

INDIGENOUS PEOPLES IN BRAZIL: OBSTACLES TO THE REALIZATION OF THE LAND RIGHT

POVOS INDÍGENAS NO BRASIL: OBSTÁCULOS À REALIZAÇÃO DO DIREITO À TERRA

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Abstract: The indigenous peoples' land rights are deprived from their effective realization although it is guaranteed in the Brazilian Federal Constitution of 1988 and in several international human rights documents. In this sense, the objective of this article is to analyze where they arise and what are the obstacles to the effectiveness of the land rights of indigenous peoples in Brazil. Thus, the sustained hypothesis is that: in the face of the regulation-ineffectiveness paradox, obstacles to the realization of the land rights are hidden under legal instruments bound to a desired social inefficiency. The method used in the present research is qualitative in nature, it was used bibliography specialized in the subject, besides texts and legal norms. It is concluded that the permanence of certain social and cultural legal mechanisms that hinder the realization of the right to land reveals the construction of an intended paradox between positivation and ineffectiveness of the indigenous peoples' territorial rights.

Keywords: Land right. Indigenous Peoples. Human Rights.

Resumo: O direito a terra dos povos indígenas, apesar de garantido na Constituição Federal brasileira de 1988 e em diversos documentos internacionais de direitos humanos, encontra-se desguarnecido de sua efetiva realização. Nesse sentido, o objetivo do presente artigo é analisar de onde surgem e quais são alguns dos obstáculos à efetividade do direito a terra dos povos indígenas no Brasil. Assim, a hipótese sustentada é a de que: diante do paradoxo positivação-inefetividade, alguns dos obstáculos à realização do direito a terra estão encobertos sob instrumentos jurídicos fadados a uma ineficácia social pretendida. O método aplicado na presente pesquisa é de caráter qualitativo, sendo utilizada bibliografia especializada na temática, além de textos e normas legais. Conclui-se que a permanência de certos mecanismos jurídicos sociais e culturais postos como óbice à realização do direito a terra revela a construção de um paradoxo pretendido entre positivação e inefetividade do direito territorial dos povos indígenas.

Palavras-chave: Direito a terra. Povos indígenas. Direitos humanos.

1. INTRODUÇÃO

The indigenous peoples' land rights are unattended of its actual realization although guaranteed in the 1988 Brazilian Constitution, and in other Latin American constitutions, such as the Venezuelan, the Ecuadorian and the Colombian, as well as various international Human Rights documents (such as ILO Convention n.169 on Indigenous and Tribal Peoples and the United Nations Declaration on the Rights of Indigenous Peoples). The unravel of such problematic situation, through the exposition of obstacles to the right's effectiveness, serves as a guide to criticize in order to

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understand the current reality of stagnation and precariousness of the territorial rights of indigenous peoples in Brazil.

The objective of this research is to analyze what are the obstacles to the realization of the land rights of indigenous peoples in Brazil and what is the origin of those obstacles.

In this sense, the sustained hypothesis is that: in face of a regulation-ineffectiveness paradox, the obstacles to the realization of the land rights are hidden under legal instruments bound to an intended social inefficiency.

This article is divided into five parts. In the first part, a historical contextualization of the Brazilian colonial past is carried out to later explain the repercussion in the dynamics of the State with the indigenous peoples. In the second part, the process of the indigenous emergency and its incidence in the Brazilian indigenous movements are described. In addition, relevant concepts to the delineation of the matter, such as, the definition of indigenous people, land and territory are addressed. In the third part, the introduction of a new understanding about the relationship between positivization and ineffectiveness of the indigenous peoples' land rights is presented to be later understood as a paradox, being effectively analyzed in the fourth part. In the fifth part, the social and legal obstacles against the effectiveness of the land rights are observed, through the recent Brazilian experience.

The method applied to the present research is qualitative, due to the test of the formulated hypothesis, since this is a research about the human and social phenomena. Through this method, it is possible to go beyond the objectiveness of human actions, and reach the thoughts and the interpretations that motivate, value, inspire and signify such ways of acting (MINAYO, 2001, p.21). In this sense, the qualitative method is particularly relevant to the study of social relations, especially when considered the persistence of old inequalities.

Taking an interdisciplinary approach, we have used specialized bibliography on the subject of the critical theory of human rights, political science and anthropology. As well as constitutional texts and international norms that deal with indigenous peoples' rights.

As a conclusion, it was perceived that: the obstacles to the realization of the right to land are covered by certain legal, social and cultural mechanisms destined to a desired social ineffectiveness, therefore revealing a dynamic of domination and exclusion created since the colonial period.

2. COLONIALISM AND COLONIALITY: AN UPDATED DYNAMIC

In the Brazilian colonial context, due to the numerous acts of violence and domination committed by the Portuguese, indigenous peoples were violated in their bodies and cultures, leaving a great part of the survivors to be expelled from the lands they originally occupied.

This encounter marked by the signs of violence and oppression stands out in its unbalanced relation of power, in which the dominant culture "feels legitimized to suppress, marginalize or even destroy the subaltern culture and its rights" (SANTOS, 2010, p.89).

This scenario is quite representative of the contact between Portuguese and indigenous people, since the violence practiced was not restricted to the extermination of the people, going

beyond, erasing their ways of life, of thinking and of representing their world. That leads to a negative impact until the present day in the Brazilian social, cultural and legal context. Making this situation not only a reflection of a past, but also the initial mark of a reaffirmed and updated dynamic throughout history.

Looking closely to the land issue, it is noted that in this period many indigenous populations were rejected and forced to relocate to areas that did not correspond to their traditional location or to their territorial extensions before the arrival of the Portuguese (GALLOIS, 2004, p.39).

The establishment of this culture of domination and appropriation was based on the colonial logic of exploitation and exclusion, the imposition of privileges, the lack of justice, and the denial of the rights of the excluded, among them the indigenous peoples (WOLKMER, 2004, p.2).

It is precisely by the repercussion of this system of appropriation, violence, and exclusion on the ineffectiveness of the rights of excluded populations that it becomes necessary to distinguish the concepts of colonialism and coloniality.

Colonialism refers to a structure of domination and exploitation controlled by a political authority whose headquarters are located in another jurisdiction, the colony, while coloniality is an engendered part of colonialism supported by the imposition of a racial/ethnic classification of the world's population, and serving as a cornerstone for the hegemonic pattern of power that has been present ever since. Thus, while colonialism is much older, coloniality has proved to be much deeper and more durable, since it is rooted in the subjectivity of the world (QUIJANO, 2009, p.73).

In this matter, the Brazilian State is still impregnated by the ways of thinking and operating rights based on coloniality, especially when dealing with the rights and demands of the indigenous peoples, repeating the domination of the Western way of thinking and acting, muting the different worldviews of these peoples, as well as their rights and goals.

It is due to that way of understanding and acting in the world that, in favor of an economic system based on the exploitation of human and natural resources, countless harms were practiced to the peoples and to their territories. It is a system that saw - as a founding part of colonialism - and continues to see - by the coloniality that remains - indigenous peoples as an obstacle to economic development.

In this way, it is extremely important to define the manner in which such ways of thinking and acting operate on the ineffectiveness of the positive rights of indigenous peoples, revealing the hidden reasons for the precariousness. However, before going deeper into this analysis, we will focus on the indigenous emergence, largely responsible for the positivization of the rights of indigenous peoples in the region and in the world.

3. INDIGENOUS EMERGENCE, LAND AND TERRITORY

In the middle of the 80s, reaching its peak in the 90s, the phenomenon known as the indigenous emergence arises in the political/social scenario. This event was marked by a process of ethnic identity recovery and also by the amount of demands for indigenous peoples' rights. Therefore,

it was a moment of insurgency against the dynamics of domination, exclusion, and erasure of identities, imposed by coloniality.

On the international scenario, a key milestone for this rise was the proximity of the five-hundred-year anniversary of the discovery of America. Indigenous peoples have refused to accept such an historical mark as a reason for celebration, thus transforming it into a symbol of resistance (BENGOA, 2009, p.8). It is for this reason that the 90s was known as the “decade of indigenous peoples”, evidenced by the struggle for recognition of indigenous peoples (ESPINOZA, 2011, p.4).

Such counter-hegemonic movement was essential for the advancement of indigenous peoples’ rights both in the internal norms of the States and in the international context of human rights, which explains the normative contemplation of the rights of these peoples in the current context. However, it should be noted that in Brazil this phenomenon has not gained the same strength compared to other countries with a larger number of indians, both quantitatively and proportionally, and with a smaller territorial extent.

It is also interesting to note that before the indigenous emergence these peoples organized themselves alongside the agrarian reform movements. It was only due to this rise in the political scene, as a new social actor, that their strategy changed to demand their goals to the State. Indigenous peoples began to organize themselves to claim the right to difference, the right to recognition of their ethnic identity, in opposition to the dominant culture (ESPINOZA, 2017, p.91-92).

In this sense, it is important to delineate the concept of indigenous peoples. Etymologically, the adjective “indigenous” means “the one who is natural of the place in which it lives, generated within the land that is its own” (HOUAISS, 2009, p.1073); thus, the one which belongs to the land where it lives. Martínez Cobo conceptualizes indigenous peoples as those who are considered different from other sectors of the societies that today predominate in the territories or parts of them by having a historical continuity with the pre-invasive and pre-colonial societies that have developed in their territories (COBO, 1987, p.29).

The exposition of such designation is very relevant because it coincides precisely with the perception of the dynamics recognized by many indigenous peoples in relation to the lands where they live.

Territoriality is understood as an essential attribute to the natives, not an external relation, as an appropriable object. In this sense, it is verified that most indigenous peoples consent to affirm that the land does not belong to them, and that actually are they who belong to the land (CASTRO, 2015, p.16).

Regarding the identity construction of the indigenous peoples, it is worth mentioning that such identity is built with a strong community aspect. Therefore, being considered a member of an indigenous people is not only a process of self-identification, but it is rather the result of the acceptance by a group that identifies one as part of people (ESPINOZA, 2017, p.88).

The relevant role of the indigenous emergence in the rise of these peoples as new actors in the political scene is a fact, since they are now able to fight for their peculiar demands and claim for the contemplation of their rights in the international scenario.

Regarding the land rights of indigenous peoples, it is indispensable to consider that this notion refers to a political and legal process carried out by the State, therefore, the concept of indigenous land is more linked to a peculiarity of Western culture views on property, than to the particular cultural conceptions of these peoples. On the other hand, the concept of territory comprehend culturally variable experiences, and, therefore, is more suitable for expressing the particular conception of several groups; although it is known that in some indigenous groups, there is not an notion of territory at all (GALLOIS, 2004, p.39).

It is a fact that several indigenous peoples, in Latin America and especially in Brazil, suffered from an enormous territorial loss, due to the colonial situation to which they were submitted. Since it was a real land expropriation (OLIVEIRA FILHO, 1996, p.6). In this context, the peoples who survived the impact of colonization were forced, due to the invasion of their territory, to elaborate the notion of delimited territory (GALLOIS, 2004, p.39), closer to the Western views of territoriality.

Due to the historical context of land expropriation, all along with all the harm produced against the indigenous peoples and by coloniality, it is perceived that, in order to respect indigenous territorialities, the State needs to guarantee these culturally diverse concepts of land, and also conform them to a closer western view so it can be protected as rights.

It is also clear that the State when proceeding with such compatibility must aim a true solution to this conflict between conceptions and cultures. In this sense, the specifications of each people should be taken into consideration, such as their territorial logics. Therefore, each analysis needs to be particular and specific, in conformation with the people and culture analyzed (GALLOIS, 2004, p.41).

In this sense, the conception of land must always be understood through the obligatory observance of the territorial particularities of each indigenous people, in order to: to avoid both the repetition of cultural domination and imposition, and also the linkage of territory and economic applicability; along side with the ultimate aim that is to contemplate culturally specific territorialities within the concept of land rights.

4. EXPOSING THE REGULATION-INEFFECTIVENESS PARADOX

There is an abyss between the normatization of the land rights, in the contemporary juridical scene, and the social reality of the indigenous peoples, in relation to the protection of its traditional territory. In this sense, the land rights does not find adequate fulfillment in the reality perceived by the indigenous peoples of Brazil, although it is widely regulated in the domestic and international scenarios. Through this observation a contradiction is perceived, being called by the term "regulation-ineffectiveness paradox".

The use of the term "paradox" is intended to achieve the meaning of a thought or proposition which appears to have a lack of nexus, an absence of a reason to exist, and thus contradicts the usual and precipitate perception of the link between two issues (HOUAISS, 2009, p.1430).

Thus, in the first instance, the vast juridical documents that contemplate the rights of indigenous peoples will be exposed, with a special focus on the land rights. Soon after, data will be

presented on the ineffectiveness of the land rights in Brazil, in order to demonstrate the existence of such contradiction.

Taking into account the colonial dynamics previously discussed, it is essential to note that the Brazilian Constitution of 1988, with the purpose of repairing the problems of the past, and, more intensely, the later Constitutions of Venezuela, Ecuador and Bolivia, at a time known as the new Latin American constitutionalism, have brought, in their respective legal systems, rights and guarantees to the original peoples concerning their lands, their social organization, habits, languages, traditions, among others.

The Constitution of the Bolivarian Republic of Venezuela of 1999 prescribes, more emphatically in the Articles 119 to 126, a series of rights and guarantees to indigenous peoples, recognizing their social, political and economic organizations, cultures, habits, and customs, as well as their original land rights. It also guarantees the protection of its knowledge, technologies, and innovations, as well as recognizing the right to political participation, through the obligation of indigenous representation in the national legislature and in the decision-making bodies of federal entities.

Following this recognition of the indigenous peoples and their rights and demands, the 2008 Constitution of the Republic of Ecuador incorporates, in its preamble, as one of its principles, the concepts of the indigenous cultures of the country, such as the “sumak kawsay”, or “well living” in the Quechua language, in addition to committing to the struggle against domination and the effects of colonialism. Throughout this normative text, rights and guarantees to indigenous peoples are contemplated alongside with other citizens. Such equality of treatment can be seen in the first article, which prescribes that the Ecuadorian State is, among other characteristics, intercultural and plurinational.

In addition to that, there is a list of specific rights and guarantees for indigenous peoples, on articles 56 and 57, related to the preservation of their autonomy, identity, sense of belonging, ancestral traditions, permanence in their ancestral lands, etc. This document is distinguished from others by the recognition of indigenous nationalities, which coexist in plurinational Ecuador, along with the recognition of an indigenous jurisdiction.

Subsequently, in 2009, the Constitution of the Unitary, Social, Plurinational, Community-Based State of Right of Bolivia was promulgated. Marked by legal and cultural pluralism, as well as by the guarantee of free determination of native indigenous peoples, this constitution defines, as one of the goals of the Bolivian State, the construction of a society based on the decolonization and the consolidation of plurinational identities. It also guarantees the collective title of indigenous lands and territories, as well as other rights of nations and indigenous peoples.

It is also important to point out that the land right of indigenous peoples has a broad scope, reaching implications beyond the ones compatible with the Western cultural conception, like the right to property and housing. It is also a right to development, guided by the particular wishes and desires of indigenous peoples, as a result of the use of soil for planting and management of other natural resources.

It is also the right to freedom and exercise of belief, for the earth and the landscape are physically and spiritually linked to their religious and ceremonial references. It is also the right to have a preserved environment (fauna, flora, fresh air, and water), as well as the right to culture, by the linkage among their languages, their beliefs, their epistemologies and the land, including an important identity feature, due to their sense of belonging and lifestyle. Thus, the land right is revealed as a fundamental guarantee for the exercise of most of the rights of indigenous peoples.

Regarding the Brazilian Constitution of 1988, it is observed that although the protection of these rights is guaranteed, with a special focus on the land right of indigenous peoples in the Article 231, that prescribes that "indigenous peoples are recognized for their social organization, customs, languages, beliefs, and traditions, and the original rights over the lands they traditionally occupy...", the practical and legal reality of the recognition and protection of these lands in Brazil is far below what is intended.

In the context of the international regulation of the rights of indigenous peoples, the ILO Convention n. 169 on Indigenous and Tribal Peoples stands out as the first legal document to deal with indigenous rights, including the land rights:

Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.
2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned [emphasis added] (INTERNATIONAL LABOUR ORGANISATION, 1989).

Furthermore, in the international context of the conformation of the land rights, the United Nations Declaration on the Rights of Indigenous Peoples of 2007 states that:

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned (UNITED NATIONS, 2007).

In consideration of all that was exposed before, despite the fact that the original indigenous peoples' land right is constitutionally guaranteed in Brazil, and in Latin America, as well as recognized within a wide range of human rights prescribed in various international documents, such as ILO Convention 169 on Indigenous and Tribal Peoples, and the United Nations Declaration on the Rights of Indigenous Peoples, its realization is mitigated.

According to the data from the Indigenous Missionary Council (CIMI), there are a total of 1,290 indigenous lands in Brazil, of which 408 have already been demarcated, 287 are in some of the stages of the long demarcation process, 61 are into other categories, such as indigenous reserves. Meanwhile, the other indigenous lands, an amount of 821, which represents approximately 63% of the total, remain on the wait for any action by the State in relation to its demarcation (CIMI, 2019, p.36).

This reality gets even more aggravated if the delay in the realization of the indigenous peoples' land right is taken into consideration, for the deadline stipulated in the 1988's Constitution for the conclusion of such procedures, prescribed in Article 67 of the Transitional Constitutional Provisions, states that "The Union shall conclude the demarcation of indigenous lands within five years of the promulgation of the Constitution."

It should also be noted that, even in relation to the land that is already demarcated, the effectiveness of the land rights, regarding protection against invaders, is very mild, a situation corroborated by the registrations in the year 2018, by CIMI, of 109 cases of possessory invasions, illegal exploitation of natural resources and various damage to the patrimony inside indigenous lands (CIMI, 2019, p.150).

Taking into consideration that the official data does not cover all the occurrences, it is more than clear that the lack of realization of the land right is a serious problem that gets even more aggravated before the paradox between the great amount of legal documents and the still very mild concretization of the land right.

It is worth mentioning that, despite not presenting an instrument for the full and complete realization of the land right, the demarcation generated an expressive realization of the territorial rights of indigenous peoples, especially during the 1990s. The issue, however, lies in the stagnation experienced today, which conducts the present investigation into an analysis of the factors that contain and diminish the effectiveness previously conquered by the effort of the constitutional land right.

5. DECIPHERING THE REGULATION-INEFFECTIVENESS PARADOX

Since the colonial period, dominant groups have developed a complex network of hierarchical relations in order to dehumanize, marginalize, exploit, exclude and discriminate collectives, like indigenous peoples, "converting them into non-persons, dispensable beings and sacrificable" (SÁNCHEZ RUBIO, 2015, p.191). Such a sacrifice, of peoples and their rights, were made in favor of a specific mode of production, the capitalist one.

The major obstacle to the realization of the land rights is a clash between the liberal conception of private property, a cultural product of the West, and the territoriality of the indigenous

peoples, based on their collective rights (SANTOS, 2003, p.45). In this sense, the hegemonic, universalized and economically centered Western notion of progress, understand the original land rights as something incompatible within the legal order and, consequently, its effectiveness as an obstacle to national development.

This incompatibility between the Western right to property and the indigenous claim to land has translated into the little legal effectiveness of indigenous human rights, even though they are abstractly made for all people.

This situation can be explained by the fact that the initial struggle for human rights was conceived under the rule of the bourgeoisie, which produced:

A conflictive social structure [which, in one hand] culturally offers the universal recognition of human experience as equal, non-alienated and legitimate (by itself), [and on the other hand] the logic of capital accumulation, denies this universality in several complex and distinct ways in the social sectors, as well as peoples and cultures (GALLARDO, 2010, p. 70).

The imperative tendency to serve the interests of capital, despite the sacrifice of peoples, customs and rights, is explained in Latin America by the fact that the national states were created in this conjuncture, from Eurocentric models, historically rejecting indigenous national identities, "ignoring or putting the indigenous presence in a situation of colonial subalternity" (LACERDA, 2014, p.90).

As for the legal obstacles put against the effectiveness of the right to land, the implementation by the Brazilian executive and judiciary of judicial protections capable of containing the procedures of indigenous lands demarcation has been perceived. Two of these instruments stand out in their effects: Decree no. 1775 and the thesis of the time frame.

That presidential decree - added to the Brazilian legal system in 1996 - granted the possibility that indigenous lands could be questioned in their legitimacy through an appeal by any interested parties. In short terms, this mechanism reestablished the prevalence of property titles to the detriment of indigenous peoples' original rights.

The thesis of the time frame - inaugurated by the Federal Supreme Court in the context of popular action n. 3.388/RR - brought a new parameter for the configuration of indigenous lands. For the recognition of a traditional territory, a new temporal criteria must be applied: the indigenous people must have permanently occupied the land until the day of promulgation of the Brazilian constitution - on October 5, 1988.

This criteria denies, therefore, the entire colonial history of precariousness of indigenous peoples, disregarding the expropriating pressures dated from the colony that endured until today. Due to this precariousness, a large part of the indigenous peoples in Brazil were expelled from their original territories, and it is inconceivable to request permanence in the territory as a necessary condition for the realization of the right to land.

These instruments come together to explain the stagnation experienced today in contrast to the positive scenario for the realization of indigenous territorial rights experienced shortly after the promulgation of the 1988 constitution in Brazil.

Considering these obstacles to the realization of the land rights, it is essential to be aware of the complexity of the situation, understanding that they are not only in the juridical and economic domain, but also strongly rooted and established in social and cultural dynamics in Brazilian society.

In this way, given the complexity of the problem surrounding the non-realization of the land rights, it can be perceived that, for it is not only legal, a solution cannot be found and provided only by law. Not even the Brazilian State, captured by patrimonial and economic interests, can be an impartial source for a contribution capable of giving effective and complete compliance with the constitutional and international human rights constitutional commandments.

8. CONSIDERAÇÕES FINAIS

At the beginning of the present article, the following hypothesis was made: due to a paradox between regulation and ineffectiveness, the obstacles to the realization of the land rights are hidden under legal rights bound to an intended inefficiency.

Then, the economic interest behind this apparent inconsistency between the regulation of the right and its ineffectiveness was evident. Along with the exposure of the obstacles imposed since colonization, it was stated that some legal obstacles were created to prevent the effectiveness of the constitutional commandment about the indigenous land rights.

Considering the lack of social realization of the land rights of indigenous peoples experienced nowadays, it is clear that there is a need to understand the reasons for such ineffectiveness, especially because of the wide regulation of this claim and right in the domestic and the international law.

To that end, the delineation of this paradox between regulation and ineffectiveness is proven essential, by bringing to the surface the evidence that this contradiction does not occur by accident, thus breaking the initial perception of an apparent lack of nexus, a lack of reason for being, between the regulation of the land rights and its lack of effectiveness in the reality experienced by the indigenous peoples in Brazil.

It is because of the needs of the economic system based on the capital, to create exclusions and to sacrifice people marginalized by it, that it is perceived that the ineffectiveness of the land rights of the indigenous peoples is produced to the economical benefit of a system, by the lack of realization of such collective claim.

Therefore, it is concluded that, due to the ineffective context of the land rights, and in spite of the wide regulation on the subject, the positive right can be put under the pretext of hiding a dynamic of domination and exclusion created in the colonial period, revealing the construction of an intentional contradiction between regulation and ineffectiveness of the indigenous peoples' land rights.

REFERÊNCIAS

BENGOA, José. ¿Una segunda etapa de la emergencia indígena en américa latina? Cuadernos de antropología social, Buenos Aires, n.29, p. 07-22, 2009.

BOLÍVIA. Constitución del Estado Unitario Social de Derecho Plurinacional Comunitario de Bolivia. Promulgada em 7 de fevereiro de 2009.

BRASIL. Constituição da República Federativa do Brasil. Promulgada em 5 de outubro de 1988.

CASTRO, Eduardo Viveiros de. Prefácio: O recado da mata. In: KOPENAWA, Davi. ALBERT, Bruce. A queda do céu: palavras de um xamã yanomami. São Paulo: Companhia das letras, 2015, pp. 11-41.

CIMI, Conselho Indigenista Missionário. Relatório violência contra os povos indígenas no Brasil - dados de 2018, Brasília, 2019.

COBO, Jose Martínez. Estudios del Problema de la Discriminación contra las Poblaciones Indígenas: Conclusiones, Propuestas y Recomendaciones. Nova York: Naciones Unidas, 1987.

ESPINOZA, Fran. La lucha por el derecho a la participación política de los indígenas en América Latina. REVISTA JURÍDICA DIREITO & PAZ. São Paulo: Ano IX, n. 36, 2017, p. 83-102.

ESPINOZA, Fran. Pueblos indígenas: ¿Y después de la emergência? Working Papers, CriDIS, Université catholique de Lou, 07 jan. 2011, p. 1-24.

GALLARDO, Helio. Teoría crítica y derechos humanos. Una lectura latinoamericana. Revista de Derechos Humanos y Estudios Sociales. Año II. No. 4. San Luis Potosí, 2010, p. 57-89.

GALLOIS, Dominique Tilkin. Terras ocupadas? Territórios? Territorialidades? In: RICARDO, Fany (org.). Terras Indígenas e Unidades de Conservação da natureza: o desafio das sobreposições. São Paulo: Instituto Socioambiental, 2004, p. 37-41.

HOUAISS, Antônio. Dicionário Houaiss da língua portuguesa. Rio de Janeiro: Objetiva, 2009.

KOPENAWA, Davi. ALBERT, Bruce. A queda do céu: palavras de um xamã Yanomami. São Paulo: Companhia das letras, 2015.

LACERDA, Rosane Freire. "Volveré, y Seré Millones": Contribuições Descoloniais dos Movimentos Indígenas Latino Americanos para a Superação do Mito do Estado-Nação. 2014.

MINAYO, Maria Cecília de Souza. O desafio da pesquisa social. In: MINAYO, Maria Cecília de Souza (org.). Pesquisa Social: teoria, método e criatividade. Petrópolis: Vozes, 2001, p. 9-30.

NAÇÕES UNIDAS. Declaração das Nações Unidas sobre os Direitos dos Povos Indígenas. Promulgada em 1º de agosto de 2007.

OLIVEIRA FILHO, J.P. Viagens de ida, de volta e outras viagens: os movimentos migratórios e as sociedades indígenas. Revista Travessia, São Paulo: CEM, v.9, n.24, jan./abr., 1996, p. 5-9.

ORGANIZAÇÃO INTERNACIONAL DO TRABALHO. Convenção nº 169 da OIT sobre os povos indígenas e tribais. Elaborada em 07 de junho de 1989.

QUIJANO, Aníbal. Colonialidade do poder e classificação social. In: SANTOS, Boaventura de Sousa e MENESES, Maria Paula (Orgs.) Epistemologias do Sul. Coimbra: Edições Almedina, 2009, p. 73-117.

REBOUÇAS, Gabriela Maia. O avesso do sujeito: provocações de Foucault para pensar os direitos humanos. *Opinion Juridica*, v. 14, 2015, p. 45-62.

RUBIO, David Sánchez. Derechos humanos, no colonialidad y otras luchas por la dignidad: una mirada parcial y situada. *Campo Jurídico*, vol. 3, n. 1, 2015, p. 181-213.

SANTOS, Boaventura de Sousa. NUNES, João Arriscado. Introdução: para ampliar o cânone do reconhecimento, da diferença e da igualdade. In: SANTOS, Boaventura de Souza (Org.) Reconhecer para libertar. Rio de Janeiro: Editora Civilização Brasileira, 2003, p. 25-68.

SANTOS, Boaventura de Sousa. Refundación del Estado en América Latina - Perspectivas desde una epistemología del Sur. Lima: Instituto Internacional de Derecho y Sociedad; Programa Democracia y Transformación Global, 2010.

VENEZUELA. Constitución de la República Bolivariana de Venezuela. Promulgada em 15 de dezembro de 1999.

WOLKMER, Antônio Carlos. Direitos humanos e filosofia jurídica na América Latina. Rio de Janeiro: Lúmen Júris, 2004.