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(COORDINATORS)

HUMAN RIGHTS AND INDIGENOUS PEOPLES



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Felipe Gómez Isa, Denise Almeida de Andrade, Emilio José Armaza Armaza,
Jan Krimphove e Paula Saleh Arbs (Coordinators)

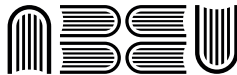
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PROLOGUE

We are excited to present this e-book's third edition, which is the result of a fruitful and long lasting cooperation between the Law School of University of Deusto (Bilbao, Basque Country, Spain) and the Law School of Unichristus University in Fortaleza (Ceará, Brazil).

As we have already mentioned in previous editions, our collaboration started during the pandemic of Covid-19 and has been a great and productive experience for both students and faculties, especially because we have been discussing and reflecting about an important and urgent theme, which is Human Rights.

We are glad to confirm with this edition that we have been able to share many insights and researches about the Human Rights contemporary challenges and our event in 2023 proved that the continuous effort of these two institutions has been worth it.

The contributions that we introduce now were presented at the *III Congress of Master's Students* from the International Legal Studies course – LLM (University of Deusto) and the Master's in Law (Unichristus University), that was held on May 30th in 2023.

Following the central themes that are addressed in our respective Master's programs, there were two thematic axes for the Congress: Human Rights and Indigenous People.

“We hope to continue taking steps to make university higher education an instrument of social transformation to create a fairer, more humane, and more sustainable world”.

Coordinators

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SOCIAL RIGHTS AND THE PRESERVATION OF INDIGENOUS TERRITORY AND CULTURE IN THE STATE OF AMAPÁ

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Abstract

The study examined the preservation of indigenous lands and their culture in the state of Amapá, correlating with economic development according to the capacity of exploitable lands without conflict with the interests of the indigenous people. The purpose of this paper was to demonstrate the excellent example set by the state of Amapá in preserving indigenous lands and the need to increase the transfer of funds from the federal government and other states to Amapá as a means of easing the economic development constraints generated by the preservation of indigenous lands. This is without detracting from the need for the local government to set up means of collecting revenue specifically earmarked for the preservation of indigenous lands. The aim is also to encourage international organizations and foreign states to promote economic development in the region, through political and financial means¹, even by joining the Green Treasury

- 1 “The Indians’ struggle to secure the land they live on and defend their culture has attracted the attention of NGOs, foreign governments such as Germany, and the support of personalities such as Danielle Miterrand. The widow of former president François Miterrand and president of the France Libertés Foundation visited Amapá in April 1996. As well as offering political support, she harshly condemned the federal government’s decree allowing challenges to the process of demarcating indigenous lands” (INDIGE-

program. The methodology used was bibliographical and exploratory, with the presentation of data to arrive at the results. The conclusion is that the binomial of environmental preservation and economic development refers not only to the sustainability of activities but also to the need to finance preservation to prevent the economic exploitation of indigenous lands. Some means of financing are presented and it has been shown that the more Indians there are, the greater the preservation of the territory.

Keywords: Social Rights. Preservation. Territory and Culture. Indians. Amapá.

1. INTRODUCTION

The Brazilian Federal Constitution of 1988 guarantees that the government will provide individuals and communities with a minimum standard of living, observing the Principle of Human Dignity. In this sense, the social rights of Brazilians essentially comprise “education, health, food, work, housing, transportation, leisure, security, social security, protection of motherhood and childhood, assistance to the destitute”, in the form of the Constitution (Art. 6 of the Federal Constitution).

The Indians are part of this group of individuals and are entitled to a meta-individual right to claim the division of land, one of which is demarcation. However, it is often observed that the lands demarcated by the government do not correspond to the real needs of the indigenous communities, and they are forced to share the space with other communities or with commercial activities.

Maintaining the preservation of indigenous tribes, and subsidizing the social rights of indigenous peoples, is a constitutional competence of the Union, which must act directly or by transferring funds to the local government. As a rule, the legal instrument is an agreement between the entities concerned. In this way, local authorities and regulatory agencies act as important agents not only in preserving indigenous land but also in preserving their culture. It should be noted that the bureaucracy and lack of transparency in the distribution of these resources potentially hinder indigenous communities’ access to basic services such as health and education.

In this sense, indigenous lands in Amapá can be seen as an example of preservation and maintenance in favor of their peoples². However, this

NOUS LANDS IN BRAZIL, 2008, *online*).

- 2 “Amapá is the first Brazilian state to have all its indigenous lands demarcated. The two large reserves, which represent 8.6% of the entire state territory, 140,276 km², are home to the Galibi, Karipuna, Palikur, Waiapi, and Galibi Marworno ethnic groups. These In-

preservation costs the state dearly in terms of its purely economic development. After all, much of its land is reserved for indigenous protection. This is the case with mining, for example, which seriously affects the environment and indigenous lands. This is a lucrative and well-developed economic activity in Amapá.³ However, its non-expansion has led to revenue shortfalls, which deserve financial compensation for the maintenance of the population living in Amapá's sixteen municipalities. After all, its population also lacks job opportunities in commercial or industrial establishments or even better conditions for entrepreneurship.

Support from the other states of the Federation for the indigenous communities of Amapá is essential for local economic development and minimizes geographical and political isolation from the other federated entities. The study aims to demonstrate that the guarantee of indigenous people's social rights and the preservation of the environment in Amapá depend on *national* support (transfer of resources), *local support* (institution of taxes and public prices with a specific destination) and *international support* (financial subsidies from international organizations and foreign states) to finance the maintenance of the preserved Amazonian environment, which is a good of a universal nature.

2. INDIGENOUS SOCIAL RIGHTS

Social rights should be understood as all those that are intended for people under the legal regime of Brazil, even if they are outside its territory, or even if they are inside the territory and are not local citizens. The important thing is that the Federal Constitution is complied with and the evils of social inequality are eradicated.

It has been reported in Brazil and around the world that there has been deforestation and illegal exploitation of natural resources on indigenous

dians do not live in isolation. They receive all kinds of government support: from health care to guidance on improving their quality of life through new economic alternatives. However, respect for the Indians comes first. At no time can this partnership interfere with the different cultures of the ethnic groups. The best example of this commitment is the support given to bilingual schools, in which children first learn their original language, the most important condition for keeping the indigenous tradition alive with its myths, legends, art and customs" (INDIGENOUS LANDS IN BRAZIL, 2008, *online*).

3 "Currently, Amapá ranks 9th among the states in the federation that collect the most CFEM, with a share of 0.94%, corresponding to funds of around R\$ 8 million, calculated on the basis of the country's total collection for the base year of 2008 (Table 5)" (CHAGAS, 2008, p. 30).

lands; violation of the right to health and adequate education; threats and physical violence against indigenous leaders and their families; lack of prior consultation and free, prior and informed consent concerning major infrastructure projects.

In Amapá, this scenario is not reflected, as there is a good relationship with indigenous leaders who are fighting for the protection of their lands and rights, as there is respect for the cultural specificities and customs of indigenous peoples, including prior consultation and effective participation in decision-making processes that affect their lives.

Sometimes indigenous leaders call meetings to demand adequate access to health, education, and social assistance services. Most of Amapá's territory is unspoiled, consisting of just sixteen municipalities, and indigenous lands make up a large part of the territory, according to data presented by the Environment Secretariat:

The state of Amapá currently has 20 Conservation Units (CUs), in the various categories of Full Protection and Sustainable Use, provided for by the National System of Conservation Units (SNUC), as well as 5 Indigenous Lands. Thus, of the 14.3 million hectares that make up the state's total area, 9.3 million hectares are covered by Conservation Units, which together with the 1.1 million hectares of Indigenous Lands occupy approximately 73% of the territory in protected areas.

Protected areas are territorial spaces legally instituted by the government and are an important tool for protecting natural resources, scientific research, recreation, leisure, environmental education, sustainable use of resources accessed by traditional communities or concessions, and guaranteeing environmental services, which are fundamental factors for the management of the state of Amapá. Protected areas as a whole, and Conservation Units (CUs) in particular, are legally instituted by the public authorities, whether at the federal, state, or municipal level (AMAPÁ, 2023, *online*).

Dialogue with the public authorities to guarantee the social rights of indigenous people from the perspective of a constitutional command facilitates the activity of government officials in protecting their territory and culture.

3. INDIGENOUS LANDS AND CULTURE IN AMAPÁ

The environment has no set price, it is a resource that guarantees the well-being and survival of humanity. In addition to practices to minimize environmental impacts with economic activity, this environmental service can be remunerated for the conservation of indigenous lands and the preservation of the environment. Payment for Environmental Services (PES) emerged as “an instrument to correct ‘market failures,’ through financial transfers from those benefiting from environmental services to those who, due to conservation practices, preserve nature” (CANTUÁRIA, 2014, p. 48). In Amapá, State Law No. 0388/1997 provides for PES for the use of biodiversity. At the federal level, there is Federal Law No. 14.119, of 13/01/2021, which establishes the National Policy for Payment for Environmental Services. “Payments for Environmental Services emerged in America and have only recently begun to be disseminated on the European continent” (ARAUJO JÚNIOR; CICILIATO, 2012, p. 575).

Not only private individuals can be providers of environmental services, but also public authorities (art. 2, VI of Law 14.119/2021). This is a duty of the state and the people, in cooperation. In this way, not only Amapá seeks to preserve its territory but also to take advantage of this preservation of the environment, which is a transnational interest, and issue the green seal to interested countries. This is the program aimed at sustainable economic development in the state of Amapá: Tesouro Verde. This program was created by State Law n. 2.353/2018 to preserve conservation units and finance economic development and social inclusion of the local population (art. 1 of Decree n. 2894 of 2018 which regulates the Green Treasury Law).

Even in the face of the search for alternatives to subsidize the economic development of the population of the cities of Amapá, there are plans to expand enterprises such as mining, agriculture, and exploitation of water resources, fauna, and flora. Preventing these invasions guarantees that indigenous people can live with dignity, by their traditions.

According to the National Foundation for Indigenous Peoples (FUNAI), there are the following tribes in Amapá and northern Pará: Waiãpi; Uaçá; Rio Paru D’este; Parque do Tumucumaque; Juminã; Galibi. All of them are under the protection of this federal entity, whose challenges are many due to the limited technical team, financial resources, and the complexity of the processes of recognizing and delimiting areas of traditional indigenous occupation (BRASIL, 2023, *online*). Among the problems, one can identify the provisions of FUNAI’s ANNUAL REPORT ON INTERNAL AUDIT ACTIVITIES 2022:

The objective of audit no. 026 (4237297) was to verify the processes and actions carried out with FUNAI's work to promote the rights of Indigenous Peoples of Recent Contact (PIRC), considering their peculiarities, from 2018 to 2021.

From the analyses, inconsistencies in the use of the administrative concept of recent contact were noted among the different actors, leading to divergences in the databases of the ethnic groups and indigenous lands covered by this policy.

It was also noted that FUNAI's strategic instruments have reduced their space for individual prioritization, linking activities to those aimed at isolated indigenous peoples, which is also reflected in the indicators currently available.

In addition, no institutionalized database was identified for the management control of actions planned between the General Coordination of Isolated Indians and People in Recent Contact (CGiirc) and the Ethno-environmental Protection Front Coordination (CFPE). Nor was there a regular procedure for monitoring the work plans agreed upon or for rendering final accounts, linking the physical and financial dimensions.

As a result, measuring the policy's performance was compromised, since it was impossible to confirm with reasonable certainty whether the actions had been implemented with the PIRCs.

Finally, the analysis of the samples showed that there is no consistent and/or periodic dialogue between the CGiirc, the units of the Directorate for the Promotion of Sustainable Development (DPDS), and the Regional Coordinations (CR), even though the latter two are also executors of actions aimed at the PIRC. This could harm the technical quality of these activities (risk), in addition to under-measuring FUNAI's efforts in the respective area, which would jeopardize the measurement of its performance indicators (BRASIL, 2022, *online*).

The reality of indigenous protection in Brazil can be seen from FUNAI's reports. On the other hand, the state of Amapá has, as already mentioned, effective protection for the indigenous people who live in its territory. "In Brazil, Amapá was a pioneering state in recognizing indigenous territorial rights. All the lands claimed by the Indians have been demarcated and ratified" (GALLOIS; GRUPIONI, 2003, p. 30).

The government's dealings with the indigenous people of Amapá are historic: it respects their rights, seeks new sources of revenue to foster economic development, and does not promote the exploitation of indigenous land with the likelihood of affecting their social rights. This guarantee of the indigenous people's fundamental rights is only possible thanks to the cooperation that exists between the government and the indigenous community:

It is important to note that throughout the region – except the Zoë - indigenous groups are mobilized to monitor the boundaries of their lands. In the Uaçá region, where indigenous monitoring initiatives are the oldest, the work is carried out annually in cooperation between various groups and villages. Today, as in other indigenous lands, villages are kept on the boundaries to facilitate surveillance. This is also the case with the Wajãpi who, since the end of the physical demarcation of their land, have organized themselves to clean up the trails every year, and have maintained an intricate network of trails, camps, and new villages, set up in the areas most affected by the invasions that continue on the southern and eastern boundaries of their land. The same has happened in the Tumucumaque Indigenous Park and the Paru d'Este Land. On these two lands, as on the Wajãpi, the Indians have implemented these permanent surveillance activities with the support of the Integrated Program for the Protection of Indigenous Populations and Lands in the Legal Amazon, PPTAL/Funai.

The integration of the boundary inspection work into the cycle of economic activities of each people, as has been happening in the region, is an extremely positive factor, given that the accumulated experiences in Brazil have already shown that the effective protection of indigenous lands and their resources cannot be maintained permanently unless there is effective intervention by indigenous groups (GALLOIS; GRUPIONI, 2003, p. 31).

The state of Amapá has been fulfilling its constitutional duty to protect indigenous people and guarantee them a dignified life⁴. The economic development of the federative entity requires funding from the Union and other political entities, but this does not prevent it from seeking other means

4 “Some fundamental rights are indispensable for a constitution to be considered as such, such as the dignity of the human person. A constitution that does not guarantee the dignity of people residing in or passing through its state (under the concept of the law of the people) cannot be respected by the rest of the world” (FERREIRA; FERREIRA, 2010, p. 197).

of compensation for being an environmentally friendly state. Amapá has more than half of its territory protected for environmental preservation and this attitude is beneficial for everyone:

These people also establish relationships with the environment that go beyond the simple extraction of resources (RAMOS, 1995). By valuing their traditional way of life, Indians protect biodiversity, the right to land and subsistence (MARETTI *et al.*, 2014). They have therefore played a fundamental role in shaping the biodiversity found in South America. For example, many plant species, such as Brazil nuts, cocoa, and cassava, and a large number of fauna species, emerged as products of interaction and formed forest management based on traditional ways, this process being responsible for the conservation and biological diversity of ecosystems (BATISTA *et al.*, 2020). Land use practices are different depending on the traditional knowledge of these peoples, which is combined with their traditional way of life and modern perspective on sustainable land use (STEVENS *et al.*, 2014; TAULICORPUZ *et al.*, 2018).

[...]

The state of Amapá, located in the north of Brazil, has one of the greatest biodiversities and is home to a diverse combination of ecosystems (MUSTIN *et al.*, 2017). It is the most protected state in Brazil, given its historical isolation and the presence of several PAs (PERES *et al.*, 2014). The federal and state governments have been very active in defining PAs and indigenous lands, which altogether cover 72% of the state (CUNHA *et al.*, 2019). It has 19 PAs, 12 under federal administration, five managed by the state and two managed by municipalities (BRITO, 2008), and five indigenous lands (Wajãpi, Uaçá, Galibi, Juminã and Montanhas do Tumucumaque National Park) (CAMPOS; NASCIMENTO; CUNHA, 2022, p. 344).

Maintaining the preservation of indigenous lands led to a population increase of more than 50% (fifty percent) between 2002 and 2018 (CAMPOS; NASCIMENTO; CUNHA, 2022, p. 345). This population growth is important for the preservation of indigenous culture. The more preservation, the higher the costs, so the PSA needs to be more than just an incentive for private individuals. Consequently, other means of revenue must be used by the preservationist state to maintain the environmental *status quo*.

It is important to remember that cooperation between the public authorities and the holder of the meta-individual right results in the *effective* satisfaction of the public interest in preserving the environment for present and future generations.

4. CONCLUSION

The defense of the social rights of indigenous peoples preserves their existence as historically conceived and benefits Brazil and the world by seeking to maintain a balanced environment. The demographic increase of the indigenous population does not lead to substantial deforestation to increase their housing and exploit the fauna and flora for their consumption⁵. Contrary to expectations, this fact can increase the preservation of the territory if the necessary means for preservation are employed. This preservation promoted by Amapá has brought benefits not only for the Indians but also for the environment.

As for economic development, alternatives have been created, such as the Green Treasury, to increase the state's revenue by subsidizing the social inclusion of the population that is not included in the job market or has been discouraged from entrepreneurship in the face of environmental limitations.

Human dignity and social rights should not only be promoted to those living in Amapá's sixteen municipalities but also to the indigenous tribes that makeup Amapá's rich territory. For this to happen, the state must count on support from the federal government and other federal entities by investing in health and education programs that are culturally appropriate for indigenous communities.

The participation of international organizations and foreign states in financing this cultural and environmental preservation is of great importance. International organizations need to defend effective sustainable development and curb the fallacious discourse of sustainable development appropriated by malicious companies associated with the image in the global market of guaranteeing the social rights of the local population (CHAGAS, 2008, p. 209). Greedy exploitation reduces the forest reserve and indigenous territory and consequently degrades the environment.

If the world's motto is to preserve the Amazon, Amapá is a good example of how cooperation between public authorities and indigenous tribes is the best way forward.

5 "All the TIs had peaked in deforestation from 2002 to 2018, but population growth did not influence it" (CAMPOS; NASCIMENTO; CUNHA, 2022, p. 353).

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THE PRINCIPLE OF SATISFACTION IN REPARATION EFFORTS: INDIGENOUS PEOPLES IN CANADA AND THE 94 CALLS TO ACTION

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ABSTRACT

In Canada, access to reparations by Indigenous peoples whom have been subject to programs of violent assimilation and colonisation in Canada, is an essential component in the process of addressing the past and healing. How reparations manifest is often dictated by a general outline of what reparations entail, recognized most widely by the UN General Assembly's Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims, created in 2005 (Res 60/147). In particular, this paper will explore the importance of the principle of satisfaction addressed in reparations as leading through verification of facts, education and recognition of truth, and commemorative initiatives. Through the discussion of six calls to action brought forward in the 94 Calls to Action published in the final report of the Truth and Reconciliation Commission of Canada in 2015, the principle of satisfaction is highlighted through the analysis of these actionable policies in order to capitalize on the importance of implementation on all levels of reparation. This includes forms of reparations which may be interpreted as more symbolic measures, which must be pursued in a meaningful and urgent manner, a way of action that has seemingly not been adopted by the Canadian Government and responsible bodies when addressing the Calls to Action. Finally, the research aims to highlight why the inability to access the principle of satisfaction through lack of implementing the Calls to Action has hindered Indigenous peoples ability to access their right to reparations, creating an environment that hinders healing and perpetuates hurtful narratives about residential schools and their contemporary consequences on Indigenous communities from non-Indigenous populations residing in Canada.

Keywords: Reparations, Transitional Justices, Principle of Satisfaction, Indigenous Peoples, 94 Calls to Action, Reconciliation, Residential School.

1. INTRODUCTION

In confronting the challenges of responding to serious human rights

violations, with the reality that history cannot be changed or reversed, reparations serve to promote justice and provide support for victims in order to aid them in their process of healing, commemorating and moving forward. Reparations are dynamic, taking shape in many ways to meet the needs of victims through a variety of avenues. In the case of Canada and the survivors and victims of the Indian residential school system, the unique needs of Indigenous communities, presents a timeline and process of reparations which must reflect the needs of those affected. The Canadian Government has demonstrated their ability to create policies and programs that support reparations for Indigenous peoples throughout the nation, with one of the biggest developments being the establishment of the Truth and Reconciliation Committee of Canada (TRC) in 2008, and the 94 Calls to Action, an in depth list of actionable policies which were created to aid the process of reconciliation and healing between Indigenous and non-Indigenous peoples, published in the TRC final report in 2015.⁶ The TRC of Canada relied heavily on the participation of Indigenous peoples and the inclusion of their voices in a series of the TRC's published reports, helping support reparations among many other important developments. However, many of these policies have yet to be implemented, some are in progress, have proposed ideas of implementation, and very few are fully completed. In consideration of the UN General Assembly's Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims, created in 2005 (Res 60/147), and the inclusion of *satisfaction* as a key principle of reparations, in this case, for survivors and affected Indigenous communities in Canada, Canada's TRC and its 94 Calls to Action has not provided an adequate implementation framework for *satisfaction* to be realized, and therefore, highlights barriers that must be overcome for Indigenous peoples fully access their right to reparations.

1.2 Method of Analyzing the Manifestation and Fulfillment of Satisfaction

Through the analysis of key Calls to Action which highlight the principle of satisfaction, mentioned in GA resolution 60/147 as a central principle of reparations, the gaps in implementing meaningful policy and practice through the guidance of the TRC 94 Calls to Action, will be highlighted. In particular, Calls to Action numbers 62, 69, 71, 80 and 82, calls centered around recognition, access to information regarding residential schools, education of the public, truth seeking and commemoration, will be addressed. The discussion of the

6 "Honouring the Truth, Reconciling for the Future" Summary of the Final Report of the Truth and Reconciliation Commission of Canada, p.6, 2015, https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Executive_Summary_English_Web.pdf

calls and status in implementing each of the supporting policies, connecting their progress or lack of progress to the process of reparations, will allow for a deeper understanding of how these Calls to Action were created with intent to aid in reconciliation efforts, and how their delayed implementation causes issues in access to reparations for victims, specifically in regards to the principle of satisfaction. The resource, *Beyond 94*, created by CBC News, is an interactive website which maps out all of the Calls to Action, summarizes their content, and measures their implementation, along with information on any developments or lack thereof. The measurements of progress for the Calls to Action are based on criteria placing them in one of four categories including; “Not Started”, meaning no plan has been created and no funding has been committed to the Call to Action, “In Progress-Projects Proposed”, indicating that a plan and/funding have been committed to carrying out the Call to Action, but no implementation has occurred, “In Progress-Projects Underway”, indicates that relevant parties are actively working on implementing the call and have a timeline and/or funds as needed to do so, and finally, “Complete”, meaning the call has been fully implemented.⁷ The website was recently updated on June 8th, 2022. A similar source, *Indigenous Watchdog*, a federally registered non-profit created by Douglas Sinclair, member of Peguis First Nation, also provides updates on the Calls to Action and is used as another point of reference for comparison in this paper. The inclusion of *Indigenous Watchdog* as a source also contributes a source providing an Indigenous lens on how the Calls to Action are progressing or not, and how this impacts Indigenous communities with discussion of current issues and challenges. Although the Calls to Action tracking of CBC and *Indigenous Watchdog* are almost identical in their tallied numbers and rankings of progress, the additional information shed on the projects and policies associated to the calls is valuable to consider. Through analyzing these sources, a summary of the relevant Calls to Action will provide information on the goals proposed and the key actors in their implementation, as well as context for how completing the Calls to Action will allow for more meaningful reparations in terms of fulfilling efforts related to satisfaction.

2. Exploring the Need for Reparations in Canada and the Principle of Satisfaction

The Indian residential school programs in Canada were a result of colonial assimilationist practices in an attempt to eliminate the presence of

7 “Beyond 94: Truth and Reconciliation in Canada,” CBC, March 19, 2018, <https://www.cbc.ca/newsinteractives/beyond-94/>.

Indigenous cultures and populations within Canada. Indigenous children were removed from their families and communities, and placed in institutions, known as Indian residential schools, led in partnership between dominantly Catholic, Anglican, United, Methodist and Presbyterian churches, and the Canadian Government.⁸ These policies have led to intergenerational trauma, systemic discrimination, health and economic challenges and distrust in the government, among other consequences, within Indigenous populations in Canada. In addressing mass human rights violations, it becomes complicated to measure the effects of discriminatory and violent action and policies, as thinking retroactively cannot determine what would have occurred had such violation not been inflicted.⁹ However, the consequences of such human rights abuses can still be observed and noted as results of their existence. This is an important perspective to consider in relation to the development and implementation of reparation programs, as the approach must be centered around the voices of the victims and in listening to the consequences they have suffered, with the awareness that what has been done cannot be undone. However, responsibility must be taken and circumstances can be ameliorated, this research delves into how reparations play a role in confronting the past, aid in healing, and strive for a better future, specifically, how the 94 Calls to Action play a role in this process.

As opposed to strictly judicial forms of justice, reparations do not always follow an internationally agreed upon framework of implementation, instead, they must be adapted to the needs of victims as the central focus. However, there are principles which define the core values and intentions of reparations and how they should be approached, outlined in UN General Assembly resolution 60/147. Through GA resolution 60/147, it is made clear that it is the expectation and responsibility of a State to “provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law”, while highlighting core principles which should be addressed in the pursuit of efficiently and proportionately implementing reparation programs and policies.¹⁰ The GA

8 Truth and Reconciliation Commission of Canada, “Honouring the Truth, Reconciling for the Future,” 3.

9 Felipe Gomez, Lecture, Indigenous Peoples and Historical Injustices, February 22, 2023

10 “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” OHCHR, December 16, 2005, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>.

resolution 60/147 principles include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The principle of satisfaction, refers to a variety of actions in support of verification of facts and disclosure of the truth, accurate accounts of violations and education on these violations at all levels, commemorations and tributes of victims, public apologies, acknowledgement of the facts and acceptance of responsibilities by relevant actors, and the search for whereabouts of the disappeared and identities of children abducted.¹¹ The principle of satisfaction is of central importance in the analysis of the 94 Calls to Action, and how the calls may be used to aid the process of reparations through the voices of Indigenous peoples in a more meaningful and intentional way.

Additionally, the principle of satisfaction seeks recognition of the truth, as well as education and access to information regarding the truth, fostering meaningful reconciliation and commemoration moving forward. Recognition aids in the reconstruction of the political community, as well as educates the wider public in effort to strengthen understanding and awareness of events, and to provide survivors and those affected with symbolic forms of reparations. In regards to the TRC of Canada, with a mandate that allowed for the collection of testimonies from residential school survivors throughout the nation, the individual experiences of those who were victims of the assimilationist system came to light. The work of the TRC allowed for the collection, documentation and organization of testimonies, which as a result, allows for greater access to the truth, of the reality and the impacts of the residential school system through the eyes of the victims, as well as highlight the needs for action in the pursuit of meaningful reconciliation through the 94 Calls of Action. When considering reparations, common conceptions of the process often lean towards monetary compensation and restitution, although key factors of reparation, cannot overshadow the importance and even critical considerations of the principle of satisfaction. Through the principle of satisfaction knowledge, truth, commemoration and responsibility come forward as key actors in healing, educating, and bringing together communities. In this way it cannot be forgotten as simply symbolic measures of reparations, but as the backbone of providing deeper meaning to reconciliation, healing, and justice between Indigenous and non-Indigenous communities in Canada, explored below through the consideration of key Calls to Action.

11 “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” OHCHR, December 16, 2005, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>.

2.2 Education and Transparency of the Truth; Calls to Action 62 and 69

The TRC was a significant process which supported efforts to meet the request of Indigenous communities who wanted the wider population of Canadians to gain information and a more accurate understanding of what the residential schools were and meant to Indigenous communities.¹² The importance public education and recognition is reflected in Calls to Action number 62 and 69, which focus on sharing the voices and history of Indigenous peoples through education and access to information for the public. Call number 62 demands action to “develop and fund Aboriginal content in education”, directed at federal, provincial and territorial governments to work in collaboration and consultation with indigenous survivors, Aboriginal peoples as well as educators to help implement a mandatory curriculums about Indigenous historical and contemporary contributions to Canada, and history including residential schools throughout elementary and high schools.¹³ It also calls for the training of educators in how to engage with these topics while also integrating Indigenous teaching methods into their teaching. The realization of this Call to Action also mentions the need for Aboriginal schools to receive funding in order to implement Indigenous teaching methods and knowledge in class rooms, and that in order to support the development of Call to Action 62, a senior level position should be established, designated for Aboriginal education development and implementation.¹⁴ As of June 2022, this Call to Action is categorized as “in progress- projects underway”, as some provinces and territories have worked on implementing the layers of this action item, however, some areas have not, and have even seen backsliding away from teaching Indigenous content, highlighting the key issue that history of residential schools is implemented but not all mandatory or regulated equally throughout the nation.¹⁵ The lack of implementation of call 62 highlights the need for mandatory and consistent education on residential school and Indigenous history in Canada as a baseline, the lack of implementation risks nurturing a population that has little to no understanding of this history and its contemporary consequences, creating patterns of discrimination, stereotyping

12 Michelle Bonner and Matt James, “The Three R’s of Seeking Transitional Justice: Reparation, Responsibility, and Reframing in Canada and Argentina,” *The International Indigenous Policy Journal* 2, no. 3 (August 29, 2011): 14 <https://doi.org/10.18584/iipj.2011.2.3.3>.

13 “62. Develop and Fund Aboriginal Content in Education” *Beyond 94: Truth and Reconciliation in Canada*, CBC, March 19, 2018, <https://www.cbc.ca/newsinteractives/beyond-94/develop-and-fund-aboriginal-content-in-education>.

14 “62. Develop and Fund Aboriginal Content in Education,” CBC.

15 “62. Develop and Fund Aboriginal Content in Education,” CBC.

and conflict between Indigenous and non-Indigenous populations.

Call number 69 is directed towards Library and Archives Canada (LAC) to adopt the UNDRIP and ensure that records on residential schools are accessible to the public.¹⁶ Greater transparency of information regarding residential schools by ensuring access to archives would allow for Canadians and other interested parties to inquire about the history of residential schools through primary documents. It would also allow for greater opportunity in the creation of educational projects and research to help further recognize the reality of residential schools and the conditions that many Indigenous peoples faced in Canada, and to share the information gathered more widely, allowing for greater understanding of this history. More specifically, call 69 addresses “Aboriginal peoples inalienable right to know the truth about what happened and why, with regard to human rights violations committed against them in residential schools” by fully adopting and implementing the UNDRIP, while also committing to create more resources to support these archives being accessible for public education and in programming related to residential schools, which could also support the efforts of call 62.¹⁷ Call to Action 69 is currently measured as “in progress-project proposed”, with LAC working to determine how an organization might implement the UNDRIP in a more meaningful way beyond citing support for the declaration, as well as made changes to the LAC website to reflect more accurately the central role of John A Macdonald in orchestrating the implementation of the residential school system.¹⁸ Unfortunately, limited progress has been made to allow public access to records as well as development of supporting educational resources to help facilitate their navigation and information as a digital archive, and it has even been found that after changes were made to the websites previous version, finding the site and navigating its tools has become more difficult.¹⁹ Agreements have been made between LAC and the National Centre for Truth and Reconciliation, dating back to 2016, however, a lack of implementation of call 69 leads to it being incomplete.²⁰

16 “69. Library and Archives Canada to Adopt UNDRIP, Ensure Records on Residential Schools Accessible to Public,” *Beyond 94: Truth and Reconciliation in Canada*, CBC, March 19, 2018, <https://www.cbc.ca/newsinteractives/beyond-94/library-and-archives-canada-to-adopt-undrip-ensure-records-on-residential-schools-accessible-to-public>.

17 “69. Library and Archives Canada to Adopt UNDRIP,” CBC.

18 “Call to Action # 69,” Indigenous Watchdog.

19 “Call to Action # 69,” Indigenous Watchdog, November 4, 2021, <https://www.indigenouwatchdog.org/cta/call-to-action-69/>.

20 “69. Library and Archives Canada to Adopt UNDRIP,” CBC.

2.3 Access to Information and Presentation of Statistics; Call to Action 71

Additionally, Call to Action 71 is one of multiple Calls to Action which address the need for proper access to information, documentation, and identification in regards to death of Aboriginal children in residential schools, calling on transparency and proper procedure in seeking truth and recognition for the violent nature of the residential school system. Specifically, call 71 calls on chief corners and provincial statistic agencies to provide records on the deaths of Aboriginal children in residential schools and under the care of their authorities, to provide them to the TRC of Canada, and make them available to the National Centre for Truth and Reconciliation.²¹ This Call to Action has been measured as “in progress-projects proposed” indicating that plans may have been created, but full and proper implementation of this Call to Action has not been fulfilled.²² As of November 2021, only the provinces of British Columbia and Alberta have fully complied with this call, whereas in other provinces and territories, there has been a lack of cooperation with the governments, as most chief corners and vital statistic agencies have not provided the documents requested.²³ In relation to providing the opportunity for satisfaction as a principle of reparations for survivors and victims of residential schools, the lack of transparency from authorities and agencies who have access to information which is crucial in understanding and recognizing the circumstances of the residential schools, as well as providing access to the truth to survivors and victims’ families and communities, creates a huge barrier in the process of healing, truth seeking, commemorating, recognition and education. After receiving information that the province of Ontario committed to transferring 1800 death records of Indigenous children in November of 2021, the National Centre for Truth and Reconciliation (NCTR) called on the cooperation of all jurisdictions to aid in finding and identifying all children who died in residential schools, and to aid in the centres ability to update the National Student Memorial Register which names, commemorates, and honours the lost children.²⁴ Unfortunately, due to

21 “71. Records on the Deaths of Aboriginal Children in Residential Schools to Go to the National Centre for Truth and Reconciliation,” *Beyond 94: Truth and Reconciliation in Canada*, CBC News, March 19, 2018, <https://www.cbc.ca/newsinteractives/beyond-94/records-on-the-deaths-of-aboriginal-children-in-residential-schools-to-go-to-the-national-centre-for-truth-and-reconciliationa>.

22 “71. Records on the Deaths of Aboriginal Children in Residential Schools to Go to the National Centre for Truth and Reconciliation,” CBC.

23 “Call to Action # 71,” Indigenous Watchdog, November 4, 2021, <https://www.indigenouwatchdog.org/cta/call-to-action-71/>.

24 “Ontario to transfer 1800 records” National Centre for Truth and Reconciliation, November 2, 2021. <https://nctr.ca/ontario-to-transfer-1800-records/>

the involvement of various authorities in the organisation of residential schools, the documentation of deaths were not necessarily fulfilled in an accurate or adequate manner, causing additional barriers in receiving and processing the information they contain.²⁵ This lack of cooperation in its own way reflects the additional institutional reform needed in Canada in order for reconciliation, and subsequently reparations, to be pursued.

2.4 Recognition and Commemoration; Calls to Action 80 and 82

Finally, in effort to provide resources and to create national efforts in the recognition and commemoration of residential schools, Calls to Action 80 and 82 call for the establishment of a National Day for Truth and Reconciliation as a statutory holiday, and for each capital city across Canada to commission and install a Residential Schools Monument. Call number 80 has been measured as “completed”, as the National Day for Truth and Reconciliation was established on June the 3rd, 2021 by the federal government, marking September 30th as the official statutory holiday through the passing of Bill C-5. However, eight provinces with 93.2% of the Indigenous population in Canada do not officially recognize September 30th as a statutory holiday provincially, creating a barrier in observing the day beyond federal employees.²⁶ The approval of Bill C-5 came soon after the discovery of unmarked graves at a former residential school in Kamloops, British Columbia, after the remains of 215 children were found on May 29th, 2021.²⁷ The timing of the bill may be seen as a recognition of the need to reflect on Canada’s history of residential schools, yet also must be approached with a critical lens for the intention of its establishment. With a lack of urgency to follow through on many key Calls to Action, including and beyond those mentioned in this analysis, the establishment of the National Truth and Reconciliation Day, although a positive advancement, is also a reminder of the lack of education and acknowledgement of residential schools throughout the wider public. The impact of the National Truth and Reconciliation Day in Canada could be a statutory holiday with a much bigger impact in terms of pursuing recognition and reconciliation between Indigenous peoples and the wider public, if other Calls to Action were carried out more urgently and

25 “71. Records on the Deaths of Aboriginal Children in Residential Schools to Go to the National Centre for Truth and Reconciliation,” CBC.

26 “Call to Action # 80,” Indigenous Watchdog, November 4, 2021, <https://www.indigenouwatchdog.org/cta/call-to-action-80/>.

27 Joan Bryden “Royal Assent given to Bill Creating National Day for Truth and Reconciliation,” CBC News, June 5, 2021, <https://www.cbc.ca/news/canada/manitoba/national-day-truth-reconciliation-canada-passes-senate-1.6054847>.

intentionally. Establishing a basis of knowledge, creating platforms for the voices of Indigenous peoples to share their stories, and taking responsibility and accountability for Canada's history, would help elevate the impact that the National Day of Truth and Reconciliation can have as a day of commemoration, reflection and learning from Indigenous communities, further aiding in fulfilling the principle of satisfaction as a means of reparations.

In conjunction with Call to Action 80, call 82 reflects the need for commemoration and recognition of residential schools in the capital cities of each province and territory. This call is measured as “in progress-projects proposed”, as no provincial or territorial government has commissioned and installed a residential school monument in the capital city to honour the survivors and those who were lost, but some have made plans to do so.²⁸ There is a need to collaborate with survivors in order to develop and install monuments that are visible and accessible to the public and which appropriately honour the survivors as well as communities and families who were impacted and/or lost their children to residential schools. Some non-capital cities and communities have built memorial monuments, and in the capital cities Winnipeg and Whitehorse, residential school monuments have been installed, however, they were not commissioned or installed by the government, an important component of the recognition of those responsible for the establishment of the residential school system.²⁹

3. CONCLUSION

The TRC 94 Calls to Action serve as useful tools in helping the Canadian Government, key institutions, and non-Indigenous Canadians, provide access to reparations through the principle of satisfaction, among other crucial components of the process, for Indigenous survivors and those impacted by residential schools. However, it is clear that the pursuit of implementing and fulfilling the intent of the actionable policies, is not an urgent one. Two Calls to Action were completed in 2022, in total 13 have been completed since 2015, and at this rate, if remaining consistent, it will take until 2065 to complete all the Calls to Action.³⁰ Therefore, the pursuit of reparations, specifically in

28 “82. Commission and Install a Residential Schools Monument in Each Capital City,” *Beyond 94: Truth and Reconciliation in Canada*, CBC News, March 19, 2018, <https://www.cbc.ca/newsinteractives/beyond-94/commission-and-install-a-residential-schools-monument-in-each-capital-city>.

29 “82. Commission and Install a Residential Schools Monument in Each Capital City,” CBC.

30 Douglas Sinclair, “Progress on the Calls to Action” *Calls to Action Accountability: A 2022 Status Update on Reconciliation*, Yellowhead Institute, p. 42-44, December 2022 <https://yellowheadin->

regards to satisfaction, have fallen short, causing an inability for Indigenous peoples in Canada to fully access reparations in pursuit of meaningful healing and reconciliation. In a process which included the collection of testimonies from survivors and Indigenous communities affected by the residential school system, the TRC's 94 Calls to Action stem from the needs and demands of the Indigenous populations who were and have been affected by residential schools, and therefore, should be implemented through the actionable policies and programs they call for. In particular, access to information, recognition of truth, commemoration, and education are essential in creating a climate of healing for Indigenous communities when it comes to having conversations and actions that reflect the engagement and priority of settler populations. These actions call for change beyond institutions, calling on fundamental change to the rhetoric and education about Indigenous history in Canada, which requires not only the fulfillment of the Calls to Action as a step towards these goals, but requires the participation of non-Indigenous Canadian populations with open minds and a willingness to learn and recognize the position of settlers in the reparation process. In this way, the Calls of Action are not a comprehensive list of policies guaranteeing reconciliation and access to reparations by indigenous peoples, but instead outline important topics and needs to be addressed, with the need for additional participation and change to occur in order for the Actions to truly instill change. The reconciliation that the Canadian Government calls for and states it strives for, should be pursued more seriously through the realization of the 94 Calls to Action, a key tool in so many layers of reparations, reconciliation, and the right to truth, which are greatly reflected in the principle of satisfaction, a principle needed in the forefront of this ongoing process.

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ELECTORAL INCLUSION AND INDIGENOUS PEOPLES IN BRAZIL: A LOOK AT THE REALITY OF TRE-CE

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ABSTRACT

As subjects of rights, indigenous peoples have been recognized and preserved, at least formally, in their physical integrity and their customs, beliefs, and political organization. This article takes a quick look at the importance of these people in the colonization of Brazil, as well as dealing with the reality of the inclusion of these citizens in the electoral process, with electoral inclusion as one of the facets of human rights and multiculturalism, essentially present in the Brazilian nation.

Keywords: Indigenous Peoples. Inclusion. Elections. Human Rights. Multiculturalism.

1. INTRODUCTION

Indigenous peoples have peculiar customs that range from the way they eat, their religiosity, and their language to the organization of their leadership structure, a form of political organization, which is recognized and protected by the Constitution of the Federative Republic of Brazil, as can be seen in article 231, which states: “Indians are recognized for their social organization, customs, languages, beliefs and traditions, and their original rights over the lands they traditionally occupy, and it is up to the Union to demarcate, protect and enforce all their property.”

The purpose of this summary is to identify, within Brazilian history, how the indigenous population has been treated and whether human and fundamental rights, specifically political rights, have evolved over the centuries.

The methodology used will be qualitative bibliographical research, analyzing the national reality and the evolution in the normative field and the reflexes of these measures effectively.

In the history of the Brazilian nation since the period of discovery, one of the striking characteristics of indigenous peoples is the political organization of these communities and the distinction between them in the form of social organization, through the leaders who lead a particular people, for example.

José Couto demonstrates this reality when he says:

The basic political institution of Tupi societies was the ‘council of the principals’ - whose composition reflected the preponderance of male gerontocratic power - made up of the heads of extended families and the men who were most respected, either for performing magical-religious functions (shamans or shamans) or for deeds done in combat (warriors). This decision-making body of community life, whose members could seize all the ‘means of domination’, played an important role in making the most important decisions concerning the *taba*. (COUTO, 2011, p. 96)

This political organization of the indigenous peoples had long been the result of the formation of networks of alliances between neighboring and politically autonomous villages, but without a central director or subordination to a common *morubixaba*, since each *taba* only recognized its leader. This union took place during times of war, as José Couto still teaches. (COUTO, 2011, p.97)

What was the political organization of the villages then, with all the proportions of today’s reality, if not the formation of alliances, political parties, caucuses, and fronts of caucuses that are formed to defend ideas and interests in today’s politics?

In addition to this reality, today indigenous customs are still found not only in reservations - areas demarcated for the establishment of these communities - notably culinary customs, leisure activities such as lying in hammocks, and hygiene habits, among others that have endured for years after the arrival of European man in the Americas and the period of colonization, which tried to enslave indigenous peoples by force and impose a new way of life on the Brazilian population as a whole.

2. THE POLITICAL INCLUSION OF INDIGENOUS PEOPLES AS A HUMAN AND FUNDAMENTAL RIGHT

The period of colonization was marked by how the human rights of the indigenous communities that inhabited America were disrespected through unequal domination, because while the indigenous people fought with hand-held weapons made by themselves, the invaders were already using weapons of war at the time, trying to subject them to a regime of slavery.

Moving forward from the 16th century to the end of the 20th century and the beginning of the 21st century, the reality of indigenous peoples has not changed much in terms of their human rights, since the most recent news is of invasions by miners to exploit the lands inhabited by these communities in Brazil and, internationally, according to Francisco Urubam Xavier de Holanda, “at the beginning of the 21st

century, the great news and hope in Bolivia was the insurgency of indigenous movements (...).) which elected Evo Morales, an Ayamara Indian, president of the republic with 54% of the vote.” (HOLANDA, 2016, p. 106)

In addition, the health conditions in which these indigenous people live are the worst, since there are reports of an alarming number of deaths of children and adults from malaria and other diseases.

However, indigenous peoples have been included in political participation over time.

Initially, the Brazilian state recorded the protection of these peoples in its legal system.

The United Nations then adopted the Declaration on the Rights of Indigenous Peoples on September 13, 2007, which guaranteed Indigenous peoples the right to participate fully in the political, economic, social, and cultural life of the state.

As a result of the UN Declaration, the Alencarina Electoral Court decided to set up polling stations in places where indigenous peoples live, through Resolution No. 434/2011 of the Regional Electoral Court of Ceará, and then signed Agreement No. 14/2011 with FUNAI.

Recently, the Superior Electoral Court, through Resolutions 23.659/2021 and 23.669/2021, determined the installation of polling stations in prisons, juvenile shelters, quilombos, and **indigenous villages**. (*emphasis added*)

This measure aims to ensure political rights and promote electoral inclusion for social and vulnerable minorities. To this end, polling stations were set up where indigenous people live, without removing them from their customs or making it too onerous for them to vote, as well as making participation more effective for this section of the electorate.

Concerning indigenous peoples, the preservation of their social organization, customs and languages, beliefs, and traditions is guaranteed as a fundamental right in the provision of electoral services, under the terms of article 13 of TSE Resolution No. 23,659/2021.

On the other hand, to make these measures effective and include indigenous populations in the electoral process, it is necessary to adjust the requirements for electoral registration to promote equal opportunities for indigenous people to participate in the electoral process, both through active citizenship (exercising the vote) and passive citizenship (being voted for). One of the measures adopted is to dispense with proof of electoral domicile when assistance from the electoral justice

system takes place within the boundaries of the land in which they live or when their community is clearly linked to that territory.

This provision for indigenous people to be granted civil and political capacity by applying for electoral registration was already a reality in the Federal Constitutions of 1946 and 1967, as well as in Constitutional Amendments No. I of 1969 and No. 25 of 1985. However, it was necessary to observe the prohibition on electoral registration for people who could not express themselves in Portuguese, as provided for in item II of article 5 of the Electoral Code, which persists to this day in the legal system, provided that all constitutional and infra-constitutional requirements are met, as pointed out by Kelsen de França Magalhães.

However, this reality has been mitigated by the Resolution of the Superior Electoral Court No. 23.659/2021, which deals with the Management of the Electoral Register, when paragraph 3 of article 13 states that: “Paragraph 3 will not require fluency in the Portuguese language for registration, ensuring indigenous citizens the use of their mother tongues and their learning processes.”

Minister Luiz Fux, in a Special Appeal, made a digression about this reality in which:

The multiculturalism paradigm also supports the need to respect the right to difference and recognition of these non-hegemonic groups. Indeed, within the framework of multiculturalism, traditional communities have the right to live according to their customs, values, and traditions, without, however, descending into a radical ethical relativism that could compromise the universal human rights of the members of these same collectivities. (FUX, 2009, p.88)

It is inferred that it is necessary to adapt to the inclusion of these people in society with due respect for their customs and language because they are subjects of rights and to safeguard the tradition and values of multiculturalism that enrich us.

It should also be added that for a long time, cultural diversity has been used to disenfranchise segments of society and social groups, who have been judged to be inferior in dignity as second-class citizens.

Flavia Piovesan (2008, p. 48) ponders that: “difference was made visible to conceive of the other as a being lesser in dignity and rights, or, in extreme situations, a being emptied even of any dignity, a disposable being, a superfluous being, an object for buying and selling (as in slavery) or for extermination camps (as in Nazism).”

Richard Falk, professor emeritus at Princeton College, argues that “diversity promotes the quality of life by enriching our experience, expanding our cultural sources”, in other words, we get away from a single culture dictating to us its customs, languages as a source, which results in an ethnocentrism that annihilates other ways of life and cultures”. (FALK, 1988, p.32)

With these considerations, we see that multiculturalism adds to and must be embraced by society as a whole to be enriched, that customs must adapt to each other and seek a respectful coexistence that promotes the sum of all customs for society as a whole, especially the guarantee and respect for human rights, an inherent condition of every human being.

Furthermore, the populations that will be governed by the person who is elected should not be excluded from the electoral process. However, all those who make up the Brazilian people should be included, within the diversity of the Federative Republic of Brazil’s extensive territory.

3. THE ROLE OF ELECTORAL JUSTICE (TRE-CE) IN THE ELECTORAL INCLUSION OF INDIGENOUS PEOPLES

Everyone should have the same right to choose their elected representatives, which is why it is of the utmost importance, both in terms of human rights and fundamental rights and guarantees, for these citizens to actively participate in the electoral process by choosing their candidates in every election.

In an analysis of the data published by the Electoral Court, polling stations have been set up to serve indigenous peoples on their lands since the 2012 elections.

For the purposes of this article, we will focus on data from the state of Ceará, where polling stations have been set up since 2012 and the number of voters has increased over time, as shown in the table below:

ELECTION	Municipalities	Voting locations	Sections	Voters
2012	11	16	16	2.343
2014	15	24	35	8.676
2016	14	23	22	4.659
2018	15	24	30	5.253
2020	13	20	26	5.307
2022	16	26	40	8.302

Source: TRE-CE

To implement and offer better conditions to the indigenous population and promote true electoral inclusion, sections and voters were identified in the electoral register, without making distinctions, under the terms of TSE Resolutions 23.659/2021 and 23.669/202, which have this objective, while also carrying out the

standard procedures carried out at other polling stations across the state, which are visited by Electoral Justice teams to inspect the polling stations, for planning, training of poll workers, lectures on Citizenship and Disinformation, promoted for the electorate by a partnership between the Permanent Commission on Citizenship, Accessibility and Inclusion and the Electoral Judicial School, and a visit from the TRE administration on election day.

And as Kelsen de França Magalhães mentions:

The first step towards exercising the political rights of any Brazilian citizen is electoral registration because to vote, Brazilians must have applied for electoral registration, fulfilling the requirements stipulated by legislation, both constitutional and infra-constitutional. (MAGALHÃES, 2008/2009, p.13)

The data from the Electoral Court, shown above, shows the evolution in the number of municipalities and polling stations in the state of Ceará, except in 2020, when the elections took place in November due to the COVID-19 pandemic, which also had an impact on these communities.

This local analysis is relevant because there has been an increase in the participation of indigenous peoples in the electoral process, which proves the effectiveness of the electoral inclusion that has taken place, with access to the exercise of political rights, preserving the customs of these populations, with respect for differences, since the sections are installed in places within the indigenous villages, the electoral domicile of the indigenous people.

So, as Luiz Fux points out:

Concerning the right to recognition, as a dimension of the axiological vector of the dignity of the human person, its negative dimension prohibits the imposition of obstacles that could hinder the effective enjoyment of universal human rights by members of vulnerable, minority, and stigmatized groups. On the positive side, recognition suggests the implementation of specific measures, of a universalist nature, to meet the particular needs of members of stigmatized groups. In philosopher Nancy Fraser's felicitous definition, the right to recognition consists of the power to claim or demand to be treated as an equal, not as an outsider, a stranger to the political, social, or more generally human community (FUX, 2009, p.87).

According to Fux, this right to difference imposes the mitigation or adaptability, whenever possible, of general and abstract provisions that may have a disproportionate impact on the legal sphere of individuals or collectivities as a result of certain singularities and particularities. (FUX, 2009, p.86)

In this way, we can see the importance of the role of the electoral justice system in promoting the realization of electoral inclusion, insofar as it provides isonomic treatment to these populations, approaching their places and their customs without discouraging them, but preserving and respecting the dignity of these populations that, even in the face of so much violence and historical injustices, have given rise to the right to reparation and promoting political participation through electoral inclusion is a recognition of the human dignity of these peoples and the engagement of these populations that were previously marginalized and extirpated from popular participation.

It is considered that the condition of indigenous peoples today has still been difficult from the perspective of the struggle for demarcated lands and the living of their customs. However, the Electoral Justice has been incessantly seeking to provide improved conditions and dignified and respectful service to promote the social and political inclusion of these citizens, who have come to enjoy rights and duties in terms of political rights conceived from electoral registration.

Elias Mesquita Lopes reminds us of this situation when dealing with the political capacity of the Indian and points out that “throughout the history of Brazil, the Indian has always been considered an inferior being who needed to be incorporated into the so-called national communion.” (LOPES, 2007, p. 35)

Inclusion actions have a character of recognition and reparation for the injustices committed over a long period. The result of the 2022 Elections shows that these actions have had a positive impact concretely, with the election of five indigenous candidates to the Chamber of Deputies, confirming the increase in self-declaration and indigenous inclusion in the 2022 Elections. (G1, 2023)

And finally, the most recent and emblematic fact of indigenous inclusion was the translation of the Federal Constitution of the Federative Republic of Brazil of 1988 into the indigenous language, called Nheengatu, which on July 19, 2023 was launched by the President of the Federal Supreme Court, Justice Rosa Weber, at a ceremony held in the Maloca of the Federation of Indigenous Organizations of the Rio Negro (FOIRN), located in São Miguel da Cachoeira, Amazonas. On the occasion, Weber pointed out that: “(...) since the Citizen Constitution, indigenous people have had their rights recognized and are no longer ‘mere tutelage individuals’”. She added that the translation “is a gesture of appreciation and respect for indigenous culture and

language.” (CNJ, 2023)

4. CONCLUSION

The exercise of political rights by indigenous people over the years has marked Brazilian history, with citizens of indigenous origin elected to legislative houses and, currently, the indigenous people have Minister Sônia Guajajara at the head of the Ministry of Original Peoples, making it possible to consolidate the inclusion of indigenous peoples without prejudice to the preservation of culture, language, and customs as subjects of political rights and human rights in the plural society in which we live.

As a result, there has been a slow but steady advance in recognition of the fundamental rights of indigenous peoples, including the right to vote, and for this to happen, electoral inclusion is necessary for the effective political participation of indigenous peoples in the Brazilian population.

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HOME, A PLACE OF INSECURITY: AN INCREASE IN CASES OF VIOLENCE AGAINST YANOMAMI INDIGENOUS WOMEN

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ABSTRACT

The meaning of Yanomami comes from the descendants of a group called “proto-Yanomami” who settled a millennium ago around the mountains, where the communities isolated themselves for long periods until the 19th and 20th centuries. The territory of this indigenous ethnic group is the Surucucu region, located in the Amazon (LIMA, 2023); they live in the north of the Amazon rainforest, in villages spread between Brazil and Venezuela. Because they are difficult to reach, services, although common and everyday, are not easily accessible, which has repercussions for information and the realization of rights. The Yanomami people originated in Brazil and today represent 0.013% of the Brazilian population, occupying a territory of over 96,000 square kilometers, making it the largest indigenous reserve in the country (GONZAGA, 2023). There are, however, situations in which any disrespect for this rule can be understood without necessarily being an aggression against the federative form of state. The research aims to illustrate the inhumane acts that indigenous women have suffered and are suffering. The study used the deductive method through documentary and bibliographical research. The conclusion is that even though the legislation protecting this group lacks applicability, it is up to society and the state to intervene to ensure that indigenous women’s rights are realized.

Keywords: Human Rights. Indigenous Women. Yanomami. Violence.

1. INTRODUCTION

Since 1500, when we have the first historical records of the arrival of Europeans in Brazil, we know that indigenous peoples have been exploited. However, indigenous peoples are protected by the Federal Constitution of

1988, which does not prevent disrespect for various rights from occurring, such as: the failure to provide education for Yanomami children (respecting their beliefs, social organization, language, customs, etc.), the precariousness of the health services provided, such as non-continuous vaccination.

The Yanomami Indigenous Land (T.I.Y), which was officially ratified in 1992, covers areas in five municipalities in Roraima (Alto Alegre, Amajari, Cajacaráí, Iracema, Mucajáí) and three municipalities in Amazonas (Barcelos, Santa Isabel do Rio Negro and São Gabriel da Cachoeira). It is, therefore, natural that there is diversity within the Yanomami people themselves, both in terms of language and culture.

Yanomami local groups are, in practice, large extended families, interconnected by kinship ties. When the group becomes too large, part of it leaves to create another local group, thus avoiding internal tensions, but also so as not to deplete the natural resources of the occupied area.” In this way, the Yanomami adopt a semi-nomadic lifestyle, moving periodically to allow the occupied areas to recover and then being able to return to the same places. They also establish alliances between communities and organize themselves horizontally, which makes it impossible to build a Yanomami state, as they do not have a centralized political organization.

Loretta adds that, within this society, there is no division by social class, everyone has the same resources and skills to make the necessary artifacts. The concept of “tuxaua” or chief is an invention introduced by the whites, and the shamans act as intermediaries between the human world and the supernatural, performing cures through the emotional-psychological level; even they have no privileges and go about their daily activities like any other member of the maloca. Loretta Emiri highlights these aspects of Yanomami life, which, despite having been isolated for a long time, began to have contact with other cultures from the moment the first encounters took place (EMIRI).

Article 227 of the CF/88 guarantees citizens, through the state and the family, their full development, which should be promoted and encouraged with the collaboration of society, with a view to the full development of the person, their preparation for the exercise of citizenship and their qualification for work.

Unfortunately, the invasion of indigenous lands is a long-standing problem, but in the last four years there has been an increase in the problems experienced by the Yanomami, such as the invasion of reserve lands, which threatens the physical integrity, health and even the lives of this group.

Many are victims of abuse and aggression in their own homes. Unemployment and socio-political insecurity have made some families even more vulnerable, exacerbating their difficulties. According to UN experts, they have issued recommendations for Brazil to defend the rights of indigenous people and provide mechanisms to guarantee their human rights (UNITED NATIONS, 2021). Violence against Yanomami indigenous women is also a critical case for this tribe.

According to a study carried out by Dulce Meire, 402 of them concern crimes against women, children and the elderly. They include 42 types of crime related to the Specialized Police Station, for example: “Maria da Penha Law”, “corruption of minors”, “rape of a vulnerable person”, “attempted homicide”, “robbery and rape”, “sexual abuse”, “sexual harassment”, “abandonment of incapacity”, “sexual exploitation and rape of a vulnerable person”, “major rape”, “Yanomami rape”, “serious bodily injury”. With regard to violence against women: 233 correspond to the “Maria da Penha Law”, 23 to “rape”, 58 to “rape of a vulnerable person”, 6 to “sexual harassment”, 4 to “serious bodily injury”, in the period from 2010 to 2022. (MORAIS, 2023).

2. LACK OF ACCESS TO JUSTICE

The moroseness and lack of cultural sensitivity on the part of the justice system often prevent indigenous women from having access to justice and effective protection measures.

Access to justice is a fundamental and universal right that should be guaranteed to everyone, regardless of their ethnic or cultural background. However, for indigenous women, this access is often hindered by a series of specific challenges, ranging from cultural barriers to structural and social issues.

Indigenous women face a complex reality, where the intersection of gender, ethnicity and social class places them in a more vulnerable position. The legal system is often not sensitive to their needs and cultural particularities, which makes it difficult for them to access and obtain justice effectively.

One of the main challenges faced by indigenous women in accessing justice is the language and cultural barrier. Many indigenous communities have their own distinct languages, which makes communication with the justice system an arduous task. In addition, the lack of interpreters fluent in indigenous languages further exacerbates this situation, making it difficult to understand the legal procedures and options available.



Source: Socio-Environmental Institute (ISA)

Another important point is the issue of mistrust of the justice system on the part of indigenous women. The Yanomami land is the target of great greed, due to the presence of valuable minerals, and this is the first threat since its declaration. In addition to the environmental consequences, such as deforestation, the Yanomami population faces other problems, which are currently being highlighted in the news.

The history of oppression and violence they have suffered over the years often means that they do not see the legal system as an instance of protection and justice, but rather as an additional source of discrimination and re-victimization. This context discourages many women from seeking help and redress through legal channels.

In addition, indigenous women often face a series of social and economic obstacles that hinder their access to justice. Lack of financial resources to pay for legal proceedings, lack of information about their rights and difficulties in getting to legal institutions are some of the problems they face.

There, the enormous pressure that mining puts on communities has left a terrible trail of hunger, death and sexual exploitation of indigenous women. According to indigenous people from the region, as relations with the miners have deepened, many families have stopped cultivating their gardens and have become dependent on unequal exchanges with the miners. Some work as porters in exchange for payment in cash or gold, which they then buy in the camp canteens, where 1 kilo of rice or a frozen chicken costs 1 gram of gold or 400 reais.

In order to face these challenges, it is essential to promote awareness and training among professionals working in the justice system, making them

more aware of the cultural and gender issues specific to indigenous women. It is also important to ensure the presence of qualified interpreters to facilitate communication between the parties involved.

The creation of spaces for dialog and partnership between the justice system and indigenous leaders is also essential to promote more effective access to justice that meets the needs of these women. The inclusion of indigenous representatives in decision-making processes can contribute to the formulation of more sensitive and inclusive policies.

Another important measure is the implementation of training and awareness programs in indigenous communities, aimed at informing women about their rights and the options available for seeking protection and justice. This empowering approach can encourage women to break the cycle of silence and fear, promoting positive change in their lives.

In short, access to justice for indigenous women is a complex challenge that requires a joint effort from society, the justice system and the indigenous communities themselves. By promoting cultural sensitivity, guaranteeing adequate resources and information, and encouraging the participation of indigenous women in decision-making processes, we will be moving towards a more inclusive, fair and truly accessible legal system for all women, regardless of their ethnic origin.

The lack of support and neglect for the Yanomami community has a significant impact on students' academic performance. Data from Cenpec's Inequality Panel, based on the School Census (Inep 2015-2021), reveals that the educational disparities in these schools exceed the local and national averages. One example is the municipality of Alto Alegre, where there are 12 state schools in the Yanomami territory, with an age-grade distortion rate of 31% in 2020.

At the Yanomami Halikatou Indigenous State School, located in the same municipality, this rate was 54.9% in 2020. At the Yanomami Hakoma Indigenous State School, this figure reached 95.1%, and at the Surucucu school, it was 68.2%. In contrast, the rate for the state network was 23.5%.

2.1 Culture of Machismo.

Cultural norms ingrained in some indigenous communities perpetuate machismo and the subjugation of women, contributing to gender-based violence. The culture of machismo is a reality in many societies around the world, and unfortunately, indigenous women are not immune to this form of oppression. This issue is even more complex when you consider the

cultural particularities of indigenous communities, where women often face overlapping discrimination involving gender, ethnicity and social class.

In indigenous communities, traditions and customs play a central role in defining gender roles. Although each indigenous culture is unique, it is common to observe patterns that place women in a subordinate and dependent position in relation to men. These patterns are reinforced over time and can result in oppressive and violent practices against women.

One of the most obvious manifestations of machismo in indigenous communities is the unequal division of labor. Often, women are responsible for tasks considered “feminine”, such as harvesting food, raising children and keeping house, while men are in charge of more socially valued activities, such as hunting, fishing or political leadership. This division perpetuates a hierarchical view of gender, where women are relegated to a secondary and subordinate role in society.

In addition, gender-based violence is a sad reality faced by indigenous women. This violence can occur within family relationships, such as domestic abuse, or even in wider contexts, involving sexual assault and abuse by members of their own communities or those outside them. The culture of machismo often normalizes this violence, making it acceptable behaviour in certain contexts.

Another important aspect is the lack of representation and participation of indigenous women in leadership and decision-making positions. The predominance of men in positions of power reinforces the idea that women are not capable or worthy of occupying these positions, contributing to the perpetuation of machismo and gender inequality.

To tackle the culture of machismo in indigenous communities, it is essential to promote awareness and education about gender equality from a young age. Including discussions about respect, consent and gender equity in educational programs is an important step towards deconstructing harmful stereotypes.

In addition, it is crucial to involve community leaders, especially men, so that they become allies in the fight against machismo. Promoting a change in mentality and a more inclusive approach to community decisions is essential to guaranteeing the participation and well-being of indigenous women.

In the study carried out by Dulce Morais, on the approach of the prospectors towards the women of the community, the researcher writes:

(...) This is what the miners do when they want to have sex with Yanomami women. First they give them a bit of food, to make them stop being afraid, so that they begin to delude themselves, thinking: “They gave me food for no reason! Maybe they’re generous? Then again, when the woman returns, they give her some food again. The woman doesn’t ask: “Why did you leave me food for no other reason?”. When the woman has lost her fear, he calls her over. This is what the miners often do with Yanomami girls. They also give the women perfumes to make them perfume themselves. They say [to them] “Only walk after you’ve perfumed yourself with this!”. This is what the miners do when they want to have sex [with Yanomami women]. They also say: “Next time you come, I’m going to buy a skirt and I’ll give it to you!”. “I’ll also give you gold. With that gold, you can get whatever you like! If you want to drink cachaça, I’ll buy cachaça, if you drink cachaça”. So, after having said this to the Yanomami women, the prospectors have relations with them. However, the women who are aware don’t let the miners have sex with them. The miners only have sex with women who have drunk cachaça (...). The garimpeiros can’t have sex with women who haven’t had cachaça. Only the women who aren’t afraid of contracting the [skin] disease aren’t afraid, the others don’t listen to [the prospectors’] insistence. This is how the Yanomami women put it: “No... the Yanomami men are needy, so I’m really not going to make [the miners] have sex. After I let the gold diggers who have the gold disease have sex, I’ll be changed!”. (...)

In this clipping, it is clear that the garimpeiros use the availability of alcoholic drinks as one of their main tactics to attract young people and abuse adolescent girls. They approach young people who are accompanied by their sisters. This is what the Yanomami ask:

“That girl you took with you, is she your sister?”. Then the Yanomami reply: “She’s my sister!”. Once the Yanomami have said this, they let the miners know. So [they keep asking:] “What do you think about your sister? If you make your sister lie with me, even though you’re her brother, I’ll pay you 5 grams [of gold]. Do as I say! If you want cachaça, I’ll give you cachaça too. You’ll get drunk at home!”.

Access to justice for indigenous women who are victims of sexual violence is a major challenge. Law enforcement is often precarious, judicial systems inadequate and, in some cases, aggressors go unpunished due to legal loopholes

or corruption. In addition, the lack of resources and psychosocial support makes it difficult for victims to report crimes, which perpetuates the cycle of impunity.

Another important issue is the impact of sexual violence on the physical and mental health of these women. Many face deep psychological trauma, as well as the risk of unwanted pregnancy, sexually transmitted diseases and other health problems. The lack of adequate access to health services, including specialized care for victims of sexual violence, makes this situation even worse. This is what an indigenous researcher said in an interview with another Yanomami woman:

The prospectors always have a crazy desire to have sex. When people said they were coming, I got scared. That's why, ever since I've heard about them, I've lived in anguish. My mother says that they cut themselves, the children stare out of fear, because they don't realize that they are suffering. When the news [about the miners] came around... after I thought the same [as my mother], I was enlightened. When my mother and my older sister talked about these people, I was convinced: "This is how these people do it!"

The territorial and cultural rights of indigenous communities are also interlinked with sexual violence. The exploitation of natural resources on indigenous lands often brings with it an increase in violence against local women. Extractive activities often attract a predominantly male population, increasing the risk of aggression and abuse.

To address this issue, it is essential that indigenous women's human rights are respected and protected. This requires a coordinated effort by governments, indigenous organizations, non-governmental organizations and civil society to ensure that laws and policies protect indigenous women from sexual violence. In addition, it is crucial to strengthen judicial systems and create safe and accessible reporting mechanisms so that victims can seek justice.

The transmission of Sexually Transmitted Diseases is another common theme in reports on the situation of violence against women, as demonstrated by the report below collected by a researcher in another region of the TIY: Previously, Yanomami women did not have the disease of the abdomen.

In fact, the men weren't sick either, so the people were healthy. So we Yanomami didn't know about these "warasi" diseases that leave lesions on the skin, when the women weren't bleeding. Now, after the gold diggers started having sex with the women because of the

poison in the cachaça, we have learned the name of this disease.

Awareness-raising and education are also important tools in the fight against sexual violence. It is essential to promote gender equality and mutual respect within indigenous communities, as well as to sensitize society in general to the seriousness of this problem.

At the international level, human rights organizations play a key role in denouncing sexual violence against indigenous women and pressing for significant changes in policies and practices. Reports and campaigns by these organizations raise awareness of the issue and seek justice for the victims.

“After the gold diggers ruined women’s vaginas, they made them sick. That’s why women are dying out now, because of the lethality of this disease. They’re having sex with women a lot. So much so that, in 2020, three girls, who were only around 13 years old, died. The miners raped these girls a lot, drunk on cachaça. They were young, having just had their first period. After the miners caused the death of these girls, the Yanomami protested against the miners, who moved away a little. The leaders told them that being so close, they behave very badly. That’s why other Yanomami call them “malaria lethality”. They’re really bad, they carry epidemics that we die from. They insist on eating YANOMAMI UNDER ATTACK our vaginas, we’re afraid of that and our elders say so. I listen to the words of our leaders, that’s why I have a conscience, I’m not irresponsible, that’s why I’m distressed.” (YANOMAMI UNDER ATTACK, 2022).

Sexual violence against indigenous women is a serious human rights violation and a sad reality that affects communities all over the world. These women face an intersection of discrimination, ethnic and gender oppression, which makes them especially vulnerable to abuse and exploitation.

According to reports by human rights organizations, indigenous women face high rates of sexual violence both inside and outside their communities. These crimes are often committed by members of their own communities, but also by outsiders, including workers from extractive companies operating on indigenous lands. These women are often seen as easy targets, as they are marginalized and face multiple forms of discrimination.

Sexual violence against indigenous women is a complex and multifaceted issue that requires effective action from all sectors of society. Protecting the human rights of these women is essential to building a more just, equal and

violence-free society for all. Guaranteeing respect for the territorial, cultural and integrity rights of these communities is fundamental to preventing and combating sexual violence and promoting a safer and more dignified future for indigenous women.

It is important to emphasize that deconstructing the culture of machismo does not imply denying indigenous culture, but rather promoting a fairer and more equal vision within these communities. Respecting the traditions and cultural identity of indigenous communities is fundamental, but it is also necessary to question practices that perpetuate gender inequality and ensure that women have a voice and active participation in shaping their own destinies. Only through joint and committed efforts can we achieve a fairer and more respectful society, free from machismo and all forms of discrimination.

In this respect, it is clear that the financial resources coming from the federal or municipal governments are not enough to meet the demands of this public. Even though access to justice is recognized as a social right, in contemporary societies the concept of “effectiveness” remains ambiguous. The disparities between the parties can never be completely eliminated, making it necessary to look for ways to reduce these obstacles in order to guarantee safer access to justice for all (CARPPELLETT; GARTH, 1989).

2.2 Responsibility to defend the Indians

The report published on January 20, 2023 by the independent journalism platform Sumaúma, revealing the 570 avoidable deaths of Yanomami children during the four years of the Bolsonaro government, sparked growing concern and attracted global attention to the humanitarian crisis currently plaguing the Yanomami Indigenous Territory. Despite being the largest indigenous land in Brazil, this critical scenario had not received due attention from the media and the authorities, even though the denunciations made by these people have been going on since ancient times. In fact, Brazilian legislation, in accordance with Article 231 of the 1988 Federal Constitution, guarantees the right of indigenous peoples to their lands and the exclusive usufruct of these spaces (ABE, 2023).

“232. Indians, their communities and organizations are legitimate parties to file lawsuits in defense of their rights and interests, with the Public Prosecutor’s Office intervening in all acts of the process.”

The principles established in the Constitution also guarantee indigenous peoples due respect for their social organization, customs, languages, beliefs and traditions. Article 231 of the Constitution reinforces the right of

indigenous people in Brazil to maintain their ethnic identity, i.e. to be Indians and to preserve this identity without interruption.

The Responsibility to Defend the Rights of Indigenous Women
Indigenous women are an essential part of the cultures and traditions of their peoples, playing significant roles in the communities in which they live. However, throughout history, these women have faced countless rights violations and discrimination, relegating them to a position of vulnerability and marginalization.

- The responsibility to defend indigenous rights in court is one of the duties of the Federal Public Prosecutor's Office (art. 129, V)
- Legislating on indigenous populations is an exclusive competence of the Union (art. 22. XIV)
- Federal judges are responsible for prosecuting and judging disputes over indigenous rights (Art. 109 XI).
- The state must protect the manifestations of popular cultures, including indigenous cultures (art. 215, § 1)
- Respect for the use of their mother tongues and their own learning processes (art. 210, § 2)

In this context, the responsibility for defending the rights of indigenous women falls on the whole of society, governments and organizations, in order to promote justice, gender equality and respect for cultural diversity.

Indigenous women are often the target of various forms of violence and discrimination, whether in their communities, in cities or in contexts of territorial conflicts. These violations include domestic abuse, sexual exploitation, human trafficking and lack of access to basic health and education services.

Gender discrimination in indigenous communities, often underpinned by entrenched cultural practices, contributes to the subjugation of women, denying them opportunities for personal development and active participation in decision-making.

One of the strategies proposed by the ministry to deal with the alarming figures involves removing the possibility of monetizing misogynistic channels, in order to prevent these communities from making a profit through crimes against the lives of Brazilian women. The minister emphasized the need for legislation to prohibit this practice.

The online space has proved hostile to minority groups, including women. The rise of hate groups and the vulnerability of minority groups on the internet are a source of concern for movements and organizations that seek to guarantee human rights, especially the protection of women. According to the government, 100 social media accounts have already been identified in Brazil - 80 YouTube channels and 20 TikTok profiles - that disseminate misogynistic and sexist content, reaching more than eight million followers and around half a billion views.

Among the accounts monitored, many are associated with the so-called “Red Pill movement”, a digital group that propagates hate speech aimed at women, promoting the idea of male superiority. This community has been a cause for alarm for authorities and educators due to its widespread membership and the negative impact it can have on women both in the virtual environment and in the real world.

The mental health of women, especially young Generation Z women, is a widely discussed topic. The vulnerability of this group is a cause for concern, and a survey carried out in 2022 and recently released by the Ipsos Institute revealed that 26% of women born after 1995 say they feel like a fraud, as well as experiencing low self-esteem and generalized anxiety due to exposure on social media. In addition, 73% of them say they feel more stressed or anxious as a result of using social media, and 59% fear not living up to expectations after receiving compliments. Living in a virtual environment on a daily basis exacerbates these symptoms and makes women more susceptible to encountering toxic and harmful environments over time.

It is essential to recognize that defending indigenous women’s rights should not be an externally imposed action, but rather an inclusive process in which these women are the protagonists of their own struggles and demands. The empowerment of indigenous women through access to education, information and training is an essential way for them to take control of their lives and become agents of change in their communities.

In addition, it is crucial to guarantee their active participation in decision-making processes, be they political, economic or cultural. Governments have a responsibility to implement public policies that promote gender equality and the protection of indigenous women’s rights. This includes actions to combat gender-based violence, guarantee equal access to health and education services, and respect indigenous women’s right to their ancestral land and territory. In addition, it is important that governments work together with

indigenous communities to develop policies that are sensitive to their cultural needs and guarantee respect for the autonomy of these communities.

Social organizations, including non-governmental bodies and feminist movements, also play a crucial role in defending the rights of indigenous women. These organizations can offer legal support, social assistance, awareness-raising and empowerment so that indigenous women can tackle the challenges they face in their lives.

3. CONSEQUENCES FOR INDIGENOUS WOMEN AND THEIR COMMUNITIES

Where the home was supposed to be the safest place, many indigenous women have become the target of harassment and abuse from various men. Unfortunately, indigenous housing has become a risky environment in which some indigenous women have been attacked or even lost their lives. Some of the factors that encourage violence are economic factors, lack of access to public services and protection services.

The microbe of violence and feminicide that contaminates some indigenous families has hindered the search for help by this group of women in vulnerable situations and has increased the violence against Yanomami women in Brazil, which is already a country with many female deaths every year. It is necessary to strengthen the support networks for these women so that they can take active action against sexual exploitation. In Brazil, Law 11.340 or the Maria da Penha Law guarantees women protective measures. However, statistics show that every four minutes a woman is assaulted in Brazil and every eight minutes a woman dies from aggression (AGÊNCIA BRASIL, 2020).



Source: AMAZÔNIA REAL

In the document already sent to the president-elect's WG on Indigenous Peoples, they tell of the calamities caused by mining, such as contamination, deaths, diseases, grooming and rapes (Photo: Juruna Yanomami/HAY). An impactful and touching letter was sent to President-elect Luiz Inácio Lula da Silva on the day he was sworn in as the country's new president, at a ceremony held on Monday (12). The Yanomami women express their hope that Lula will fulfill his promise to combat illegal mining on indigenous lands. The letter was written during the 13th Yanomami Women's Meeting, which took place between November 22 and 26, in the Catrimani Mission region, in the Yanomami Indigenous Land, located in Roraima, with the participation of 49 women representing 15 communities (AMAZÔNIA REAL, 2023).

The contents of the document were shared exclusively with some press outlets by the Hutukara Yanomami Association (HAY), including Amazônia Real. In addition, a copy was sent to the President-elect's Working Group (WG) on Original Peoples:

“Lula, we Yanomami women want to send our word to you. You are a long way from the Yanomami Indigenous Land, but we know that you will receive our words and that you want to listen to us. We want you to know that we are afraid and very worried. Today the forest is sick. When our forest is sick, we all get sick.

According to the Yanomami women, “the forest is full of holes” and there are many miners in the territory. Before the invaders arrived, the water was clean, but today it is “dirty and the rivers are yellow”.

“Our children are already suffering the impacts of what is happening now. Lula, the eyes of the fish are changing. They look like their eyes are loose and even the animals are different, they look thin and sick. We're afraid of eating the sick fish. We're afraid that our children will become disabled,” say the women.

This reality is an affront to the principle of human dignity, the cornerstone of human rights. Unfortunately, 243 million women between the ages of 15 and 49 have suffered sexual or physical violence from their partner (UN, 2020). As far as human rights are concerned, in the case of Yanomami women, the United Nations, the International Labor Organization (ILO) and Convention 107 of 1957 are support networks for Brazil's indigenous people. However, they are silent on human rights, especially the dignity of the human person of these indigenous women.

The Brazilian state has institutes that can combat aggression, rules that can be applied effectively to reach all women, who are a vulnerable group, and Yanomami women are even more vulnerable. In this sense, the sexual violence in the Yanomami case reveals a scenario of interested parties of sexual exploitation related to the mediocrity of these oppressors.

In May 2022, the federal police, together with FUNAI and the Federal Public Prosecutor's Office, the Special Secretariat for Indigenous Health, and the military, carried out an investigation and received complaints about crimes on the Yanomami Indigenous Land, which offend not only infra-constitutional legislation but also the Brazilian Constitution.

News of the kidnapping, rape and murder of a 12-year-old Yanomami girl in Roraima has caused outrage and fear in recent days, aggravating social uncertainties. The complaint was made by Júnior Hekurari Yanomami, a young indigenous leader and president of the Yanomami and Ye'kwana Indigenous Health District Council. The miners invaded the community, kidnapping a woman, a 4-year-old child and a teenager, resulting in the child's death after falling into the river.

The situation of ethnic risk in the Yanomami Indigenous Land has been reported for some time. In 2021, the Hutukara Yanomâmi Association and the Wanasseduume Ye'kwana Association, with the support of the Socio-Environmental Institute, published a well-founded document entitled "Yanomâmi under attack - illegal mining in the Yanomâmi Indigenous Land and proposals to combat it". The study, based on satellite images, reveals the presence of 19 mining sites that have caused immense scars in the forest, with an increase of 46% over the previous year. This situation affects around 200 Yanomami villages, some of which are still uncontacted, making them vulnerable to harassment by gold miners.

Environmental degradation and the change in the indigenous people's living conditions resulted in shortages and hunger. The balance between natives and nature has been disrupted, putting their very survival at risk. Women have been victims of sexual violence in exchange for food, and adolescents of both sexes are exposed to alcohol and drugs as a way of creating dependency and vulnerability.

The current context presents a growing dampening of social awareness, an inversion of values and the spread of fear and insecurity. There are a number of visible and widespread occurrences of treatment incompatible with the human condition, affecting not only indigenous people, but also other vulnerable groups

such as black people, the poor, women, children, the elderly and the homeless.

In recent years, there has been an increase both in the number of reports of extreme violence against women by their partners and in cases of rape of children, including babies, often perpetrated by family members. This is evidence of a profound anomie in Brazilian society, as if there were no social rules proper to a normal, civilized society.

Social disorganization can occur in many societies, but the real challenge lies in the capacity of these societies to regenerate their violated social relations and establish new, more developed and civilized patterns of relationships (SOUZA, 2023).

In this way, international human rights organizations are robustly supported and the applicability of Brazilian legislation would guarantee the weakening of sexual exploitation of indigenous women, a challenging case for the state, to guarantee the most vulnerable their dignity, protection of the collective rights of indigenous peoples in relation to the DADDH, especially with regard to sexual violence.

Actions could mitigate these crimes: monitoring, military police, support centers for battered women, women's police stations... In addition to reiterating all the other violated rights, the solution to the case depended essentially on the application of the Federal Constitution in its entirety. In February, FUNAI took part in an event organized by the Federal Government to promote the Action Plan for the Defence of Guarantees of the Rights of Indigenous Children and Youth, within the scope of the Ministry of Women, Family and Human Rights (MMFDH), to apply to the protection of indigenous youth and children, according to the following axes: training and diagnostics; practical actions to reduce violence; review of regulations and bills; and mobilization and social participation. (FUNAI REPORT, 2022).

When indigenous issues hit Brazil in recent months, the inhumane situation of the Yanomami tribe was exposed in the media, various rights being violated, including violence against indigenous women: "The Federal Police have already identified four suspects: two sisters who are under arrest, and their husband and another woman who are on the run.

Two teenagers, one aged 15 and the other 17, and a young woman were rescued after being exploited in cabarets by gold miners" (GLOBO, 2023). In this report, it was reported that the girl had spent 30 days doing 16 shows a night, an inhuman fact of the utmost cruelty. Another report, "The

Federal Police are investigating the sexual exploitation of girls in mines in the **Yanomami Indigenous Land**, the corporation has already identified **four people** involved in the prostitution network” (UOL, 2023).

However, despite the various protection institutes, the indigenous faced a life abandoned by the protection institutes. There was a clear violation of the human rights of indigenous people. In this sense, with the aim of preserving the culture of indigenous peoples, the IACHR and the Court, since 2020, have been trying to secure collective land ownership rights to guarantee the protection of their ways of life, of building knowledge and existence.

First of all, let's make a fundamental distinction between immunity and exemption. The former is provided for in the constitutional text and occurs when the constituent legislator itself provides for the tax not to be levied in a given case. Even if the word “exemption” or its derivations is spelled out in a given constitutional provision, we will still be dealing with immunity, since it is expressly provided for in the Constitution.

Reports from the defense of On the rainy morning of March 18, 2020, after having breakfast with Ms. Flora⁵⁶, a 65-year-old Piratapuya, an ISA employee, I stayed in the kitchen of the same institution to review my Tukano lesson. Shortly afterwards, Flora returned to the kitchen and sat down with me. I asked her if she remembered the case of Sarah, who died at the age of 17 in the second half of 2016. She thought about it... it was hard to remember and then she said: “Wow, I do remember, it was horrible”. With a very sad face, she looked at me and added: “But what about it?”. I said that I didn't know much about what had happened to her and then Flora began to tell me that the two girls who were with her ran out, but they caught her. They tore up all her clothes and school materials. It happened around nine o'clock at night, and they found her in the house in the morning when they went to look for her. She did everything she could to get away from them, but she couldn't. The girls who escaped don't say anything about what happened, they can't say anything.

Intrigued by the story, I asked if, as well as being killed, Sarah had also been sexually abused and the answer I got was as follows: “Wow, they abused her a lot, a lot. She was found without any clothes on, they took everything off”. Based on my question, Flora says that the abuse Sarah suffered was having her clothes removed from her body, without mentioning any other type of sexual abuse (ACERVO SOCIOAMBIENTAL, 2022).

On the other hand, an exemption is a legal dispensation from paying a tax, which leads us to the conclusion that it is done by law. Thus, even if the

legal text states that a certain taxpayer or group of taxpayers is immune, we are actually dealing with an exemption. Consequently, the term is not the most important thing, but where it comes from.

4. CONCLUSIONS

The focus of action of international human rights bodies can expand to include new rights and new subjects of rights, as in the case of the IACHR, which opened up to the agenda of indigenous peoples' rights as a result of the Yanomami case. The United Nations Conference on Human Rights recognized the occurrence of violence against women as one of the forms of human rights violation. As a result, the governments of UN member countries and civil society organizations began to create action plans to combat violence, which is recognized as a serious public health problem (CNJ, 2023).

Therefore, changes in favor of respecting and promoting human rights can be made effective through the actions of states, with their strength and in a positive way, in order to include on the agenda the guarantee of combating sexual exploitation and violence against indigenous women. Brazil is a signatory to all international treaties (INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, 1985). They aim to reduce and combat gender-based violence, which indicates that it is possible to guarantee a dignified life for indigenous women, keeping them safe from violence.

The Yanomami are a part of humanity and should be treated with respect and dignity, as Aíton Krenak said: "That's why Brazilians in general have heard complaints for almost 40 years and have never done anything to protect the lives of the Yanomami." (CENTEC, 2023).

The responsibility to defend the rights of indigenous women is a collective and urgent task. All of society, governments and organizations must unite to promote gender equality, respect for indigenous cultures and an end to the rights violations faced by these women. Only by recognizing the importance of indigenous women as agents of transformation in their communities and promoting their voices and leadership will we be able to build a society that is fairer, more inclusive and respectful of all its diversities.

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STRONG INITIATIVE, WEAK OUTCOMES? PERCEIVED LEGITIMACY OF THE BELGIAN TRUTH COMMISSION

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Abstract

In 2020, the Belgian parliament established a truth commission to address the country's brutal colonial past in Congo, Rwanda and Burundi. It concluded its investigative work in 2022. Despite numerous substantial recommendations, the commission's report failed to gain final parliamentary approval, resulting in heavy criticism and disbelief among civil society organizations and diaspora groups in the country. Following S. FORD's (2011) social psychology model, this contribution examines the perceived legitimacy of the Belgian truth commission as a transitional justice mechanism and explores how party politics played a significant role in undermining its effectiveness. The main conclusions are: i) the Belgian political landscape has come a long way to acknowledge the atrocities of the past, however, neither formal apologies nor reparations are or will be on the agenda any time soon, and ii) the truth commission was established and operated top-down, excluding meaningful representation and participation from diaspora groups and other reconciliation advocates.

Key words: Belgium, Congo, perceived legitimacy, truth commission, reparations

1. INTRODUCTION

At the end of 2022, the first ever Belgian truth commission has concluded its investigative work on the country's colonial atrocities and legacy. After over two years of work, the final report contained more than 120 recommendations but was eventually not voted for or adopted. That further intensified the criticism from civil society on how the commission had operated and lowered once again the credibility of the Belgian political landscape (DE STANDAARD, 2020a, 2022). Some referred to it as a "cosmetic operation at the service of the status quo" (DESTROOPER, 2022, p.9). This paper is relevant because of its analysis of the commission's perceived legitimacy as a mechanism for transitional justice and of how party politics can jeopardize such a process.

2. BACKGROUND

As of 1885, King Leopold II claimed and de facto owned the then called

Congo Free State, a country more than 70 times larger than Belgium and rich in natural resources (e.g., rubber, ivory, etc.). Under his rule, many atrocities took place (e.g., exploitation, arbitrary imprisonment, mass mutilation, etc.), causing the death of up to 10 million people (Politico, 2022). This led the Belgian state to take over control in 1908. Congo became a colony until its independence in 1960 (VAN ASSCHE et al., 2021, p.1).

When Congo was led by Joseph Kabila (2001-2019), Belgium's relationship with its ex-colony was rather on the back burner. Apart from apologizing for its role in the assassination of Patrice Lumumba – Congo's Prime Minister in 1961 (see e.g., VERDOOLAEGE & KERSTENS, 2004) – Belgium remained dead silent about all other aspects of its brutal colonial past. Tensions decreased as of 2019, when Félix Tshisekedi became President. In that same year, Belgium recognized its responsibility for the segregation and abduction of *metis*³¹ children in and from its colonies (VAN ASSCHE et al, 2021, p.1).

In June 2020, due to the COVID-19 pandemic, Belgium's King Philippe could not travel to Congo for the 60th anniversary of the ex-colony's independence. At that time, in the wake of the death of George Floyd in the US, many Black Lives Matter and other anti-discrimination protests took place in many countries (POLITICO, 2022; FOREIGN POLICY, 2022; DESTROOPER, 2022, p.6). In Belgium, manifestations were not only addressing institutionalized racism and police brutality but also condemning the lack of contextualization and the continued glorification of Leopold II. There are still at least fifteen monuments of King Philippe's great-great-uncle and hundreds of streets and symbols named after white colonialists (GODDEERIS, 2016, pp.352-353, p.368, DESTROOPER, 2022, p.7).

Instead of travelling, King Philippe used this momentum to send a formal letter to President Tshisekedi and, for the first time ever in the history of the royal family, express his deepest regrets for the insufferable harm his country caused when it colonized the region (DESTROOPER, 2022, pp.6-7; VAN ASSCHE et al., 2021, p.2; POLITICO, 2022; FOREIGN POLICY, 2022; VRT NWS, 2022a). In parallel, in June 2020, the Belgian parliament – as the first ever institution of a former colonizer – established a truth commission to reflect on appropriate reparations for the country's overseas colonial legacy (DESTROOPER, 2022, p.1, DE STANDAARD, 2020b).

In June 2022, King Philippe travelled to Kinshasa for the first time and

31 *Metis* refers to (mixed-race) children from African mothers and European fathers who worked in the Belgian colonies.

condemned once again the colonial regime, this time when addressing the Congolese parliament. He said it “was one of an unequal relationship, in itself unjustifiable, marked by paternalism, discrimination, and racism. It led to abuse and humiliation” (POLITICO, 2022; BRUZZ, 2022a). Many considered this a big step forward, others were hoping for official apologies.

3. METHODOLOGY

Now that the commission concluded its work, it is the aim of this paper to assess the commission’s outcomes as well as to explain the reasons for the criticism it received. In that light, it is relevant to build on the research done by T. DESTROOPER (2022), who conducted an expressivist³² analysis shortly after the Belgian parliament established the commission in 2020. In other words, this paper explores if and how the perception about the commission has evolved, by comparing start to finish.

To fully understand what led civil society actors, including diaspora groups, to perceive the legitimacy of the commission negatively, the below analysis uses (mostly Belgian) media coverage and follows the social psychology model as outlined by S. FORD (2011). He suggested that this model not only affects the perceived legitimacy of international criminal courts (which his research focuses on), but also of other transitional justice mechanisms, which truth commissions can be one form of (FORD, 2011, p.463; DESTROOPER, 2022, p.2).

Following FORD (2011, p.440), “the social psychology model predicts that when an affected group identifies strongly with one of the sides in a conflict and has a dominant internal narrative that denies responsibility for the conflict and any ensuing crimes, then indicting [...] that group will cause the group to view [the transitional justice mechanism] negatively”, as a result of a mix of biases.

4. ANALYSIS

4.1. *No to repair: party politics can’t get beyond the recognition of suffering*

Even though positive perceived legitimacy is usually a prerequisite for transitional justice mechanisms to be successful, S. FORD argued that any such mechanism can be subject to negative perceived legitimacy too without it

32 T. DESTROOPER’s analysis followed the logic of both normative and empirical expressivism, which examines if and how institutions could use their expressive potential to facilitate transitional justice processes.

always being a complete failure per se (FORD, 2011, pp.462-463). Looking at the Belgian case, both views seem to hold up.

4.1.1. Towards acknowledgement

On the one hand, in comparison with other former colonial powers, Belgium is one of the few that has taken the initiative to establish a formal parliamentary commission to look into past atrocities and its colonial legacy. Additionally, King Philippe's letter of regret to President Tshisekedi in 2020 and the adopted 2018 resolution in support of the 'metis' people (KAMER VAN VOLKSVERTEGENWOORDIGERS, 2022) indicated that norms are slowly shifting. Most Belgians seemed to be ready to come to terms with their colonial history (VAN ASSCHE et al., 2021, p.2).

On the other hand, truth commissions should not be seen as direct reconciliation providers; instead, they are merely a means to advise how to get there (VAN ASSCHE et al., 2021, p.1). This aligns with the definition of a truth commission followed by T. DESTROOPER (2022, pp.4-5), which entails (i) a temporary body (ii) sanctioned by the state (iii) to conduct an investigative report (iv) on abuses that occurred over a longer period of time in the past. The Belgian truth commission fits that definition and its mandate also explicitly adopts the rhetoric (truth and reconciliation) and logic of transitional justice (DESTROOPER, 2022, p.7). That could be indicative of progressive political intentions.

Nevertheless, recognition of and remorse for the past alone is insufficient to achieve true reconciliation. An acceptance of responsibility, a promise of non-repetition and some form of reparations is required as well. So far, those elements, including formal apologies, have not been officially expressed, neither by the Belgian monarchy nor the government (VAN ASSCHE et al., 2021, p.7; LASTREGO & LICATA, 2010, p.64, p.71).

4.1.2. Misplaced sense of victimization

Interestingly, the fact that such elements were taken up in the recommendations was eventually the main reason why the commission was unable to adopt the final report. After more than 2 years of work, this is an important political observation. On the one hand, most mainstream parties – usually those with a political representation on both sides of the country (i.e., Flanders and Wallonia) – are hesitant to go all-in on seeking justice, so it seems. They are anticipating that heavy criticism on Leopold II would as such not only destabilize the Belgian royal family today, it would at the same time

be music to the ears of the increasingly popular Flemish nationalist parties *N-VA* and *Vlaams Belang* (GODDEERIS, 2016, pp.369-370).

On the other hand, besides being in favour of an independent Flanders, *N-VA* and *Vlaams Belang* are respectively situated on the right and far right end of the political spectrum. This, traditionally speaking, makes them highly conservative on the socio-cultural dimension and therefore much less open to ingroup sacrifices (i.e., Belgian citizens) in the benefit of outsider communities (i.e., Congolese, Rwandan and Burundian diaspora) (VAN ASSCHE et al, 2021, p.9). Moreover, despite being among the governing parties, the liberals (i.e., both *OpenVLD* in Flanders and *MR* in Wallonia) have left the commission's final meeting before it could get to the voting of the report. They fear legal obligations to material reparations as a potential consequence of apologies (DE TIJD, 2022; VRT NWS, 2022b). Their narrative is that Belgian citizens nowadays should not – at least not literally – be paying a heavy price for misdeeds only their ancestors were involved in. This obviously hinders the reconciliation process and contributes to what S. FORD describes as a misplaced sense of victimization (2011, p.476).

According to S. LASTREGO and L. LICATA (2010, p.64), people usually remain reluctant to agree to very costly compensations, even if recognition is considered an important factor for the motivation to repair. In that light, fear of money being misused is a commonly used anti-argument (VAN ASSCHE et al., 2021, p.8). Regardless, that doesn't make it less likely that victims would want their perpetrators to be punished and, as a consequence, perceive the commission's legitimacy negatively if it does not validate that ingroup narrative (FORD, 2011, pp.464-465).

In short, what S. FORD (2011, pp.467-468) refers to as a 'tipping point' in belief changes seems to have occurred within the dominant group (i.e., Belgians and their (political) institutions) when it comes to the acknowledgement of past wrongdoings, though not fully when it comes to accountability or repair.

4.2. TOP-DOWN APPROACH DISREGARDING VICTIMS' VOICES

The Belgian parliament's initiative to establish a truth commission could have been properly welcomed if it wasn't for its rather inconsiderate top-down approach. Several diaspora groups and civil society organizations (CSOs) had been advocating for a formal and honest investigation of Belgium's colonial legacy for years. They felt taken by surprise and left out once again (DESTROOPER, 2022, p.8).

4.2.1. *Only empathy, no inclusion*

According to the procedural justice theory, people perceive and voluntarily accept institutions as legitimate as long as their authority is experienced through procedures that people perceive to be fair as well (FORD, 2011, p.456). In the Belgian case, however, the commission's legitimacy was negatively affected because its mandate was too broad and its operational timeframe too tight, but even more so because of how it disregarded the victims' voices throughout the process. Not only were diaspora actors underrepresented in the commission's expert panel, neither were they offered meaningful participation in shaping the agenda or managing expectations (DESTROOPER, 2022, pp.7-9; LA LIBRE BELGIQUE, 2020; DE MORGEN, 2020, DE STANDAARD, 2020c).

Interestingly, the commission was chaired by a parliamentarian for *Groen*, the Flemish Greens, a party traditionally made up of individuals J. VAN ASSCHE et al. (2021, p.9) would describe as "having an open-minded, universal and inclusive worldview towards social-cultural outgroups". Their research shows that such progressive profiles are more willing to apologize for and raise awareness about their country's colonial era. The main predictor is their higher sense of empathy for the outgroup's sufferings (VAN ASSCHE et al, 2021, p.7). From that perspective, if you chair a truth commission and you claim to be empathetic, then why not avoid what co-shaped past harm in the first place (DESTROOPER, 2022, p.9) and instead push for the affected communities' involvement from the get-go?

A plausible argument is that people desire to maintain a positive image of themselves and the group they represent. Hence, they might adapt their representations of the past by minimizing or justifying committed crimes and by neglecting the related consequences felt to this day (LASTREGO & LICATA, 2010, p.64). In the same vein, participation could lead to reactivated feelings of anger and revenge from victims towards their perpetrators. This could discourage constructive intergroup interactions, as was the case for *Gacaca*³³, for example (VAN ASSCHE et al., 2021, p.8).

4.2.2. *Extra-legal steps: the only way forward?*

The Belgian truth commission's final report contains over 120 recommendations divided into 3 main categories, each with subcategories

33 *Gacaca* courts are community justice systems set up in Rwanda after the genocide in 1994.

(KAMER VAN VOLKSVERTEGENWOORDIGERS, 2022): (i) history and research (incl. the facilitation of further academic research and cooperation between the 4 countries; making governmental and royal archives available to the public; etc.), (ii) reparations (incl. symbolic reparations; decolonizing the public space; reconciliation; education; international relations; and the infamous article 69 on formal apologies), and (iii) the link between colonialism and racism and discrimination today (incl. follow-up actions).

Diaspora groups reacted with outrage and disbelief (BRUZZ, 2022c) when they found out that the reference to formal apologies was the main political stumbling block for the commission's final report not to be adopted (BRUZZ, 2022c). Moreover, it remains very unlikely that those apologies will be expressed any time soon. Having said that, throwing out the baby with the bathwater would not be advisable, which is something diaspora groups realise too (BRUZZ, 2022b).

Instead, focusing on the extra-legal dimensions of accountability and transitional justice seems a more feasible path forward (DESTROOPER, 2022, p.3; see also MCEVOY, 2007). In the end, the healing process for psychological traumas can take diverse forms (VAN ASSCHE et al., 2021, p.2).

As the phenomenon of post-colonial migration is much more limited and recent in Belgium compared to other countries, it is very difficult for the relatively small number of Congolese, Rwandan and Burundian people to be the loudest critical voice in the debate (GODDEERIS, 2016, p.369; BRUZZ, 2022b). Therefore, besides the commissioners and politicians, the recommendations could (and should) be taken up by other actors too and be the foundation for a continued effort – this time embedded in a more collaborative spirit.

5. CONCLUSION

The commission's broad and ambitious mandate, composition and tight deadlines were assessed by T. DESTROOPER (2022) in the early stages of its establishment, taking into account the criticism from civil society actors (DE MORGEN, 2020; BRUZZ, 2022c). As the commission's work came to an end in 2022, this paper built on that analysis and aimed to elaborate an answer to whether or not the commission had the potential to either further accountability or consolidate the unjust status quo.

The conclusion is that the commission's work, at least for the time being, was not successful in fostering formal accountability on the political level. To substantiate that, this paper developed two lines of argumentation. On the one

hand, party politics and ideological fault lines could not be surpassed after more than 2 years of investigative work. Despite the fact that the commission managed to formulate over 120 recommendations – most of those framed as ‘common denominators’ across the political spectrum – it ultimately did not vote for or adopt the final report. It could not get any further than acknowledging the painful past, which comes across as repetitive and redundant at this point in time. This completely undermines the commission’s seemingly sincere political intentions at the start of this process as well as its openness to reconciliation.

On the other hand, the lack of involvement of the diaspora throughout the entire process, ranging from establishing the commission all the way to shaping potential next steps, remains a major and heavily criticized issue. Even if the commission would have managed to adopt the final report and to push for actions, its credibility among affected communities would still be low. This paper showcased that by following the social psychology model (FORD, 2011) and acknowledging the importance of positive perceived legitimacy for accomplishing transitional justice.

In sum, one could argue that the 2020 momentum was real and expectations were high, but that the overall process and (lack of) official results of the Belgian truth commission were rather disappointing. Critics speak about a missed opportunity (DE STANDAARD, 2022). Looking ahead, this paper would recommend the Belgian parliament to overcome hesitations concerning apologies and (financial) reparations, first of all by addressing those directly with the actual victims and their families. Also, Belgium’s most recent commitment³⁴ to Congo seems to be a good investment and could facilitate further progress (VRT NWS, 2022c).

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TRANSITIONAL AND TRANSFORMATIVE JUSTICE: APPROACHES TO REPAIR SLAVERY LEGACY AND INEQUALITIES FACED BY BLACK BRAZILIANS

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Abstract

This paper aims to explore the necessity of reparations policies for afrodescendant people in Brazil, in order to reach equality and diminish the structural imbalances generated by racism towards this population. In this sense, to contextualize the problem, this paper highlights the main historical dynamics occurred in the country since the slave trade period, through the abolition process and its impacts in black people's lives, attaining the current reality and structural inequalities faced by afrodescendant people in the country. Also, this paper explores some key social concepts important to comprehend how and why black people in Brazil are the oppressed ones, despite of being the numeric majority in the country. Hence, by placing the issue and its development throughout Brazilian history, it is possible to support the claim made on this paper regarding (i) the need of reparations to overcome the inequalities faced by black Brazilians and (ii) the pertinence of using the transitional and transformative justice approaches as tools for addressing structurally the imbalances faced by them.

Keywords: Transitional justice; Transformative justice; racism; Brazil; reparations; black people.

1. INTRODUCTION

Human rights violations that occurred during past historical events often shape current realities, affecting the descendants of the victims and the power dynamics which structure the society. That is the case of black people living in Brazil, who experience social inequalities and racism as a legacy of the slave trade period, harms that successfully crossed different generations due to the lack of responsibility of the state to integrate this population during the abolition and post-emancipation process (D. Ribeiro, 2018, p. 48).

In that sense, the present essay aims to explore a) how the dynamics of this past period in Brazil's history influence the current inequalities and power imbalances faced by black Brazilians, b) how the marginalization and 'minorization' process happened towards this population as an agenda

of the government to, finally, c) propose the approaches of Transitional and Transformative Justice as tools for Brazilian government to address its responsibility to repair black people's rights.

Is imperative to mention that this essay does not intend to design or propose which reparations policies need to be created in order to reach equality to black Brazilians. In reality, what is pursued in this article is to propose strategic tools to be used as guidelines by the government, guidelines which will enable the creation of effective policies that can address structurally the imbalances faced historically by this population.

For this purpose, this essay engages with the literature and uses secondary data analysis to describe the situation experienced by afro-descendants in Brazil and to suggest the mentioned approaches to overcome the imbalances faced by them, thus functioning as a call for justice to black Brazilians.

2. SOCIAL INEQUALITIES AS AN INHERITANCE OF SLAVERY AND THE ABOLITION PROCESS

Errors from the past, mainly those regarding human rights violations, are not confined to only one period of history, they have collateral effects that keep reverberating into nowadays societies. This dynamic is present when we analyze the historical period of slave trade in Brazil, which is one of the structural roots to explain the socioeconomic and political inequalities currently experienced by black Brazilians.

Brazil, as a former colony of Portugal, received about 5 million enslaved African people (A. Rossi, 2018, para. 10), which represents 36% of the 14 million enslaved people trafficked by European countries into the New World (E. Allen & R. Chrisman, 2001, p. 50). This scenario is crucial to understand why nowadays Brazil is the country, outside the African continent, with the largest black population in the whole world (C. Carvalheiro, 2021, para. 1), since black Brazilians represent 56,2% of the general population of the country - which is a total of 209,5 million people according to the Brazilian Institute of Geography and Statistics – IBGE (2020, p. 1).

However, even though black people in Brazil are the majority of the population, they face a 'minorization' process, a social process described by the Brazilian philosopher and anthropologist L. Gonzales (1980) as a dynamic of the dominant groups which marginalize a specific social group denying them the access to the full enjoyment of basic human rights and the access to power spaces. Is important to highlight that this attribute of the dominant

and minoritized group is based not on the numeric aspect of the population, but rather on the social positioning of this group in the social hierarchy. This marginalization and minoritization dynamic, towards black Brazilians, is intrinsically related to the slavery period, to the abolition process and to the post-abolition period, as explained below.

2.1. The post abolition and the marginalization of black people

First, regarding the slavery period, Brazil was an active actor when it comes to slave trade during the colonial time. As mentioned above, the country received almost 5 million enslaved people brought from the African continent and these people were subjugated to violations of basic human rights for almost 4 centuries. The abolition movement only started after a) the pressure imposed by the capitalist process that took place worldwide during the XIX century and b) the need for paid workers to this new economic model, reason why this movement in Brazil started to grow and the government started a process to transit from the old slavery economy to the new capitalist one (F. Fernandes, 2008, pp. 31-35). A base measure for this purpose, implemented by the Brazilian government, was the incentive policy for white European workers to migrate to the country and, as consequence, between 1870 and 1900 over 1,13 million European migrants arrived in Brazil to replace enslaved workers (G. Marigoni, 2011, para. 16).

This scenario created a marginalization of black Brazilians since the agenda of the Brazilian government, during the abolition process, was focused on providing reparations to the enslavers rather than developing measures to integrate ex-enslaved into society. As stated by F. Fernandes (2008, p. 29) the abolition process that took place in Brazil relieved the responsibility of the enslavers and the government regarding the safety and socioeconomic status of black Brazilians, leaving them without any kind of support to survive in the new regime.

Additionally, it is important to mention that the marginalization of black Brazilians is also a consequence of two laws created by the Brazilian government when the abolition movement started worldwide: a) the first one is the Law on Education (Law n.º 1 of 1837), which prohibited enslaved black people and even freed enslaved to access education in Brazil; b) the other one is the Law on Lands (Law n.º 601 of 1850), which created measures to prevent black people – enslaved or freed – from acquiring lands (Vieira, 2020, para. 26). These laws were only repealed after the abolition, which occurred in 1888 and, with no policy or law created to provide lands to the ex-enslaved or to

integrate them in education, they faced a reality of illiteracy and homelessness.

With that, black Brazilians started to install themselves in the margins of the cities and struggled to find means to integrate into the new economy, competing with the white migrants for jobs. Regarding this process, the Brazilian philosopher and researcher D. Ribeiro (2018, p. 48) asserts that black people were evicted from the 'slave quarters' and only had the option to create the favelas – vulnerable communities that exist until nowadays in Brazil.

As another obstacle to the integration of black people, there was the growing eugenics ideology that started to create roots in Brazilian society. It is well known how the slave trade was supported by the ideology of the inferiority of the black race and, in Brazil, this ideology thrived during the post-abolition period as an agenda of the government. The eugenics theory supported in Brazil stated that, for a country to be considered developed and modern, it had to erase the unfit races – in this case, the black one – and the government used that ideology to create policies for the 'whitening' of the population (A. Nascimento, 1978 pp. 70-71).

These policies can be approached under the concept of "necropolitics" developed by the researcher A. Mbembe (2018, p.41), who argues that States, during the post-emancipation period, created policies based on racism and the ideology that black lives are disposable and do not matter, the reason why they neglected the necessity to create policies of integration and, instead, designed laws and policies to restrict rights of black people. In Brazil, some of these policies were the incentive of white migration mentioned above and the creation of laws that criminalized loitering and capoeira – afro Brazilian martial art –, which imprisoned thousands of black men (M. Wermuth et al., 2020, p. 1062). It is imperative to highlight that the target of these policies was black people and to reinforce their marginalization process. This demonstrates that the Brazilian government not only abstained from the responsibility to provide means for black people to find work positions during the post-abolition, but in fact created policies to criminalize black people who were unemployed – which the government masqueraded as loitering.

In this scenario, even though the segregation of black people was not directly expressed in the law – as the apartheid laws in South Africa or Jim Crow's in the US – the government institutionalized racism through the lack of policies for the integration of black people and the creation of the "whitening" and "necropolitics" mentioned above. As explained by A. Nascimento (1978, p. 73), these ideologies and policies corroborate the process of extermination of

the black race, which was not only an abstract theory but a calculated strategy of destruction, a strategy of neglecting black people's access to basic rights and exposing them to all kind of destruction environments – such as prisons.

This process of institutionalized racism was reinforced by the “myth of racial democracy”, a discourse promoted not only by the government but also by Brazilian elites who, as explained by A. Nascimento (1978, pp. 79-80), prohibited the debate around race and discrimination by claiming that all people in Brazil are equally considered a Brazilian, with no race distinction. The government and the white elites alleged that there was no racism in the country in order to deny space for rights discussion by black movements, in a strategy to maintain the *status quo* and to evade the responsibility of promoting social justice and reparations to black people.

2.2. The current imbalances as legacies of the slavery and abolition period

Owing to these historical injustices, black people in Brazil currently experience different forms of social imbalances, being on the bottom line of the social indicators regarding social development and on the peak line of those regarding social inequalities. According to the census of Social Inequalities by Color or Race, conducted by the Brazilian Institute of Geography and Statistics in 2019 (pp. 1-2), despite being the numeric majority of the Brazilian population, black people occupy only 29.9% of the leading position in companies in Brazil, whereas white people – being the numeric minority – occupy 68.6%. Black Brazilians are 64.4% of the unemployed people in the country and, when it comes to salary, there is a racial pay gap, with white Brazilians earning 73.9% more than their Black counterparts. Only 24.4% of the congress is composed of black people.

Furthermore, the extreme poverty rate³⁵ among white people is only 15.4%, whereas for black people is 32.9%, and, regarding illiteracy, they are 9,1% of this population, while white people are only 3.9% of them. The homicide rate among black people is 98.5, and for white people is 34.0 in each 100 thousand young people, which basically means that a young afro-descendant in Brazil has 2,9 more chances of being murdered than a white young person. Also, black people are 61,7% of the incarcerated population, over 450.000 persons, whereas white people are only 37,22% (P. Calvi, 2018, para. 2). These are only some of the examples of social inequalities faced by black Brazilians.

35 Extreme poverty is understood as people who receive less than US\$ 5.40 per day (IBGE, 2019, p. 1)

As mentioned at the beginning of this chapter, black people are the largest population in the country, but due to all this history of neglect and marginalization by the government, they were minoritized and struggled to have access to basic rights – housing, education, work, dignity – and are almost invisible in power spaces such as political arena or high hierarchy positions in private and public institutions. This means that black Brazilians are only represented as the majority when it comes to the inequality indicators described above because they are the minority when it comes to development indicators, such as access to education, wealth, and power. As stated by D. Ribeiro (2018, p. 48), the inequalities faced by black Brazilians today are a legacy of slavery and a direct consequence of the state's absence in creating integration politics during the abolition and post-emancipation process.

In this scenario, addressing the social inequalities faced by black people in Brazil is not only an urgent matter but also a responsibility of the government, which for more than one century denied its duty to integrate black people into society. On this matter, the next chapter explores how Transitional and Transformative Justice approaches can be tools to address policies of reparation to promote social justice and effective equity to afro descendants in Brazil.

3. TRANSITIONAL AND TRANSFORMATIVE JUSTICE: MEANS TO REPAIR BRAZIL'S ERRORS FROM THE PAST

Through the previous chapter, it was evidenced how the government dynamics established during the slavery period, the abolition process, and the post-abolition period influenced the current reality of black Brazilians. Regarding this and analyzing the social indicators previously mentioned, is possible to emphasize that the errors committed by Brazil in the past affects black lives in three ways: a) the distribution of wealth and political power, b) the access to education and job market, and c) violence and incarceration.

In this sense, to address social inequalities faced by black people as a legacy of slavery, M. Evans and D. Wilkins (2019, p. 142) argue that states must understand that a) “historical events determine the distribution of wealth, power and privilege”, a distribution that lasts through many generations, b) “how racism is one of the significant legacies of transatlantic slavery – perhaps the most significant” and c) how slavery period “reflect and emerge from wider social and economic structural hierarchies which shape and perpetuate inequality” nowadays. By understanding that, states can pursue justice approaches to the implementation of reparations policies.

Justice approaches can be understood as the field of social sciences that explores the consequences and long-term effects of human rights violations from the past and how states can provide reparations to restore the rights of the harmed people, their descendants, and future generations (N. Immler, 2021, p. 2). For this article, two approaches will be proposed as fundamental strategies that can be used by the Brazilian government to address reparations policies for black Brazilians: the Transitional and the Transformative Justice approach.

It is important to bear in mind that those are frameworks to be used as guidelines by the government and to allow the creation of effective remedies to the social imbalance experienced by black Brazilians. It is not the intention here to propose the policies to be created or which reparations should be made but to provide approaches that can be useful for the government while creating these policies, as explained below.

3.1. Transitional Justice

Transitional justice, as the name suggests, is the approach that states can use during the transition process between a previous period of human rights violation and the post-period where the normality is restored, like periods of post-war, genocide, or in this case, slavery. In this matter, to justify the use of this approach, it is imperative to consider that even if the abolition occurred more than 130 years ago since the Brazilian state did not create any kind of transitional policies or reparations in the following years of post-abolition, black people keep experiencing the social harms of the slavery period – as explored in the previous chapter – and because of that, it is possible to say that Brazil still is in a transitional period of post-abolition. To support that, the Brazilian historian and anthropologist L. Schwarcz (2019, p. 30) states that, by not providing any kind of integration policies to black people in the past, the Brazilian state created a period of post-emancipation which had a start date but no end date.

Regarding how this approach can be used as a tool by the government, M. Evans and D. Wilkins (2019, pp. 138-139) state that transitional justice tends to focus on individual victims and the perpetrators of human rights violations related mainly in the range of political and civil rights, especially “direct violations of bodily integrity (through torture, killings and disappearances particularly)”. Furthermore, transitional justice is also an important tool to identify the “root causes that gave rise to the harmful effects, particularly rights violations, abuses of power, and atrocities” (D. King & J. Page, 2018,

pp. 746-747) by having a backward-looking and, through that, enabling the identification of the perpetrators of these violations. This is an important strategy that the Brazilian government can benefit from, mainly to understand the root causes of the issues currently faced by black Brazilians and also to identify the perpetrators' behavior which reinforces the social inequalities, in order to create policies do overcome them. In this context, this approach can be used by the government, for instance, to address and create reparations policies to mass incarceration and violence against black people.

3.2. Transformative justice

As a complement to this approach, transformative justice takes place in the scenario as a way to address the issues related to socioeconomic rights in a structural and collective aspect, emphasizing the analysis of power and exclusion dynamics at the local and global levels (M. Evans & D. Wilkins, 2019, p. 139; N. Immler, 2021, p. 4). The focus of this approach is to address scenarios of inequalities, exclusion, and discrimination, and, thus, the relevant aspect here is not only to identify the perpetrators themselves but to understand which are the forward-looking responsibilities involving them. N. Immler (2021, p. 13) argues that this approach is a “calling for institutional responses that would indicate structural changes granting inclusion to the hitherto marginalized, addressing equal representation in politics and media and equal opportunities in education and in the job and housing market”.

Collaborating with this approach, L. Laplante (2013, p. 68) introduced the concept of the ‘justice continuum model’, which has as important pillars the civic and socio-economic justice approaches. The civic justice approach takes place to understand the power imbalances that exclude black people from power positions in society, whereas socioeconomic approach is the pillar that seeks to provide remedies regarding wealth inequalities and remedies for redistribution. She states that “the civic and socio-economic approaches are more future-oriented, addressing the structural nature of injustices and aiming at a more transformative process, requiring the state to play a more active role.” By introducing this concept, L. Laplante reinforced the aspect of transformative justice as an approach that is useful to create reparations with a forward-looking, with the active role of states and focusing on the measures capable of overcoming structural imbalances. This can be used by the Brazilian state, for instance, to create affirmative policies to the inclusion of black people in politics, in high hierarchy positions in the public and private sector, in education, and also policies regarding the distribution of wealth.

Hence, the use of these two approaches to address the inequalities issues experienced by black Brazilians can be a step to overcoming the harmful legacy of slavery and post abolition process. The strategic use of them as tools to identify the root and structural causes and possible means to provide justice to afro-descendants is an opportunity for the Brazilian government to provide the necessary reparations to a population that was institutionally marginalized in the past, by this same government.

4. CONCLUSION

With this call for justice, it was possible to explore how the past errors of the Brazilian government, regarding the absence of integration policies during the abolition and pos-abolition process, entailed a current reality of inequalities and social imbalances faced by black Brazilians. In this scenario, reparations are urgent to provide to afro-descendants, and also to the future generations, the possibility of enjoyment of their rights and equal access to opportunities in the country. It was almost 4 centuries of slavery and 1 more century of the government's neglect regarding its responsibility to create policies to provide equity to afro-descendants in Brazil. If the government continues evading its responsibility, black people and their descendants will keep experiencing structural racism and the social inequalities derived from it.

In this scenario, a step toward reparations for black Brazilians is the application of transitional and transformative justice approaches as tools to address the issues narrated. By that, the Brazilian government will be able to repair its past errors and overcome the slavery legacy of social imbalances inherited by different generations of black Brazilians. Hopefully, this essay will contribute to the debate on reparations and enable further research on the topic, mainly regarding which policies can be effectively developed to create a scenario of equity and meritocracy for black people in Brazil.

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