

Global Protection Of The Ecologically Balanced Environment In The Amazon Forest And The Urgency To Decolonise

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Abstract: The long process of colonisation of Brazil, especially concerning the exploitation of the natural resources of the Amazon, has resulted in the degradation of the environment and in a reflexive way, in the mitigation of the human rights of the indigenous peoples. In this way, as the forests were cleared and the rivers were polluted by harmful substances – in order to satisfy the economic commitments of the colonisers – the amerindians watched the violation of their own social and identity rights. Under this bias, this study presents the process of neocolonisation of Amazonian forests, which today is influenced by the “Risk Society” proposed in the studies of Anthony Giddens and Ulrich Beck. Thus, the modern colonisation process repeatedly manifests the same outrages as the predecessor colonisation, this time, however, to serve the interests of the establishment and the large multinationals. Furthermore, even though internal and avant-garde protection laws for the Amazon and the identity rights of indigenous communities are in force, these provisions continue to be disrespected. Still, even if the international declarations for the protection of the rights of nature and human rights of the indigenous peoples were signed, the forests of the Amazonian region continue to be degraded and the local communities remain feeling the effects of the past, suggesting an unfinished decolonization.

Keywords: Amazon; Rights of nature; Decolonisation.

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1 INTRODUCTION

For centuries, Brazilian nature was indiscriminately explored, therefore, feedstock was withdrawn violently and the fruits that came from it. However, the coloniser process justifies itself as the way found by the human kind to spread around the world. However, in the intent of expanding the political and economic power, severe violations of human rights were engaged against native populations.

In Brazil, the colonisation began in 1500 with the arrival of the troops led by Pedro Álvares Cabral coming from Portugal. Thus, dividing the Luso-Brazilian territory in hereditary captaincies, the resources that these lands offered were subtly explored by the donors of the lands donated by John III of Portugal. In contrast, the donors were left with the responsibility of populating and, surprisingly, protecting these places.

In reference to the exploration of the Amazon in particular; rubber, wood, soy, ore, pecuniary and *et cetera* the reasons that boosted the colonists to explore the Amazonian territory are countless. However, the desire of Portugal found difficulties at the signature of the Treaty of Tordesillas, which divided the South American territory and put the Amazon forest under the dominance of the Spanish.

Later on, in 1637, Portugal organised the first expedition to the Amazonian region, in order to explore cacao and the nuts of the region.

In the meantime, the country also invested in agriculture and in the pecuary, utilising as the propelling machine of these activities involving indigenous labour, that further ahead, got the 'reinforcement' of black Africans brought as slaves.

In such a manner, the usurpation of natural resources in the Brazilian environment lasted until 1815, when the colonies in Portuguese America began to integrate the United Kingdom of Portugal, Brazil and Algarves. However, as early as 1822, it was proclaimed the independence of the Brazilian Kingdom, which converted itself into Empire, crowning Dom Pedro I as the first Emperor, consolidating it with the Political Constitution of the Brazilian Empire, in 1824.

Such violation of the environment continued being carelessly reiterated by the rest of the XIX Century until the first half of the XX Century. It was then, in 1972, in Sweden, the Conference of United Nations about Human Environment occurred, figuring as the first reunion headed by the United Nations, that had focused on the questions related with the environment.

Twenty years later, in Rio de Janeiro, a United Nations conference about Environment and Development, also known as Dome of the Earth, occurred. The goal, by that time, was to debate environmental problems. However, even if it can be said that such UN meetings can be considered as marks of the development of International Rights of Environment, the conferences forgot to imbue ecological and sustainable content in their statements.

Therefore, with the Millennium Agenda (2000), the Conference of United Nations about the Sustainable Development or Rio+20 (2012) and the 2030 Agenda (2015), if brought this time, the necessary impact about responsibility of the States and the commitment to promote an ecologically balanced environment, including and most important, in the Amazon forest, which represents one third of the tropical forests of the World.

So taking in consideration the biological potential of the

Amazon forest, it irradiates over the States the duty of global protection to the region, however always prevailing the sustainable development of these forests. However, the advent of a society of risk, suggests the process of reverse of the colonisation – the decolonisation – still shows itself unfinished, considering that the pollution and violation of indigenous human rights are still present.

The objective of this work is to present the historical path of human rights violations suffered by indigenous peoples and the exploitation of the Brazilian ecosystem.

In conclusion, sheltered by the deductive approach method, will be discussed the guardianship of the Environment International Right, leaving the diffuse nature of the environment and national and international commitment of the Amazon, flowing out in the violation of the indigenous human rights. *Exempli gratia*, the deforestation of the indigenous areas, the pollution of the áreas by the mercury of the illegal extraction of gold.

As a method of procedure, the historical context will be listed, pointing to the evolution of International Law concerning the sustainable environment. Furthermore, the explicative method will be remembered, clarifying the global necessity of Amazon preservation and investigating the preservation of the Brazilian forest, through national and international documents, and the obedience of those nowadays.

Finally, the research techniques employed were bibliographical and documentary. The former involved gathering important research for the development of the topic. The latter involved presenting the main national and international legislation on environmental and indigenous peoples' protection.

2 HISTORICAL EVOLUTION OF THE HUMAN RIGHT TO THE ENVIRONMENT: THE GLOBAL DUTY TO PRESERVE THE AMAZON FOREST

Enjoying the benefits of nature is not just a right of current generation, with more reason, it is a guarantee of future generations: indeterminate and indeterminable subjects. In that regard, in other times, a lot has been exacted from the environment, restraining in a way, the fruition of these natural resources by posterity. Under this bias, Machado (2007, p 118) settles:

The environment is a collective good for individual and general enjoyment at the same time. The right to an environment is of each person, but not not just hers, being at the same time "transindividual". Thats why, the right of environment enters the category of diffuse interest, not running out in just one person, but spreading to an indeterminate collectivity¹ (Machado, 2007, p. 118) (Our translation).

With the purpose of relating the aforementioned right to the Amazon region, it is needed to remember the own origin of Brazil. So, he set sail in 1500, under the leadership of Pedro Álvares Cabral, the first Portuguese ships that gave start to the colonisation process. This time, it is unnecessary to know if the discovery of Brazil was accidental or calculated, being, therefore, called by the abundance of red wood found, and utilised to dye.

Before this, however, in 1499, the Spanish Vicent Yañez Pinzón was the first European to arrive at the mouth of Amazon river; the exploration, however, did not apply. In turn, the Portuguese exploration of the Amazon forest found difficulties in the Treaty of Tordesillas, signed between Portugal and Spain, in 1494, that put the

¹ In the original: "O meio ambiente é um bem coletivo de desfrute individual e geral ao mesmo tempo. O direito ao meio ambiente é de cada pessoa, mas não só dela, sendo ao mesmo tempo "transindividual". Por isso, o direito ao meio ambiente entra na categoria de interesse difuso, não se esgotando numa só pessoa, mas se espalhando para uma coletividade indeterminada".

Amazon under the dominance of the Spanish. Such domination lasted until 1750, when the Treaty of Madrid, imposing new limits in the territorial division of American colonies, culminated in the annexation of the State of Acre, in the XX Century.

Diving the lands under Portuguese domain in hereditary captaincy, Portugal little by little establishes the domain of cacao, nuts, of agriculture and the pecuary in Amazon utilising indigenous labour and the slaves brought from Africa. The Amazon region, then, only consolidated itself in Brazilian politics in 1808, with the installation of the Court of John VI of Portugal in Rio de Janeiro. The initial exploration period was marked by massacres against indigenous populations and the personal rivalry among the colonists (Soublin, 2003).

At the end of the XIX Century, rubber had arisen as a product of the exploration of the Amazon, in the transition of the Empire to Republic. By the time, however, it was no longer possible to take advantage of indigenous and African slavery and several northeastern migrants travelled to the region. Thus, it was established that "The rubber tapper is the only man who works to enslave himself" (Cunha, 1999). Suddenly, still in 1900 Asia interrupted the Brazilian ascension in the rubber market.

Nonetheless, in 1940, taking advantage of World War II, the actual president Getúlio Vargas decided one more time to invest in rubber of the Amazon, defending the motto "March to the West", and again compromising the natural resources of the Amazon forest. Only after the great war, the human person was placed at the centre of the concern of States, with the creation of the United Nations Organization United Nations, in 1945. Such an event means the creation of a society of nations compromised with the promotion of the common good of the planet. In condensation with the preservation of nature, Ramos (2012, p. 56) points:

In fact, you can see easily that the environment matter is

an international concern *per se*, given that environmental degradation within the territory of a State can affect the entire planet² (Ramos, 2012, p. 56) (Our translation).

Meanwhile, precipitously, in 1972, with the United Nations Conference about Human Environment, in Estocolmo, in Sweden, began to think in the relation of humans with nature, and how the society can ponderate the economic development and the decrease of the environmental wear. In that regard, in his initial articles, the Declaration of the event underlines:

1. Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights, the right to life itself. 2. The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments³ (Organização Das Nações Unidas, 1972) (Our translation).

In 1987, the Brundtland Commission about the Environment and Development, summoned by the United Nations Organization, released an innovative report, entitled "Our Common Future". In it for the first time, inserts to the international legal, the concept of

² In the original: "De fato, percebe-se facilmente que a matéria ambiental é preocupação internacional *per se*, já que degradações ocorridas do meio ambiente dentro do território de um Estado podem afetar todo o planeta".

³ In the original: "1. O homem é ao mesmo tempo obra e construtor do meio ambiente que o cerca, o qual lhe dá sustento material e lhe oferece oportunidade para desenvolver-se intelectual, moral, social e espiritualmente. Em larga e tortuosa evolução da raça humana neste planeta chegou-se a uma etapa em que, graças à rápida aceleração da ciência e da tecnologia, o homem adquiriu o poder de transformar, de inúmeras maneiras e em uma escala sem precedentes, tudo que o cerca. Os dois aspectos do meio ambiente humano, o natural e o artificial, são essenciais para o bem-estar do homem e para o gozo dos direitos humanos fundamentais, inclusive o direito à vida mesma. 2. A proteção e o melhoramento do meio ambiente humano é uma questão fundamental que afeta o bem-estar dos povos e o desenvolvimento econômico do mundo inteiro, um desejo urgente dos povos de todo o mundo e um dever de todos os governos".

development applied to sustainability. Under the presidency of the Norway doctor Gro Harlem Brundtland the report defines:

In his essence, the sustainable development it is a process of change which the exploration of resources, the targeting of the investments, the orientation of the technology development and the institutional change are in harmony and reinforce the actual future and potential to satisfy the aspirations and human necessities⁴ (Organização Das Nações Unidas, 1987) (Our translation).

The Stockholm Conference, previously mentioned, supported notable influence in the Republic Constitution of Brazil, promoted in 1988, ending two decades of military regime. Established the common competency of Federative Entities in the protection of the environment, in harmony with the Art. 23 (Brasil, 1988). Furthermore, the Letter dedicated an specific chapter to the matter, adducting:

Art. 225. Everybody has the right to an ecologically balanced environment, common use of the people and essential to a healthy quality of life, imposing the Public Power and collectivity and the duty to defend it and preserve for the present and future generations⁵ (Brasil, 1988) (Our translation).

In 1989, in Basileia, in Switzerland, the Convention about the Control of Transboundary Movements and Hazard Residual and its Deposits. The pact, then, aimed to mitigate the illegal trafficking and intensify the cooperation between the States, to the proper gestion of the residues harmful to nature. The Brazilian Government, in this way, deposited your Letter of Adherence to the convention in 1992 (Brasil, 1992).

⁴ In the original: “Na sua essência, o desenvolvimento sustentável é um processo de mudança no qual a exploração dos recursos, o direcionamento dos investimentos, a orientação do desenvolvimento tecnológico e a mudança institucional estão em harmonia e reforçam o atual e futuro potencial para satisfazer as aspirações e necessidades humanas”.

⁵ In the original: “Art. 225. Todos têm direito ao meio ambiente ecologicamente equilibrado, bem de uso comum do povo e essencial à sadia qualidade de vida, impondo-se ao Poder Público e à coletividade o dever de defendê-lo e preservá-lo para as presentes e futuras gerações”.

In posteriori, 20 years later after the first international reunion about preservation of the environment, emerged in the International Right territory of Environment, in Rio de Janeiro, discussing matters about climate changes, and the reduction of acid rain (UNO, 1992). However, remained the anthropocentric vision, that forgot to integrate the ecologic content and the actions of the contention of interference of the human being in nature (Antunes, 1998, p. 52). Comparato (2005, p.31), however, highlighted the positive aspects:

Regarding the vital dependence on the environment of humanity, it is comforting to point out the latest developments in ecological law, notably the Convention on Biological Diversity, signed in Rio de Janeiro on June 5, 1992⁶ (Comparato, 2005, p. 31) (Our translation).

In 2000, however, the conception of the last conventions began to suffer subtle changes, with the Millennium Agenda, which brought one of these objectives, the guarantee to environment sustainability. On this treadmill, influenced by international commitments with the environment, the Ecuador in 2008, established the nature rights or of *pacha mama* in its new Constitution:

Art. 71. – Nature or *Pacha Mama*, where life is reproduced and realised, has the right to have its existence and the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes fully respected. Any person, community, town or nationality may demand that the public authority comply with the rights of nature. To apply and interpret these rights, the principles established in the Constitution will be observed, where appropriate. The State will encourage natural and legal persons, and groups, to protect nature, and will promote respect for all the elements that make up an ecosystem⁷ (Constitución

⁶ In the original: “No tocante à vital dependência em que se encontra a humanidade em relação ao meio ambiente, é confortador assinalar os últimos desenvolvimentos do direito ecológico, notadamente a Convenção sobre a Diversidade Biológica, assinada no Rio de Janeiro em 5 de junho de 1992”.

⁷ In the original: “Art. 71.- La naturaleza o Pacha Mama, donde se reproduce y realiza la vida, tiene derecho a que se respete integralmente su existencia y el mantenimiento y regeneración de sus ciclos vitales, estructura, funciones y procesos evolutivos. Toda persona, comunidad, pueblo o nacionalidad podrá exigir a la autoridad pública el cumplimiento de los derechos de la naturaleza. Para aplicar e interpretar estos derechos se observaran los principios establecidos en la Constitución, en lo que proceda. El Estado incentivará a las personas naturales y jurídicas, y a los colectivos, para que protejan la naturaleza, y promoverá el respeto a todos los elementos que forman un ecosistema”.

Del Ecuador, 2009) (Our translation).

If so, the transition between the millenia reinforced Ulrich Beck and Anthony Giddens loggings about the ‘Society of Risk’, under this concept, the process of modernization would be unrelated, blind and deaf to the effects and threats that can affect the environment. Thus, not only distributed the goods, but also, shared the risks, specially, the ecologic ones (Beck, 1997). Programing the future, Galeano (1998, p. 232) synthesises:

VIEW OF THE TWILIGHT, AT THE END OF THE CENTURY

The land that buries or banishes us is poisoned.
There is no longer air, but snub.
There is no rain anymore, but acid rain.
There are no longer parks, but parking lots.
There are no longer companies, but public limited companies.
Companies instead of nations.
Consumers instead of citizens.
Agglomerations instead of cities.
There are no people, but public.
There are no realities, but advertisements.
There are no visions, but televisions.
To praise a flower, one says: It looks like plastic⁸ (Galeano, 1998, p. 232) (Our translation).

In 2012, it was approved in Brazil, the Forest Code disposing about the protection of Brazilian native vegetation, previewing in the internal legislation, that financial and economic resources would assist in the materialisation of preservation of the forests and areas of the Legal Reserve. Still, the 2nd Art. of the Law nº 12.651/2012, outlines the Legal Amazon, between the States of Acre, Pará, Amazonas, Rondônia, Amapá and Mato Grosso (Brasil, 2012).

Once, even if evolutions could be foreseen, it prevailed – or still

⁸ In the original: “VISTA DEL CREPÚSCULO, AL FIN DEL SIGLO/ Está envenenada la tierra que nos entierra o destierra/ Ya no hay aire, sino desaire/ Ya no hay lluvia, sino lluvia ácida/ Ya no hay parques, sino parkings/ Ya no hay sociedades, sino sociedades anónimas/ Empresas en lugar de naciones/ Consumidores en lugar de ciudadanos/ Aglomeraciones en lugar de ciudades/ No hay personas, sino públicos/ No hay realidades, sino publicidades/ No hay visiones, sino televisions/ Para elogiar una flor, se dice: Parece de plástico”.

prevails – the definition of the social spaces by the market (BAUMAN, 2001). Of exceedingly, in this meaning, less than a month after the approval of the Forest Code, effective changes were made in matters of environmental protection. That said, with the Conference of United Nations about the Sustainable Development or Rio +20, joined the dance the concept of Green Economy:

We emphasise that the green economy must contribute to the eradication of poverty, and economic sustainable growth, reinforce social inclusion, improve human well being, and create job opportunities and worthy jobs for everyone, keeping the healthy operation of the ecosystems of the earth⁹ (Organização Das Nações Unidas, 2012) (Our translation).

It was then, that finally, in 2015 it was introduced the 2030 Agenda in the 70^a UNO General Assembly, which had as title, ‘Transforming our World: The 2030 Agenda for Sustainable Development’, thus, the objectives of sustainable development: The social equity the economic growth and environmental protection (Organização Das Nações Unidas, 2015). In this way, as Comparato writes (2005, p. 429):

Insist on the fact that the human being is, always, the central focus of the actions of preservation of the environment. Only he represents itself, as Kant showed, one end in itself, could not be utilised as a way or instrument for the consecutive or other ends. Sometimes, however, the preoccupation in preserve biodiversity lends to make us forget the principle that the man is the culminating point of biological evolution and that, although depends on biological balance to survive, your ethical position does not equalise to no other living being¹⁰ (Comparato, 2005, p. 429) (Our translation).

⁹ In the original: “Ressaltamos que a economia verde deve contribuir para a erradicação da pobreza e para o crescimento econômico sustentável, reforçar a inclusão social, melhorando o bem estar humano, e criar oportunidades de emprego e trabalho digno para todos, mantendo o funcionamento saudável dos ecossistemas da Terra”.

¹⁰ In the original: “Insista-se no fato de que o ser humano é, sempre, o foco central das ações de preservação do meio ambiente. Só ele representa, como mostrou Kant, um fim em si mesmo, não podendo ser utilizado como meio ou instrumento para a consecução de outros fins. Algumas vezes, no entanto, a preocupação em preservar a biodiversidade tende a nos fazer esquecer o princípio de que o homem é o ponto culminante da evolução biológica e que, embora dependente do equilíbrio ecológico para sobreviver, sua posição ética não se iguala a de nenhum outro ser vivo”.

Presented with the main international documents of nature protection, it's necessary to emphasise that all of them irradiate about the international compromise of preservation of the Amazon, as well as all sustainable development of its forests and the necessity of emancipation of the indigenous people. However, even with this responsibility the total tax of deforestation in the Brazilian Amazon corresponds to the highest number since 2009, equivalent to the area of 10.100km² (INPE, 2019). In such a way, there is a pressing need for the inspection of nocive activities to the sustainable environment in these places.

With a diffuse right, the human right about the Amazonian region is not limited to the nationalities, nor restricted to the generations that are gone, or in march (Comparato, 2005, p. 280). The challenges of the society, substantiated with the economic globalisation, with the interests of the *establishment* overpower the satisfaction of the right of the ecologically balanced environment (Bauman, 2001).

3 VIOLATION OF INDIGENOUS HUMAN RIGHTS AND THE DEGRADATION OF THE AMAZON FOREST: WH(O)Y DECOLONISE?

Since the first exploratory climbs on command by the Portugal Court, the colonisers violated rights inherent to the human condition of indigenous people. In such a way, the Portuguese invaded the lands under the domain of their native and took their fruits, as if it were not enough, discriminated against the habits of the found people and imposed the Portuguese culture and religion.

The European ideology about these populations, made that Immanuel Kant – without ever having set foot in America – said that the indigenous would be incapable of living in a civilization and should

be exterminated (Galeano, 1998. p. 48). In continuation, what was practised in the Portuguese colony, was in fact a ethnocide, so, imposed itself forcefully a process of acculturation by the dominating subjects, owners of the "most powerful" culture. However, in 1680, by a royal decree, it was considered that the indigenous were the natural owners of the earth, considering that they were the first occupants.

Posteriorly, in 1775, the decree was ratified and became law, so, 'written in the leaflet of Pope Benedict XIV, of December 20 of 1741 – according which, in granted lands and private, would always be reserved the indigenous right, primary and naturally their lords' (Tourinho Filho, 1993, p. 09). Of all luck, the reality of the suppression of the rights and marginalisation did not change, the Portugal Court continued to oppress the native populations and, from now on, justifying in 'fair warfare', the way found to legitimate the indigenous massacre, by the Royal Charter of 1808 (Cunha, 1987).

Shortly afterward, the Royal Charter was revoked by the law of October 27 of 1831. The politics of the Brazilian Empire, who had just become independent, created an identity for the Brazilian people. So, exerted influence at the time the process of independence and the construction of a national identity of the United States of America. It was not proper to exterminate and discriminate the Indian any more, but to integrate him into the society of the time:

The Regency, in the Name of the Emperor, Lord D. Pedro II, makes it known to all the Empire's Subordinates that the General Legislative Assembly Decreed, and it Sanctioned the following Law:

Art. 1 The Royal Charter of November 5, 1808 is revoked, in the part in which it ordered the declaration of war on the Bugres Indians of the Province of S. Paulo, and determined that the prisoners were obliged to serve for 15 years with the militiamen or residents, to understand them.

Art. 2 The Royal Charter of May 13th and December 2nd, 1808 are also revoked, in the part in which they authorise the same war in the Province of Minas Geraes, and servitude of Indian prisoners.

Art. 3 The Indians, all of whom have been in servitude until now, will be freed from it.

Art. 4 They will be considered as orphans, and handed over to the respective Judges, to apply to them the provisions of

Ordination Book first, Title eighty-eight¹¹ (Império Do Brasil, 1831) (Our translation).

The creation of a Brazilian identity, permeated by all sectors and agents of the society, including literature. Thus, Indian romanticism worked hard to create the figure of a socialised native, as a mythical hero of the nation, influencing, primarily, in the theory of the "good savage" of the enlightenment philosopher Jean-Jacques Rousseau. So, in 1851, Gonçalves Dias, in "Juca Pirama", recites:

They are loud, severe, thirsty for glory,
Already prizes incite, already sing victory,
Already gentle they listen to the singer's voice:
They are all Timbiras, brave warriors!
Your name flies into people's mouths,
A spell of wonders, of glory and terror!
[...] Who is it? – no one knows: his name is unknown,
Your tribe does not say: – from a remote people
Certainly descended from a gentle people;
So there in Greece to the island slave
They made them distinct from the vile Muslim
The correct lines of the noble profile¹² (Dias, 2003, p. 89)
(Our translation).

Once again, the small civilizational leaps in the way to recognize the Indigenous human rights, did not result from the extinction of barbarism against these vulnerable groups, not much less in the guarantee of rights. As early as 1916 with the Civilian Code, granted to the foresters, not only the civil incapacity, excluding from these

¹¹ In the original: "A Regencia, em Nome do Imperador o Senhor D. Pedro II, Faz saber a todos os Subditos do Imperio, que a Assembléa Geral Legislativa Decretou, e Ella Sanccionou a Lei seguinte: Art. 1º Fica revogada a Carta Régia de 5 de Novembro de 1808, na parte em que mandou declarar a guerra aos Indios Bugres da Provincia de S. Paulo, e determinou que os prisioneiros fossem obrigados a servir por 15 annos aos milicianos ou moradores, que os apprehendessem. Art. 2º Ficam tambem revogadas as Cartas Régias de 13 de Maio, e de 2 de Dezembro de 1808, na parte, em que autorizam na Provincia de Minas Geraes a mesma guerra, e servidão dos índios prisioneiros. Art. 3º Os índios todos até aqui em servidão serão della desonerados. Art. 4º Serão considerados como orphãos, e entregues aos respectivos Juizes, para lhes applicarem as providencias da Ordenação Livro primeiro, Titulo oitenta e oito".

¹² In the original: "São rudos, severos, sedentos de glória/ Já prêlios incitam, já cantam vitória/ Já meigos atendem à voz do cantor/ São todos Timbiras, guerreiros valentes!/ Seu nome lá voa na boca das gentes/ Condão de prodígios, de glória e terror!/ [...] Quem é? - ninguém sabe: seu nome é ignoto/ Sua tribo não diz: - de um povo remoto/ Descende por certo - dum povo gentil/ Assim lá na Grécia ao escravo insulano/ Tornavam distinto do vil muçulmano/ As linhas corretas do nobre perfil".

groups, the most part of the practice of private rights (Estados Unidos Do Brasil, 1916).

However, in 1928, by the Decree nº 5.484, it was recognised that the lands under the domain of the Indigenous, have a public legal nature, and should be destined to them permanently and exclusively. In addition, in 1967 then, under the aegis of Military Regime, instituted the Justice's National Foundation for Indigenous Affairs – FUNAI – making then, up to this foundation, in conformity with the Art. 1º, I of Law nº 5371, ‘establish the guidelines and guarantee the enforcement of indigenous politics’ (Brasil, 1967).

The Indian Statute of 1973, revoked the Decree nº 5484 that represented advances in the politics to protect indigenous lands. Perpetrated, in this sense, excesses, authoritarianism, inserting the equality of rights between indigenous and civilian, forgetting the principle of equity and equality of conditions. In this perspective, Souza Filho (2003, p. 306) settles:

It should have determined the application of the principles of public law; the private ones are family law and harmful to the Indians. The way forward, including to avoid corruption among the officials in charge, would be to deepen the public regime and not return to the private empire. Thus, the Indian Statute, in order to break with a recent past of corruption, rearms the web of oppression created by nineteenth-century law¹³ (Souza Filho, 1993, p. 306) (Our translation).

In 1988, it was assigned an important step in the recognition of fundamental and identity guarantees of the Indigenous. That said, the Citizen Constitution finally affirmed the rights of Indigenous populations, dedicating a specific chapter of the Constitution in the establishment of rules about the use of lands and the fruits from it

¹³ In the original: “Deveria ter determinado a aplicação dos princípios do direito público; os privados são do direito de família e nefastos para os índios. O caminho, inclusive para evitar a corrupção dos funcionários encarregados, seria aprofundar o regime público e não voltar ao império privado. Assim, o Estatuto do Índio, no intuito de romper com um passado recente de corrupção, rearma a teia de opressão criada pelo Direito oitocentista”.

(Chapter VIII, Brazil, 1988). Therefore, the Constitution of the Republic of 1988 says:

Art. 231. The Indians are recognized for their social organisation, customs, languages, beliefs and traditions, and the original rights over the lands they traditionally occupy, with the Union being responsible for demarcating them, protecting and ensuring respect for all their assets.

§1º The lands traditionally occupied by Indians are those inhabited by them permanently, those used for their productive activities, those essential to the preservation of the environmental resources necessary for their well-being and those necessary for their physical and cultural reproduction, according to their uses, costumes and traditions.

§2º The lands traditionally occupied by the Indians are intended for their permanent possession, with them having the exclusive use of the riches of the soil, rivers and lakes existing there¹⁴ (Brasil, 1988) (Our translation).

The article above, in this sense, recognises the ‘right to difference’, not imposing conditions or common ground between Indians and civilians – a mistake brought by the Indian Statute of 1973. But, correcting eventual dissonances that exist between indigenous and non-indigenous culture. In that way, Alexy (2008, p. 51) clarifies that the differentiations are permitted and does not tarnish the right to equality, since they exist on reasonable parameters.

Internationally, the human rights of Indian populations begin to emerge between the end of XX Century and the beginning of the XXI Century. In sight of this, in 1993 the Vienna Conference brought implicitly that the fundamental rights consecrated by the Universal Declaration of Human Rights apply integrally to the indigenous

¹⁴ In the original: “Art. 231. São reconhecidos aos índios sua organização social, costumes, línguas, crenças e tradições, e os direitos originários sobre as terras que tradicionalmente ocupam, competindo à União demarcá-las, proteger e fazer respeitar todos os seus bens. §1º São terras tradicionalmente ocupadas pelos índios as por eles habitadas em caráter permanente, as utilizadas para suas atividades produtivas, as imprescindíveis à preservação dos recursos ambientais necessários a seu bem-estar e as necessárias à sua reprodução física e cultural, segundo seus usos, costumes e tradições. §2º As terras tradicionalmente ocupadas pelos índios destinam-se a sua posse permanente, cabendo-lhes o usufruto exclusivo das riquezas do solo, dos rios e dos lagos nelas existentes”.

people. In that regard, underlined:

20. The World Conference on Human Rights recognizes the inherent dignity and unique contribution of indigenous peoples to the development and pluralism of society and strongly reaffirms the international community's commitment to the economic, social and cultural well-being of these peoples and their right to enjoy the fruits of sustainable development. States must guarantee the full and free participation of indigenous peoples in all aspects of society, particularly in matters that concern them. Considering the importance of promoting and protecting the rights of indigenous peoples, as well as the contribution of such promotion and protection to the political and social stability of the States in which such peoples inhabit, States should, in accordance with international law, take measures positive and concerted efforts to guarantee respect for all human rights and fundamental freedoms of indigenous peoples, based on equality and non-discrimination, as well as recognizing the value and diversity of their distinct identities, cultures and social organizations¹⁵ (Organização Das Nações Unidas, 1993) (Our translation).

After a long time of negligence, the international agencies for the indigenous people, finally created The Declaration of United Nations about the Rights of Indigenous People in 2008. It is the first specific international document in consecution and protection of the human rights and identity of the indians. That way, reaffirming the Vienna Conference of 1993, the Declaration brought expressly in its Art 1^o:

Indigenous people have the right, collectively or individually, to the full enjoyment of all human rights and

¹⁵ In the original: “20. A Conferência Mundial sobre Direitos do Homem reconhece a dignidade inerente e o contributo único dos povos indígenas para o desenvolvimento e o pluralismo da sociedade e reafirma vivamente o empenho da comunidade internacional no bem-estar económico, social e cultural desses povos e no seu direito de gozar dos frutos do desenvolvimento sustentável. Os Estados deverão garantir a participação plena e livre dos povos indígenas em todos os quadrantes da sociedade, particularmente em questões que lhes digam respeito. Considerando a importância da promoção e da protecção dos direitos dos povos indígenas, bem como a contribuição de tal promoção e protecção para a estabilidade política e social dos Estados em que tais povos habitam, os Estados deverão, em conformidade com o direito internacional, tomar medidas positivas e concertadas para garantirem o respeito por todos os Direitos do homem e liberdades fundamentais dos povos indígenas, com base na igualdade e na não-discriminação, bem como reconhecer o valor e a diversidade das suas identidades, culturas e organizações sociais distintas”.

fundamental freedoms recognized by the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law¹⁶ (Organização Das Nações Unidas, 2008) (Our translation).

In conclusion, with regard to the sampling of the documents of protection to the Indigenous human, the Organization of American States – OAS brought in 2016, the American Declaration about the Rights of Indigenous People. It turns necessary to transcribe the literality of the Article IV, that explicits the binding character from International Charter about indigenous communities:

Nothing in this Declaration shall be construed as conferring on a State, people, group or person any right to participate in an activity or perform an act contrary to the Charter of the Organization of American States and the Charter of the United Nations, nor shall it be understood as meaning that any action intended to harm or depreciate, in whole or in part, the territorial integrity or political unity of sovereign and independent States is authorized or promoted¹⁷ (Organização Dos Estados Americanos, 2016) (Our translation).

Otherwise, after exhaustive presentation of rights and fundamental guarantees of indigenous people, above all, about those primary owners of the Amazonian territory, it turns out that such dispositions continue being repeatedly violated by the degradation of the soil and pollution of land means and the rivers of the region. So, about the expansion of territories and gold extraction *et. al* (2013) indicates:

Gold mining is rapidly expanding in the western Amazon, with an explosion of activities centered in the Madre de

¹⁶ In the original: “Os indígenas têm direito, a título coletivo ou individual, ao pleno desfrute de todos os direitos humanos e liberdades fundamentais reconhecidos pela Carta das Nações Unidas, a Declaração Universal dos Direitos Humanos e o direito internacional dos direitos humanos”.

¹⁷ In the original: “Nenhuma disposição da presente Declaração será interpretada no sentido de que se confere a um Estado, povo, grupo ou pessoa direito algum de participar de atividade ou realizar ato contrários à Carta da Organização dos Estados Americanos e à Carta das Nações Unidas, nem se entenderá no sentido de que se autoriza ou promove ação alguma destinada a prejudicar ou depreciar, total ou parcialmente, a integridade territorial ou a unidade política de Estados soberanos e independentes”.

Dios region of Peru. Our results reveal far more forest damage than has been reported in the past, both in terms of the current area affected and the rate of clearing over time. The 50,000 ha of new mining hat we mapped from 1999 to 2012 far exceed previous estimates and reports by the government and nongovernment organizations operating in the region. For example, Swenson had estimated about 15,500 ha in total by 2009, whereas we found more than double that amount (32,371 ha) in the same period. The difference in estimates rests in the fact that previous work has focused on the three large mines without accounting for the thousands of small clandestine mines along roads and waterways (Asner *et. al*, 2013).

Remains in the Amazonian territories, principally in the Peruvian region, the illegal extraction of gold which under the Resolution nº 11 of the State Council of the Environment of the State of the Amazon – which establish the procedure to be observed for the mining activity – ends vilifying the human indigenous rights identity relatives of health. Adding, that the Brazilian Constitution, demands also a reglementary legislation, for the mining to occur in indigenous lands, which until today never happened, violating the Charter of Brazilian Rights. So, Caheté (1998) points out:

Without a doubt, the greatest emphasis on chemical impacts is given to the problem of mercury to the detriment of these other released substances, or even the harmful social effects resulting from gold exploration in the Amazon. Be that as it may, the problem of mercury in this region has received, especially in the last decade, support from governments and the most diverse institutions for its research, leading to a production of knowledge not found for any other pollution problem related to the extraction of gold¹⁸ (Caheté, 1998) (Our translation).

The gold extraction, in that sense, provokes landscaping alterations, such as; deforestation, provoked by the construction of

¹⁸ In the original: “Sem dúvida, a maior ênfase dos impactos de ordem química é dada ao problema do mercúrio em detrimento destas outras substâncias liberadas, ou mesmo dos efeitos sociais danosos resultantes da exploração do ouro na Amazônia. Seja como for, a problemática do mercúrio nesta região tem recebido, principalmente na última década, apoio de governos e das mais diversas instituições para a sua pesquisa, levando a uma produção de conhecimento não encontrada para nenhum outro problema de poluição relacionado com a extração do ouro”.

landing zones and camps; and change of water course of the rivers, caused by the daily activity of the miner (Caheté, 1998). In this sense, they are profoundly affected by the proliferation of mercury in the mining activity of the tribes *Kayapó* and *Munduruku* – both in Pará – and the *Yanomami* – in Roraima and the Amazon.

The Amazon Network of Georeferenced Socio-Environmental Information – RAISG – which reunites ambientalist NGOs, identified illegal mining in eighteen indigenous territories in Brazil (Baía Júnior, 2014). In addition, a second data of the Satellite Monitoring of the Brazilian Amazon Forest, with a tax of deforestation of indigenous áreas in 2019 was the highest since 2008, corresponding to 423,3km² (INPE, 2019). Such data explicit that day after day, the intent violations against the territories and identities of indigenous people.

To conclude, the process of decolonisation needs, at this height, to find its epilogue. Soon, to illustrate the violations suffered by the indigenous and the degradation of the environment at the Amazonian region, it was properly explored by the biggest problem at the present, which involves two aspects: Illegal extraction of gold and deforestation of the Amazonian areas and indigenous that tarnish the Human Rights to health, identity and to territoriality.

4 BRIEF FINAL CONSIDERATIONS

Brought to discussion, the evolution of internal legislations and internationally about the preservation of the environment, constituted the omission of international agencies for a long time, about the abuses committed against indigenous people. Equally, it discussed the frequent violation of human rights of the indigenous communities, just like the treaties and conventions of safeguard of equilibrated use of natural resources of the Amazon and rights of nature.

Thus, brought elucidation and relevance of important

declarations at the International Right of the Environment, *exempli gratia*: The conference of Stockholm, the ECO-92, the Millenium Agenda, the Rio+20, and the 2030 Agenda for sustainable development. Other provisions, such as the Basileia Convention, the Federal Constitution of 1988, and Brazil's Forest Code, also made it essential in the integral protection of the environment.

In this perspective, the raised data by the Satellite Monitoring of the Brazilian Amazon Forest – PRODES, developed by the National Institute of Space Research – NIS, motivates the comprehension that even though lots inside the ecologic matter has evolved, the human being insists in degrade the soils of the Amazon and vilify the occupied spaces by the indigenous communities and protected constitutionally.

Therefore, the indigenous that in 1500 were seen as incapable beings of civility, at the measure of a Brazilian society that evolved, was incorporated in the same cultural identity of the nation. Adding, however modern legislations have weakened the rights of these people, the XX Century, with the UNO Declarations and the OAS, strengthened once the compromise of States to preserve its indigenous people.

Finally, as for the Amazonian indigenous communities, even though they have, little by little, achieved their emancipations, through the recognition of their human and fundamental rights, they also support – even today – the violations of their territories and identities, through deforestation of areas destined for such groups and the contamination of Amazon rivers by illegal gold extraction.

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Proteção Global Ao Meio Ambiente Ecologicamente Equilibrado Na Amazônia E A Urgência Em Descolonizar

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Resumo: O longo processo de colonização do Brasil, especialmente no que concerne a exploração dos recursos naturais da Amazônia, resultou na degradação do meio ambiente e de maneira reflexa, na mitigação dos Direitos Humanos dos povos indígenas. Desse modo, à medida que as florestas eram desmatadas e os rios eram poluídos por substâncias nocivas – com o intuito de satisfazer os compromissos econômicos dos colonizadores – os ameríndios assistiam à violação dos próprios direitos sociais e identitários. Sob esse viés, este estudo apresenta o processo de neocolonização das florestas amazônicas, que hodiernamente, sofre influências da “Sociedade de Risco” proposta nos estudos de Anthony Giddens e Ulrich Beck. Assim, o processo colonizatório moderno manifesta repetidamente os mesmos ultrajes da colonização predecessora, dessa vez, no entanto, para atender os interesses do establishment e das grandes multinacionais. Outrossim, ainda que vigentes as leis internas e vanguardistas de proteção à Amazônia e aos direitos identitários das comunidades indígenas, tais disposições continuam sendo desrespeitadas. Ainda, mesmo que assinadas as Declarações Internacionais de proteção aos direitos da natureza e dos direitos humanos dos índios, as florestas da região amazônica continuam sendo aviltadas e as comunidades locais permanecem sentindo os efeitos de outrora, sugerindo uma descolonização inacabada.

Palavras-chave: Amazônia; Direitos da natureza; Descolonização.

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