

Multiculturalism and Brazilian constitutional protection for the traditional peoples and communities of the Baixo Madeira in Rondônia

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SUMMARY: Introduction; 1. Multiculturalism and exclusions; 2. Justice and multiculturalism; 3. The Community and Traditional Peoples in the contemporary context; 4. Brazilian constitutional protection of Communities and Traditional Peoples; Conclusion.

ABSTRACT: The content brought in this article focuses on the challenges of human rights in the international arena. Put universalism as opposed to cultural relativism. Similarly, we discuss human rights because of the secular state and religious fundamentalism, so I understand the development as a right of peoples and asymmetries such as a component of social justice that indicates the diversity being discussed by countries in the XXI century. Thus, the meaning of globalization and the imperative of the protection of economic, environmental, social and cultural rights of minorities print multiculturalism and the need for these are under territorial law in which they live, respecting their diversity. I drew upon the concept of justice in the mold of the Theory of KIMLICKA Citizenship (2003), and the concepts of "reflective equilibrium" and "moral arbitrariness" JOHN RAWLS (2000), to appreciate multiculturalism within the liberal state structure. Similarly, we seek to understand the trajectory of the riverine and the formation of the Communities and Traditional Peoples in the State of Rondônia, the constitutional right light, due to its characteristics.

KEY WORD: justice, community, traditional people, constitutional.

Introduction

This article seeks to rescue the way of life of the settlements living on the banks of rivers in the Amazon Region, known as riparians or riverines, identifying them as a human group that demands a special attention from the scientific community, especially for the implementation of the rights of plural community, isolated, without prejudice, according to the constitutional determination described in the Title of Fundamental Rights and Guarantees, of the Political Charter of 1988.

In order to satisfy the objective, we will go through some juridical and philosophical concepts that seek to identify the meaning of justice, not only in the theoretical plane, but in its concreteness, since the focus of evaluation is an existing, real community that deserves equal treatment in its condition of citizenship.

One of the most relevant aspects of our work is the approach of multiculturalism, highlighting the importance of values built and lived by minority groups that deserve recognition and protection so that they do not get lost before the aggressiveness of the massive universalist culture, resulting from globalization.

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In the first section we will deal with the labels that most print the minority creating pockets or ghettos of exclusion, without such groups being covered by the same norms of the others.

The second section deals with justice and multiculturalism, with an emphasis on social issues that interpret multiculturalism, in the light of the concept of justice in the context of cultural pluralism and groups with special rights, so that we should not discriminate people who do not follow key patterns.

Minorities must be seen as to their diversities, which will be dealt with in section three, so that exclusion does not subjugate them. In this sense, concepts such as "reflexive equilibrium" and "moral arbitrariness" impose on the State the shelter of the multicultural groups that integrate it, so that these concepts contemplate the Communities and the Traditional Peoples.

The contemporary state has a set of laws that protects the rights and duties of the dominant and non-dominant social groups that constitute it, which will be the object of the fourth section in what concerns the Brazilian constitutional protection of the Communities and Traditional Peoples. Therefore, as a first state rule must contain principles that are cogent for the equitable treatment of its citizens, in the manner recommended by the Democratic State of Law.

Finally, a synthesis will be made regarding the research described in the sections declined above so as to conclude what legislative protection given to minority groups that belong to the democratic state of law, according to the principles and concepts that guide this necessary legal protection.

1. Multiculturalism and exclusions

On contemporary society a multiculturalism is built which is the object of different solutions for governments. Traditional patterns of citizenship pour into different directions, as such at least two must be observed, the first that gives relevance to public virtues and political participation, and the second that supplements common rights, guided by cultural pluralism and groups with special rights, KIMLICKA (2003).

Before, there was a subordination between authoritarian expressions of cultural representation, in order to create normative differences that clouded the normality expected from social relations, which is no longer appropriate, since groups of abnormal ones can not be labeled before dominant patterns, by force of representation of the majority. Such a conception of subordination is exclusive, since minorities are no longer met and often represented.

In the form of nationalism, acting the state for the distribution of primary goods, it reached only part of society, the so-called dominant, since the objective was the cultural unity and the fidelity of society to the standards established by the state, excluding blacks, women, indigenous peoples, ethnic and religious minorities, gays and lesbians, not contemplating multiculturalism.

In fact, the traditional model implied a nationalism of exclusion, since it presupposed the distribution of primary goods as basic social rights, which included health, education and security, representing the State's assistance policy as a form of distribution of rights and inclusion of less favorable economically groups as a form of cultural unity and loyalty of social groups to the State, as indeed happened to avoid the influence of communist ideals in British society, LEITE (2007).

This model was used in the United Kingdom as a way to dispel the possibility of external or exogenous ideas, especially in Soviet communism. Thus, making social rights find the British working class was the tool of building a national identity. The criticism is centered on the aspect of privileging the "heterosexual white man", according to the traditional standard of citizenship, LEITE (2007).

Countries such as Spain and Canada have groups that reject cultural integration as a central idea, as in Catalonia or Quebec, respectively. These groups seek to maintain their own identities differentiated from central government, both by territorial self-management, including legal public constitutions that preserve the language, and educational and political issues are treated specifically within the aspects of self-management, LEITE (2007).

From these considerations the traditional western States, appreciated by KIMLICKA (2003), have two models: the economic hierarchy and the status quo hierarchy. In the traditional model the economic hierarchy preponderates on the one of the status quo, with respect to the combat of the economic inequalities. It is important to point out that with this precept there is an effort to reduce inequalities, with attention being paid to the status hierarchy.

As a counterpoint, the author advocates the Citizenship Theory, which claims individual freedom along with associated equality, observing that the groups are heterogeneous and yet have common points between their petitions and must have respected the concepts of equality.

The individual freedom defended, regarding multiculturalism, especially with the fall of the Berlin wall, focuses communitarianism within a liberal structure and as a response to the construction of a nation, especially the autonomy of the individuality within the collective entities. For the individualists this freedom must be pursued unceasingly within a free society, which is similarly appreciated also by the liberals when they affirm that individual freedom is morally superior to the yearnings of the collectivity.

In another sense, it is the communitarian position, which affirms that the individual is a product of social practices, so that privileging individual practices is a way of dynamiting communities. This assertion identifies multiculturalism, before cultural minorities, as a defense against the external attacks of society.

The structure of the liberal State of politics, KIMLICKA (1992), contains multiculturalism and the author discusses the liberal/community, emphasizing two basic points: a) The community attack on liberalism; B) Debate between liberals and minority communities. From these discussions, the premise is that individual autonomy is linked to the individual's access to their own culture, respecting their recrudescence. With this comes multiculturalism to favor the expansion of diverse cultures that guarantee special rights of each individual, meaning multiethnic liberalism.

In fact, two points are particularly addressed: liberal neutrality and benign neglect. In the first case the state must let the individual seek the ideals for the good life. Putting the State, neutral as far as ethnic and cultural issues, in the face of the choices of each one, provided that they respect the right of the other members of the community. So, on this premise, there is no moral difference in any conception for the conquest of the good life, since no choice would be made to the detriment of others.

Benign neglect in practice is a fallacious premise, on the axiological aspect, since there is no liberal neutrality. However, state norms are constructed through qualitatively considered conceptions, so that one will prevail over the other, since they aim at the integration of society.

Moral divergences emerge from the diversity of opinions, but discussions can only continue if respect for one's point of view is viewed as a learning tool, given that in learning diversity happens, in this spectrum, teaches TAYLOR (1994, P.41).

...The most correct is a multicultural society include a great diversity of respectable moral divergences, which gives us an opportunity of defending our points of view before people whose moral conscience causes us to disagree with them and thus learn from our own differences. In this way, we can draw a lesson on the necessity of our moral disagreements.

Thus, the benign neutrality of the State is pushed aside by pragmatic interests, such as the adoption of one language over another in order to better integrate the State regarding communication between individuals. The question that arises is how within hegemonic cultures, even if benign neglect is adopted, a minority of rights can protect itself against external injustices.

2. Justice and multiculturalism

The social observations from the analysis of multiculturalism demand a

more accurate digression regarding the concept of justice in the perspective of cultural pluralism and of groups with special rights. These should not be discriminated because they do not follow key patterns. The adoption of these positions generates exclusion, which is inappropriate in today's society, so the need to understand what justice is.

John Rawls in his *A Theory of Justice* (2000), integrates moral sentiment, public and individual liberties in the West. With the novel vision of the Social Contract, he demonstrated his ability with egalitarian thinking in the face of economic inequality, exposing divergences of liberalism that generate injustice by virtue of the market economy. Rawls emphasizes rationality as a primordial vision to see justice, with equity between rights and duties as a mechanism for reaching the just.

The justice understood in the universal context, in which is included the fair and the good, since the Aristotelian analysis, has actions of commutation and redistribution. The first touched on reciprocity and educational balance, and the second on proportionality and establishment of merit.

I would argue that RAWLS (2000) affirms that fairness is superior criterion to the normative principle of individual action, that is, it brings the norm to the natural, divine or positive field. Pragmatically supports the fairness of rights and duties as a tool to achieve the just, subjectively, implies a moral activity imposed by the rules of coexistence, founded on formal principles, so that this rationality is the theoretical ballast that supports the work of Rawls, because, for him, the righteous one moves away all affective inclinations to settle in reason.

Hence, three principles of justice must be formulated: recognition of persons; treat others not as means, but only as ends; just is prior to good and it integrates the just. Such principles, formulated by RAWLS (2000), are about society that should be fair, such as building on equitable foundations of rights and duties, inspired by a condition analogous to the "state of nature."

The "ideal contract" would be the celebration, with free motivation, rationally approved among equals, removing their positions within the socioeconomic structure among themselves, so that when they enter into the contract, they only assimilate the knowledge placed before them, giving priority to the so-called " Ignorance veil". Acceptance of the covenant is characteristic of rational agents who use utilitarianism.

The central point of the thesis is the procedural form that must be rational and equitable, as a search for the morally justifiable distribution of social wills. Thus, the full resolution of the problem of absolute justice is not discussed, but the result of a procedure formulated through reason and equity that will be equal to the just.

Sustaining freedom as previous to all other principles, RAWLS (2000) affirms that with the rebalancing of inequalities, respecting freedom, justice arises, and therefore all morality. So that it happens, the theory proposes that free people in assembly choose the principles that should guide society.

In order to avoid disadvantageous agreements, the principles chosen must be neutral in order to take account of the general interests, for which purpose the conditions must seek: (a) a shortage circumstance; B) generality, universality, publicity, ordination and determination; C) reasonableness of agents; D) veil of ignorance.

Hence, the north of this agreement must preserve two basic principles: freedom and difference. The first requires that each individual should have a right to the system of basic freedoms, as broadly as possible and compatible with the freedom of others, and this principle is a priority to the rest.

The second, of the difference, seeks the compensation and the rebalancing between the socioeconomic differences, especially for the hyposufficient ones. Equity should be placed as a condition for opportunities and advantages accessible to all, with balances of rights and duties.

Understanding the theory of RAWLS (2000), it urges to appreciate that the

system is actually composed not of two principles, but of three, namely: that of freedom, that of difference, and that of equality. These three elements constitute the "reflective balance". I conclude that the "reflective balance" is the gathering of the moral convictions of a culture and its consequences, which allow corrections and adjustments during the process.

Freedom is posited by Kantian rationalism, in the form of autonomy, yet it differs from the concept given by this theorist in relation to the Constitution. Freedom is not built by man but constitutive of him. If freedom is set, it is reasonable for us to discuss the differences, because reality is the foundation of the *Theory of Justice*.

Social values, freedom, opportunity, income and the social bases of self-esteem, need to be equally appreciated and distributed as well. However, RAWLS (2000) analyzes inequality as possible, as to the distribution of social values, provided that it is advantageous to the majority and accepted by the majority, if it does not become injustice.

Justice is effective if the necessary means and social goods are established. "Social goods" are those formed from moral, abstract, and material goods. In this way equality and the distribution of goods imply freedom for all, by virtue of the democratic symmetry that affects both intangible goods, conscience, thought, religion, among others, and material goods of socio-economic relevance. It is up to the State to provide public goods and control the institutions that distribute social goods, a distribution that must be equitable, privileging individual and collective freedoms.

According to RAWLS (2000), formulating the Equation that contemplates equality of opportunity and freedom indicates a symmetrical balance between advantages and prerogatives, since the way in which equilibrium is treated is verified that even for those who have more purchasing power and enjoy privileges social opportunities will also receive equal opportunities, which will benefit everyone. In fact, it is fair that those who are entrepreneurs should earn more, given the risks they run, without neglecting that the profit obtained returns to the working class as well, because of the circulation of goods and services it promotes.

RAWLS's theory of justice (2000) removes absolute concepts from the egalitarian and liberal discussions proper to the beginning of the last century, since it bases its concepts on plural principles with an emphasis on morality. Hence comes the definition of "moral arbitrariness" resulting from nature and chance, escaping from decisions not grounded in reason.

It is up to the State to provide public goods and control the institutions that distribute social goods, a distribution that must be equitable, privileging individual and collective freedoms. So the theorist discusses the so-called compensatory redistribution, that is, who earns more pay more, as, for example, the progressive taxes collecting.

3. The Community and Traditional Peoples in the contemporary context

Concepts such as "reflexive equilibrium" and "moral arbitrariness" should encompass all the groups that constitute the State, so that they should include the Communities and the Traditional Peoples. Thus, these minorities need to be appreciated in their diversity so that exclusion does not reach them.

Justice as a tool to give each one what is his must permeate all the groups that make up the State, so it is necessary to know the Communities and Traditional Peoples, focusing on how they are inserted as minorities in Brazil, in the Amazon, and in special, in the micro-region of Lower Madeira.

The Amazon with its biodiversity is a place to what eyes turn to, especially in the XXI century, because in this space many transformations happened. The locus is analyzed for its geopolitical and human constitution. Within this sphere permeated by cultural hybridity, are the riverside people, who are a mixture of caboclos, contemplated by diverse ethnic groups, a miscegenation between

Europeans and natives, that anthropologically means a marked dynamism of regional culture giving a meaning, especially to the syncretism which reigns in the green regionalism FRAXE et al (2009).

The continentality of the region implies the recognition of an Amazon with ambiguous traces as far as social aspects are concerned, since the man who is inserted there has riverside customs that are often opposed to the urban scenery of the big cities. Nevertheless, the ambiguity is present in the communities on the edge of the river, as these do not pass untouched by the influences of other peoples who have arrived there and mingled, so that their socio-cultural characteristics have been lost, due to this approximation, causing, to the Amazon, and traditional peoples irreversible losses, FRAXE et al (2009).

In the regional context, it is fundamental to affirm that man in the Amazon is not isolated, let alone lost in time and space. The assimilation and rejection of urban practices by the riverine community are part of an interaction between these worlds, so that the differences impose a transformation for the man who is inserted at the edge of the river, FRAXE et al (2009).

In this vein, diversity remains patent, values collide, and constitutional protection for riparian peoples is elastic, especially with regard to health, education and security assistance, weakening state presence within traditional communities, and allowing exogenous private intentions to impose themselves, in order to de-characterize the socio-moral values of the riverines.

It can be seen that the northern region of Brazil has never been geographically isolated, either economically and culturally from other regions of Brazil. However, due to its particularities it remained for a certain time preserved. With the process of colonization there was an inversion and the Amazon began to be interwoven with other elements which led it to change.

It is important to consider the daily life of the traditional community, respecting its manifestations and cultural attachments. The territorial expanse in harmony with the exuberant nature houses a social panel full of contrasts, at a time when the groups that constitute the Amazon possess the cultural accumulation that distinguishes with accuracy from those who are uncertain in the urban conglomerates, FRAXE et al (2009).

Workers who settled in the vicinity of the tributaries of the Amazon River, especially the Madeira River, along the Municipality of Porto Velho/RO, descended mostly from Northeastern migrants who came to the region in the mid-nineteenth century motivated by the extraction of latex. At that time, they were known as "rubber soldiers", because the extractivism they practiced served to supply the war industry of the Allied countries in the World War II, SILVA (2000).

The difficulties encountered at the time by these Northeasterners were substantial, since they did not know the jungle, because the rubber tree was native, as well as suffering from the labor relations established by the rubber tree owners, which inevitably were analogous to those of slaves. In addition, the isolation to which they were subjected placed them in a constant danger, either by the endemic tropical diseases or by the attacks of the beasts of the forest. Thus, SILVA (1994, p.26) focuses on:

Between the long walks in the forest and the loneliness in the rudimentary huts where they lived, their life was exhausted, in an isolation that perhaps no other economic system has imposed on the man. And besides, the dangers of the forest and the hard working day shortened his life, mainly in relation to the first Northeastern migrants.

The dependence on rubber brought to the settler a bond of difficult disruption with the land and with the rubber tree owners, so much so that the economy in the region in the 50's collapsed due to the international fall in the price of rubber, many of them were not even able to return to their home states, as a result of which the federal government began to establish agricultural colonies to maintain the rubber tappers on the land, SILVA (2000).

Appreciating the approach above, it was noted that there was a need for

the Madeira valley region to be developed, so that they were classified as developed, semi-developed and pre-capitalist, which in a way denied the different historical trajectories of traditional peoples and communities, culturally mischaracterizing this society, NEVES (2005).

The concept of economic development that was involved implied in the so-called "domain of nature", which became impractical before the preservation of the environment. The demand for so-called environmental sustainability was inserted into the intellectual production and the contemporary political agenda, as seen at the Stockholm/1972 conference, at the Tbilisi-Georgia / 1977 conference, at Eco 92, among others, where expressions like ecodevelopment was coined, NEVES (2005).

The first need is the perception that a diagnosis must be established for the public and formal recognition of the communities, since this is part of the essentiality for the establishment of public policies for traditional communities. It should not be forgotten that these communities are composed of indigenous peoples, extractivists, fishermen, among others, CABRAL (2002).

The discussion on sustainable development is reasonable, that is, one that can combine economic development without causing significant damage to the environment, since projects involving economic nature, on the whole, modify the natural habitat and socio-cultural environment of those involved.

In the above context, it is evident that traditional communities have as their means of production goods for subsistence and in the Amazon, they often use barter as a mode of commercial relationship, mainly because of the kinship ties between the members of each riverine nucleus as the surplus and the system of accumulation proper to capitalism are not explored in the way of integration and when this happens the process of disintegration of the community is accelerated, especially in the face of inequality of wealth, CABRAL (2002).

Therefore, the title "sustainable development" implies rethinking, especially the agribusiness, the way the community has sustained itself over the years, since the occupation of spaces by foreign squatters and farmers to the community implies modifying the *modus vivendi* of indigenous peoples, distorting their culture and modifying the sustainability of that environment. CALEGARE (2014).

The Brazilian public policy taken to these communities has a close link with the municipalities to which they belong, however, resource management has suffered from intercurrent changes of political orientation, which generalize the application of these resources leaving aside the specificity of the community, which increases the need and violates the most intense desires of man, CABRAL (2002).

In the 1970s, the Brazilian government implemented programs and projects for occupation of the Amazon. This governmental enterprise eventually generated conflicts in the region, since the rural Amazonian society was fragmented and did not have a clear social and political organization, which deformed the possibility of collective interaction. CALEGARE (2014).

Organized groups such as the Land Pastoral Commission (CPT) and the Indigenous Missionary Council (CIM) struggle to change the isolation of families in the Amazon, organizing them so that they can ensure their survival through the use of natural resources. Over time, this process becomes a political struggle, which seeks to defend the rights that have been usurped from these peoples, CALEGARE (2014).

In fact, the communities began to react because of the expropriation and use of their territory without any discrimination, as happened with the Movement of Tappers and Extractivists of Vale Rio do Acre, which resisted against the works of the agricultural industries and the colonization projects stimulated by the government, CALEGARE (2014).

In this context, government programs have become catalysts for solidarity bonds between social groups, since they have become "mobilization units". It should be noted that collective interests prevailed so that programs involving the removal or even maintenance of the status quo according to the will of the

government were not implemented, since it disregarded the interests of the community, which meant substantial political changes in the mobilization of social groups from the perspective of the state power.

The mobilization of these social groups implied the creation of governmental programs, such as the "Our Nature" program, decree n° 96944/88, and IBAMA, Law 7735/89. Due to international pressure, the federal government was obliged to adopt policies that addressed indigenous environmental issues, such as the National Environment Program (1941) and the Pilot Program for Protection of Rainforests in Brazil. In addition, the Brazilian government, under political pressures from the organization of social groups linked to traditional communities, legally recognizes traditional populations, including the creation of the National Commission for the Sustainable Development of Traditional Communities, CALEGARE (2014).

Decree No. 6,040/07 indicates that sustainable development in traditional peoples and communities, as defined, should be part of a social mapping that is the result of an effort of the new social cartography of the Amazon, with the purpose of identifying and giving visibility to the collective identities of social groups that are legally recognized. Such a legal mechanism, despite the discrepancy of its application, which emerges when hydroelectric buildings, such as Belo Monte, for example, recognize that Brazil is a multicultural and multiethnic country, which must ensure to guarantee the legal shelter of the members of these peoples, CALEGARE (2014).

However, it can not be denied that advances in legislation have affected the right of traditional peoples and communities to remain in their territories, with the possibility of discussing the use of natural resources and participation in regional management. Though, the discussion on political ideological issues that transcend interests relevant to the natives of traditional peoples and communities is significant, especially due to the different motivations that mobilize agents operating in these communities, CALEGARE (2014).

Geopolitical interests, as the background to various propositions, mark the immeasurable progress that the unity between traditional peoples and communities has achieved, with obvious international assistance among national groups that make current efforts to ensure the protection of natural resources and the rights of these Peoples. Nevertheless, it is important not to miss the point to the fact that there are some shadowy interests in territorial domination and the appropriation of the natural resources that are in these territories, CALEGARE (2014).

Thus, the presence of Universities, NGOs, Government sectors, and others that surpass the particular interests of traditional peoples and communities emerges, since the discussion is not only within the scope of Conservation Units, as they enter into all social groups that discuss the cultural and plural ethnic diversity of Brazil, with the clear objective of guaranteeing rights. In spite of not losing sight of that, it is only due to biodiversity conservation that the political struggle became visible, CALEGARE (2014).

4. Brazilian constitutional protection of Communities and Traditional Peoples

The organization of the contemporary State presupposes a legislative framework that gives shelter to the rights and duties of the dominant and non-dominant social groups that constitute it. The Constitution as the first state rule must include in its content, sayings that matter in equal treatment to all its citizens, in the manner recommended by the Constitutional Democratic State.

To that end, it urges to appreciate how the rights of minorities were enshrined in the 1988 Republican Charter, aiming to safeguard Communities and Traditional Peoples. To do so, it is necessary to glimpse some international norms and treaties, in the context in which they were promulgated that deal with the matter and were accepted by the national legal order.

In this vein, the UNO provides comprehensive protection to minorities through covenants, conventions and treaties, as well as other international acts, as seen in article 27 of the Covenant on Civil and Political Rights, *in verbis*:

In states where there are ethnic, religious or linguistic minorities, persons belonging to such minorities shall not be deprived of the right to have, together with other members of their group, their own cultural life, to profess and practice their own religion and to use their own language.

The relevance of the legal shelter to the minorities has had its point of greatest interest in the year of 1919, with the concern of the winners before new frontiers and the emergence of possible political instabilities in Europe, that is, the protection was due to much more political reasons than humanitarian motivations. Countries such as Poland, Yugoslavia, Czechoslovakia, Romania and Greece, had their borders changed, MAIA (2009).

It is noted that in 1950 the Subcommittee on Prevention of Discrimination and Protection of Minorities lists the clauses that define the minority as a form of identification of these peoples. In this document the definition of non-dominant groups appears. However, the criticism made on the UNO Subcommittee is mainly about not recognizing non-nationals, leaving aside the right of secession, MAIA (2009).

In 1979, CAPORTORTI apud MAIA (2009), defines that the minority within a State is that which has stable ethnic, religious or linguistic characteristics, that differ strongly from those of the rest of the population; they must in principle be numerically inferior to the rest of the population; in a position of non-dominance.

Jules Deschênes apud MAIA (2009), in 1985, formulates a new definition of minority for the Subcommittee, this time includes the political elements nationality and citizenship. Wagley and Harris apud MAIA (2009) summarize the identifying characteristics of the minority: 1) are subordinate segments of state societies; 2) minorities have special physical or cultural features that are little taken into consideration by the dominant segment of society; 3) minorities are self-conscious units linked by the special traits their members share and the constraints they produce; 4) membership of a minority is transmitted by the rule of descent which is able to affiliate successive generations even in the absence of readily apparent physical or cultural traits; 5) minority peoples, by choice or necessity, tend to marry within the group.

MOONEN apud MAIA (2009) points out that the definition of minority is not only quantitative but also qualitative, the differential treatment received by the minority group implies the existence of a domination/subordination relationship. The said relation does not specify the size of the dominating group, so may the smallest group dominate the larger.

The UNO Human Rights Committee, commenting on art. 27 above, states that minority groups do not have to contain nationals, so that the State can not limit the rights described in art. 27 as for those groups that are in the territory of the State, as a fact. The question of identification of minority groups rests with the State, observing objective and subjective criteria, that is, it is the State that will determine if this or that group is a minority. Thus, such recognition will imply being national or not, which increases the relevance in the case of migratory movements, MAIA (2009).

In the analysis of art. 27, the current criticism is about a limited number of minority groups, since it only speaks about ethnic, religious or linguistic minorities. However, other relevant and minority groups such as homosexuals, the elderly, people without fixed addresses are excluded from this expression, MAIA (2009). Other groups may emerge immigrations, as we see in Brazil with Haitians, who flee from the misery in their country; Bolivians who provide services to garment factories in Sao Paulo, clandestinely, according to what is reported in the media.

Regarding the protection of the right of minorities in comparative legislation, it is necessary to observe two cases that mirror the confrontation between the individual right and the collective right. The first, in Canada involving

an Indian, Sandra Lovelace, and her community. Sandra marries a non-Indian and leaves the reserve. After a few years he separates and wants to return to live with his tribe. The Tribal Council denies the plea and receives support from the Canadian government. The UNO Human Rights Committee appreciates the case the other way around on the grounds that Sandra Lovelace's return to the reserve posed no risk to her ethnic identity, especially for the group continued existence, MAIA (2009).

Another one-off case occurred in Sweden. Kitok belonged to the minority Sami, whose main activity is the reindeer breeding. That one decided, due to economic difficulties to leave the community and for several years lived in the city. However, she decided to go back and raise reindeer by using pastures belonging to the Sami minority. The Tribal Council refused, as Kitok had already hired a nearby area and there was not enough room for everyone. The decision was upheld by the Swedish government. In the species, the UNO Human Rights Committee sided with the minority Sami. It is noted that by canceling Kitok's membership the group relied on strong arguments, whether the usufruct of the pastures did not contemplate the coming of another without compromising the economic survival of that minority. So, the right of the group prevails over the right of the individual, MAIA (2009).

The heading of Article 27 is on the principles of equality and non-discrimination. These principles clearly state that members of the minority can not be treated in an inferior position in law and in facts. Legally it excludes any type of discrimination and in the facts imposes the balance that must exist between the diverse social and political situations in the State, MAIA (2009).

Having the principles of equality and non-discrimination as guides, one can conclude the existence of some basic rights pertaining to the minority, without excluding others that may arise due to social dynamics, they are: the right to existence; right to identity; right to positive measures, MAIA (2009).

Legal protection for the minority group is accompanied by the total disgust of human rights for genocide, enshrining respect for the right to life. The right to protection of collective life and the protection of the group against physical decimation are objects of the Convention for the Prevention and Punishment of the Crime of Genocide (1948). *Verbis*:

Art. I ...

Art. II – Presently in this Convention, genocide means any of the following acts committed with the intent to destroy, wholly or in part, a national, ethnic, racial or religious group, such as:

- (A) murder of group members;
- (B) serious harm to the physical or mental integrity of members of the group;
- (C) intentional submission of the group to conditions of existence resulting in total or partial physical destruction;
- (D) measures to prevent births within the group;
- (E) forced transfer of minors from the group to another group.

The right to identity is primarily aimed at preserving the characteristics of the individual and the group in which he is inserted. Protecting the identity of the individual and of the group means allowing the cultural, linguistic, religious and social survival and continuity therein intrinsic, so as not to prohibit its associative manifestations that aim at the enjoyment of these rights, even without there being state intervention for the existence of such enjoyment .

Regarding positive and affirmative measures for the enjoyment of rights, the State should adopt a legislative stance to ensure the linguistic, cultural and religious rights of these minority groups. Such actions are necessary to legitimize the difference between groups and correct past distortions to avoid direct or indirect discrimination.

In Brazil, the 1988 Political Charter enshrines legislative protection for

minority groups, especially when in its preamble it says that Brazil is a pluralistic and unprejudiced society, verbis:

We, representatives of the Brazilian people, gathered in a National Constituent Assembly to establish a Democratic State, designed to ensure the exercise of social and individual rights, freedom, security, well-being, development, equality and justice as supreme values of a fraternal, **pluralist and unprejudiced** society founded on social harmony and committed, in the domestic and international order, with the peaceful solution of controversies, we enact, under the protection of God, the following CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL. **(I pointed out)**

The constitutional text is considered a system, its norms do not overlap one another, so that in the possibility of conflict between them the scope of one to the detriment of the other is diminished. Thus, the individual and collectives rights must be interpreted. Therefore, the Major Charter for the preservation of cultural aspects, among others, is orientated, as seen in articles 215 and 216:

Art. 215. The State shall guarantee to all the full exercise of cultural rights and access to the sources of the national culture, and shall support and encourage the promotion and dissemination of cultural expressions.

Paragraph 1 - The State shall protect the manifestations of popular, indigenous and Afro-Brazilian cultures, and those of other groups participating in the national civilizing process.

Paragraph 2. The law shall provide for the establishment of commemorative dates of high significance for the different national ethnic segments.

Paragraph 3. The law shall establish the National Plan of Culture, of a multi-year duration, aiming at the cultural development of the Country and the integration of the actions of the public power that lead to: (Included by Constitutional Amendment nº 48, of 2005)

- I - defense and valorization of the Brazilian cultural patrimony; (Included by Constitutional Amendment nº 48, of 2005)
- II - production, promotion and dissemination of cultural goods; (Included by Constitutional Amendment nº 48, of 2005)
- III - training of qualified personnel for the management of culture in its multiple dimensions; (Included by Constitutional Amendment nº 48, of 2005)
- IV - democratization of access to cultural goods; (Included by Constitutional Amendment nº 48, of 2005)
- V - appreciation of ethnic and regional diversity. (Included by Constitutional Amendment nº 48, of 2005)

Art. 216. Constitute Brazilian cultural patrimony the assets of a material and immaterial nature, whether individually or jointly, bear a reference to the identity, action, and memory of the different formative groups of Brazilian society, which include:

- I - the forms of expression;
- II - the ways of creating, doing and living;
- III - scientific, artistic and technological creations;
- IV - works, objects, documents, buildings and other spaces destined to the artistic-cultural manifestations;
- V - urban complexes and sites of historical, scenic, artistic, archaeological, paleontological, ecological and scientific value.

Paragraph 1 - The Public Power, with the collaboration of the community, shall promote and protect the Brazilian cultural patrimony through inventories, records, surveillance, registration and expropriation, and other forms of precaution and preservation.

Paragraph 2 - The public administration, in accordance with the law, is responsible for the management of governmental documentation and the arrangements for franking its consultation to those who need it. (See Law No. 12,527, of 2011)

Paragraph 3. The law shall establish incentives for the production and knowledge of cultural assets and values.

Paragraph 4 - Damages and threats to cultural patrimony will be punished, according to the law.

Paragraph 5 - All documents and sites reminiscent of historical remnants of the former quilombos are registered.

Expressed in the Constitution of Brazil integrate the so-called cultural rights, not enshrining the State no cultural model that preponderates over another, let alone adopts as a model of culture a particular one. This is the current pluriculturalism in Brazil. It is true that cultural rights are on the same level as other rights, including topographically, they are on the side of education because of the importance they have within the programmatic norms, that is, those that are priority goals to be achieved by the State.

The exegesis of the expression "national culture" needs to be carried out systematically, obeying the prism of multiculturalism that is the constitutional tonic. Thus, "national culture", in the species, means the same as national patrimony seen this as the cultural diversity existing in the homeland. It is Patrimony that brings together all the cultural forms that are manifested in the country. All these values, ideals and behaviors merge to form our cultural patrimony, MAIA (2009).

The 1988 Constitution mentions for the first time the contribution of the different ethnic segments to culture, placing them in equality with the surrounding society. Constitutional protection guarantees the manifestations of indigenous and Afro-Brazilian popular cultures, as well as the other groups that participated in our civilization. It greatly values minorities when it authorizes the setting of commemorative dates for the significant events of each ethnic group, MAIA (2009).

For a brief passage in article 216 of the CF, it is observed that it shelters the maintenance of each group, and their memory and their actions are protected and sponsored. It emphasizes the sense of identity of the groups, since it is clear that each one has the right to be different and to have identity with each other, without there being unequal treatment by the State. In fact, what the Charter seeks is to welcome each one as it is culturally identified, respecting multiculturalism, which happens to be a measure of inclusion, MAIA (2009).

Social dynamism imposes the passage through a dialectical process. It should be noted that in making a diagnosis of society it is reasonable to revisit Brazilian history, under penalty of allowing to be hidden the portraits where the racial and cultural interactions are imprinted, between minority and dominant groups, such attitude aims to contextualize actions and thoughts, especially if the objective is to eradicate the inequalities born in colonization, MAIA (2009). From this point of view, article 68 of the transitional constitutional provisions was drawn up, which delivers the lands to the quilombolas, as long as they remain in those communities, *verbis*:

Art. 68. To the remnants of the communities of the quilombos that are occupying their lands, the definitive property is recognized, and the State must issue the respective titles to them.

The insertion of the material and immaterial assets constituting the patrimony of the homeland is the motto of items I and II, of art. 216, of the Constitution. They are, in fact, the forms of expression as to create, to make and to live, by this constitutional mechanism pass the scientific and technological works, the artistic ones, the buildings, the spaces of cultural manifestations, besides the archaeological sites.

Lastly, it urged the Court to examine what constitutional protection was given to linguistic rights. In fact, discussion about what the language for a group means is fundamental. However, the identity of the group is umbilically linked to the language that provides the communication between them, defining the boundaries between the groups due to the essentiality of communication, MAIA (2009).

In Brazil there are over a hundred ethnic groups, with more than one hundred dialects and different languages. It is known that a minority group should be analyzed from a context, avoiding the unitary analysis, since it transcends the

present moment as its historical origin will join in a social and ideological context, MAIA (2009).

Article 210, § 2, of the Constitution, guarantees to the Indians the fundamental education in Portuguese language, however there is no prohibition in the use of the mother tongue in private or public environment. It is verified that, according to the principle of constitutionally enshrining isonomy, indigenous communities can use their language in a specific process of learning without any state intervention, see the provisions in the Political Charter:

Art. 210. Minimum contents will be established for basic education, in order to ensure basic common education and respect for cultural and artistic, national and regional values.

Paragraph 1 - The religious education, of optional enrollment, will constitute discipline of the normal hours of the public elementary schools.

§ 2º - The regular basic education will be taught in Portuguese language, ensuring to the indigenous communities also the use of their mother tongues and own processes of learning.

It is inferred that the language used by indigenous peoples must be preserved as an element of integration of the group, its evolution must be supported in the group itself without overlapping the dominant culture. The Constitutional Charter safeguards linguistic manifestations without repressing them to the environment of minority peoples.

Conclusion

The legislative recognition of the cultural importance of minority groups, although incipient, is already a reality. In this regard, we have a number of UNO resolutions, with repercussions in the home-country legislation, which, for example, recognize the right of people and traditional communities to remain in the territories in which they live. Some Brazilian legal acts recognize the Communities and Traditional Peoples creating a National Commission of Sustainable Development aiming the interests of these Communities.

However, despite the recognition of legislation, it is necessary to note that several legislative achievements are still in the field of potentiality, not reaching the full realization of what the law allows. There is still much to conquer.

Also, it should not be forgotten that, on an opposite way, there are strong groups that militate in an organized way for the territorial domination and appropriation of natural riches that are in the Amazonian territory, putting in danger the advances already conquered. Some of these groups, by virtue of their strength, dominate the state machine and act on the sly, appropriating such valuable concepts for the protection of the environment, traversing themselves as protectors of the most fragile groups, when in fact their first pretension is precisely the contrary.

In this regard, the intervention of international bodies, notably the UNO, through the Rights Commission, must act more incisively when it defines that minorities are covered by universal rights.

The art. 27 of the Covenant on Civil and Political Rights gives legal status to minorities, having its point of greatest interest in 1919, with the concern of the winners due to new frontiers and the emergence of possible political instability in Europe. In this Diploma emerges the definition of non-dominant groups demanding a differential treatment to the minority group, recognizing a relation of domination/subordination that certainly generates exclusion.

For the purposes of this work, a criticism of the UNO diploma refers to the limitation of the concept of minority, since when describing who fits as a minority (ethnicity, religion and language) it seems to limit the concept, excluding other minority categories, as it is the case of the riversides.

However, in the Magna Charter of 1988 there is an advance, when it enshrines legislative protection for minority groups, especially when in its preamble it says that Brazil is a pluralistic and unprejudiced society. In this context, the possibility of expanding concepts to encompass a greater diversity of communities

emerges, as is the case of those described in Constitution, art. 216, which describes the "Brazilian cultural patrimony" referring to the diversity of groups that make up Brazilian society.

In any case, what is already done opens space for the scientific community to advance in studies to safeguard the existing knowledge and rescue others who are almost lost.

In the moment in which mankind met at a crossroads where it was glimpsed the possibility of irrational development lead to the extinction of life on the planet, "sustainable development" emerged as an alternative for global society to perpetuate itself in a dignified, without giving up the positive innovations of development.

In this respect, the study on the culture of minority groups may present viable alternatives, since usually they have not experienced the context that has brought us to the edge of the abyss. The traditional communities of the Amazon Region, for example, have their production their subsistence goods and, often, they still use barter as a means of commercial relations, mainly because of the ties of kinship between them, since the surplus, the accumulation system and profit, proper to capitalism, are not explored as the way of integration.

A great effort must be made to ensure that progress in the area of sustainability does not suffer a setback, especially after what has recently occurred in the choice of the North American people, which has taken a step backwards in a speech that forget the whole alarming situation in which the planet and, as a consequence, mankind finds itself.

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