alta de 2,48% em 2020, diz FipeZap. *CNN Brasil* [online], 19 January. Available from: <https://www.cnnbrasil.com.br/business/preco-medio-do-aluguel-registra-alta-de-2-48-em-2020-diz-fipezap/> [Accessed 23 September 2021].
- Sen, A., 2008. *Desigualdade reexaminada*. Rio de Janeiro: Record.
- Sen, A., 2010. *Desenvolvimento como liberdade*. São Paulo: Companhia das Letras.
- United Nations Organization for Gender Equality and Women's Empowerment (UN Women), 2020. *COVID-19 and Ending Violence Against Women and Girls* [online]. Available from: <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/Issue-brief-COVID-19-and-ending-violence-against-women-and-girls-en.pdf> [Accessed 14 August 2021].

Zambam, N.J., 2014. A teoria da justiça de Amartya Sen: as capacidades humanas e o exercício das liberdades substantivas. *Episteme NS* [online], 34(2), 47-70. <http://ve.scielo.org/pdf/epi/v34n2/art04.pdf> [Accessed 17 August 2021].

Zambam, N.J., and Kujawa, H.A., 2017. As políticas públicas em Amartya Sen: condição de agente e liberdade social. *Revista Brasileira de Direito* [online], 13(1), 60-85. Available from: <https://doi.org/10.18256/2238-0604/revistadedireito.v13n1p60-85> [Accessed 15 August 2021].

Legal sources

Constituição da República Federativa do Brasil de 1988 [online]. Available from: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm [Accessed 14 August 2021].

Declaração Universal dos Direitos Humanos. Adotada e proclamada pela Assembleia Geral das Nações Unidas (resolução 217 A III) em 10 de dezembro 1948 [online]. <https://www.unicef.org/brazil/declaracao-universal-dos-direitos-humanos> [Accessed 14 August 2021].

Decreto No 591, de 6 de julho de 1992. Atos Internacionais. Pacto Internacional sobre Direitos Econômicos, Sociais e Culturais. Promulgação [online]. Available from: http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/d0591.htm [Accessed 14 August 2021].

Decreto municipal n. 60.111, de 08/03/2021 [online]. Available from: <http://www.saopaulo.sp.leg.br/iah/fulltext/decretos/D60111.pdf> [Accessed 20 July 2021].

Lei municipal n. 17.320, de 18/03/2020 [online]. Available from: <http://www.saopaulo.sp.leg.br/iah/fulltext/leis/L17320.pdf> [Accessed 20 July 2021].

Lei municipal n. 17.579, de 26/07/2021. *Diário Oficial da Cidade de São Paulo* [online], 27 July. Available from: http://diariooficial.imprensaoficial.com.br/nav_cidade/index.asp?c=1&e=20210727&p=1&cli [Accessed 30 July 2021].

Portaria SMDHC n. 28, de 07/04/2021. Secretaria Municipal de Direitos Humanos e Cidadania. *Diário Oficial da Cidade de São Paulo* [online], 8 April. Available from: <http://legislacao.prefeitura.sp.gov.br/leis/portaria-secretaria-municipal-de-direitos-humanos-e-cidadania-smdhc-28-de-7-de-abril-de-2021> [Accessed 28 June 2021].

Projeto de Lei n. 136, de 09/03/2021 [online]. São Paulo. Câmara de vereadores. Available from: <https://splegisconsulta.camara.sp.gov.br/Home/AbriuDocumento?pID=281638> [Accessed 30 July 2021].