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# INDIGENOUS PROTAGONISM IN RORAIMA AND ENVIRONMENT GUARDIANSHIP INSIDE THE SÃO MARCOS INDIGENOUS LAND

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## ABSTRACT

This paper presents a case study about an environmental lawsuit proposed by an indigenous citizen and signed by an indigenous lawyer aiming at preserving the environment inside the Indigenous Land of São Marcos, near Pacaraima city seat, at the border of the Indigenous Community of Ouro Preto. The case is about the irregular disposal of solid waste by the city seat inside the indigenous land and within the limits of the community where the tuxaua author of lawsuit lives. The objective of the paper is to check whether the judicialization of this environmental claim resulted in the maturation of the indigenous movement pointed out by the exercise of the full protagonism in solving problems arising from the relationship with the Brazilian State. The methodological procedures were partially empirical, based on two years of field observations, carried out at the community and in several meetings at the Public Prosecution Office in Roraima, workshops and assemblies with indigenous leaderships; bibliographic and documental, based on literature and on procedural documents. Finally, it was possible to observe the indigenous protagonism in the defense of their interests through the judicial apparatus of the State, reinforced, in the con-

crete case, by the nature of the indigenous land as a conservation unit and abandonment of the government tradition of the representation guardianship.

**Keywords:** Environmental popular lawsuit; Indigenous Land of São Marcos; Indigenous protagonism; Conservation unit; Roraima.

*PROTAGONISMO INDÍGENA EM RORAIMA E A TUTELA DO MEIO AMBIENTE NA TERRA INDÍGENA SÃO MARCOS*

**RESUMO**

*Este ensaio aborda estudo de caso sobre ação popular ambiental, proposta por cidadã indígena, inscrita por advogado índio, visando a preservação do meio ambiente na Terra Indígena São Marcos, nas imediações da sede municipal de Pacaraima, fronteira com a Comunidade Indígena Ouro Preto. O caso versa sobre a disposição irregular de resíduos sólidos provenientes da sede municipal, no interior da terra indígena e nos limites da comunidade em que vive a tuxaua autora da ação. O objetivo do ensaio foi verificar se a judicialização dessa demanda ambiental ensejou o amadurecimento do movimento indígena, indicado pelo exercício do protagonismo pleno na solução de problemas decorrentes da relação com o Estado. Metodologicamente, a pesquisa foi parcialmente empírica, resultado de dois anos de observações de campo, realizadas na comunidade e em diversos atendimentos ocorridos no Ministério Público de Roraima, reuniões e assembleias com lideranças indígenas; bibliográfica e documental, com base na literatura e documentos processuais. Ao final, concluiu-se pela afirmação do protagonismo indígena na defesa de seus interesses por meio do aparelho judiciário do Estado, reforçado no caso concreto, pela natureza da terra indígena como unidade de conservação e pelo abandono da tradição estatal da tutela representação.*

**Palavras-chave:** Ação popular ambiental; Terra Indígena São Marcos; Protagonismo indígena; Unidade de conservação; Roraima.

## INTRODUCTION

This essay is a case study judicialized in the State of Roraima that contrasts indigenous people and the surrounding non-indigenous civilization, but with the peculiar environmental nature of the claim, sustained within a popular action<sup>1</sup> proposed by an indigenous citizen, subscribed by an indigenous lawyer and having the scope of preserving the environment within the indigenous land.

The proposal is to understand the case in all its aspects, trying to demonstrate the validity of the following hypothesis: the judicialization of this environmental claim reflects the maturation of the indigenous movement, pointing at the performance of protagonism in the solution of problems resulting from the relationship with the State itself.

Despite the small adjustments, the case told from the perspective of the plaintiff, documents and other elements in the lawsuit allow for understanding that the facts are almost uncontroversial, outstanding matters related to the liability for the damage or even the demarcation of the impacted area, consisting in little relevant points for thinking, being maybe postponed to the defense phase. The legal anthropological context, which is important, relates to constant clash for the realization of the right to difference, while one can notice that local ethnical friction that repeats all over Brazil (for example: conflicts between agrobusiness and indigenous groups in the fight for space).

Thus, the objective of this paper, abstracting merit issues or even formal procedural ones, is to analyze the context of the performance of indigenous people's protagonism in the defense of their interests through the judicial structure and not according to the standards of the already outdated representation guardianship by the Brazilian State. Additionally, there is the intention to analyze the nature of the indigenous land as a conservation unit displaced from the listing carried out by the National System Conservation Units law, but with new and direct constitutional configuration, as the standard for the exclusive indigenous usufruct over the land, as well as a source of additional guardianship regarding the cultural environment. The case is paradigmatic and it presents an extreme situation where the conflict involves a city seat inside indigenous land. The conflict is aggravated by the natural consequences of the urban dynamics

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<sup>1</sup> Lawsuit dated October 31, 2014, filed at the 4<sup>th</sup> Judicial Office of the Federal Justice of Boa Vista/RR under number 0009583-63.2014.4.01.4200.

on the environment in all its aspects.

The methodological strategy used was the case study and the objective was to understand the text in which the protagonism of the indigenous movement takes place in the State of Roraima, through the evaluation of a judicialized environmental conflict: an environmental popular lawsuit filed by an indigenous leadership and assisted by an also indigenous lawyer. On that purpose, field observation took place for two years, in different circumstances such as *in loco* visitation, participation in community assemblies and meetings (in different places: the indigenous land, the association's headquarters in Boa Vista and in meetings held by the plaintiff at the Public Prosecution Office in Roraima). Everything was duly registered in writing or filmed<sup>2</sup>. Additionally, bibliographic and document research was carried out, the last one consolidated by the physical proceedings in order to substantiate the analyses carried out. However, it is important to highlight that the judicial lawsuit referred to is no longer the main focus of the evaluation and it is an indicator of the maturation of the indigenous movement and the creation of emancipatory collective awareness.

The case was first followed up in the middle of 2013, allowing for real research-action, in accord with the indigenous communities, producing rich primary results from personal observation. The analysis and understanding of the primary information obtained started from a comparison between the local situation, provided by the concrete case, and the national and international literature, partially surveyed at CAPES' Journal Portal (although restricted to freely accessible journals due to institutional limitations).

It is also important to notice that working with concrete cases and fundamental [indigenous] rights weighting is an exercise that is not really considered in court and in the academy itself. However, that kind of empirical research contributes for understanding a new dynamics regarding indigenous rights in Brazil after 1988, when ethnic minorities were no longer protected by the state and have gradually tried to impose their interests themselves and to claim their constitutionally settled rights, as shown below.

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<sup>2</sup> The indigenous people in the Ouro Preto Community requested from the Public Prosecution in the State of Roraima the production of a documentary on the local situation. It was produced in 2014 under the title "... and for the Indians, the Garbage!" and it was then presented in several academic congresses and movie festivals.

## 2 UNDERSTANDING THE CASE

As mentioned above, the concrete situation under assessment may be observed under two relevant and different contextual aspects, that is: the territorial and the political ones. This item is presenting both biases below.

### 2.1 The territorial conflict: State vs. Native People

According to Pacheco (2010, p.124), territorial rights are one of the main points of the claims of indigenous people and movements. The plaintiff says that, historically, the policy of despoiling indigenous land started in 1850 with the Law of the Land, which determined the incorporation of the land of native people dispersed and mixed to the non-native population to the “nationals”. That measure came from the previous official pressure for the occupation of areas surrounding settlements as a forced integration strategy.

This integrationist trend is confirmed in the 1891, 1934, 1946, 1967 and 1969 Constitutions, in which indigenous people were seen as beings in transition, starting from a primitive status aiming at the evolution through the integration with the so called “civilized peoples” (PACHECO, 2010, p.124).

At first, one notices that the strategies of the modern State of weakening the indigenous movement, isolating traditional populations from their land and/or, whenever that is impossible, facilitating the despoliation and degradation of that land, are still strongly present. The conflicts between the city of Pacaraima and the communities in the São Marcos Indigenous Land reflect the scenario previously described.

In the concrete case, since 1995 and with the installation of Pacaraima city seat, the conflicts with the indigenous population are gradually getting stronger. In the 2000’s, leaderships of about 45 communities gathered to create the Association of the Indigenous People in São Marcos Land, according to information given by Alzemiro Tavares<sup>3</sup>, its current General Coordinator. Since then, the communities have strategically been organizing themselves in order to try to stop the invasion and degradation of their land. In face of the failure to reach a peaceful solution, the plaintiff

<sup>3</sup> The information on the history of the Association of the Indigenous People of the São Marcos Land was collected on field from speeches in community assemblies and compiled *a posteriori*. There were no formal interviews.

in the popular lawsuit, an indigenous citizen who is a subject of individual rights, hired a lawyer (also an indigenous citizen) to preliminarily interdict – and then definitely clear away from São Marcos Indigenous Land – the open air urban garbage dump located about 400 meters from the Ouro Preto Indigenous Community, where she is a Tuxaua<sup>4</sup>.

It is important to highlight that as Pacheco (2010) points out, the Ouro Preto Community has been trying to strengthen its ethnical identity to increase its own protagonism, support for territorial claims that are not limited to the land, but also encompass an ecologically balanced environment and one's own way of life and culturally set forth at the threshold of a forced integration.

The State denies the strategy. In the words of Loureiro (2010), the Brazilian State and society have never accepted the peaceful interaction with minority groups. That fact was once again evidenced in this case study, where the lack of cooperation and the negligence of the non-indigenous society in regards to the environmental issues seen at the border of those two worlds denote strong dissimulated violence towards the right to difference and ethnical minorities in Brazil.

In this respect, it is relevant to report and contrast the official speech. According to Pacaraima City Hall (2015), the history of the city is closely connected to the works carried out by the Brazilian Army to demarcate the border between Brazil and Venezuela and to implement boundary marker n. 8, known as Pacaraima Village or simply “BV-8”. Thus, due to the above mentioned demarcation works, the Army installed a Special Border Platoon there, which served to attract migration for an “urban”, “pioneer” and non-indigenous population to settle.

With the colonialist densification and the approval of São Marcos Indigenous Land demarcation (through Decree n. 312 dated October 29, 1991), the government of the State of Roraima decided to emancipate Pacaraima on October 17, 1995, that is, four years from the approval of that indigenous land, creating the city seat inside the São Marcos Indigenous Land and completely disregarding the current constitutional text.

That is how the city was dismembered from Boa Vista, the current capital city of Roraima. Still according to Pacaraima City Hall (2015), the city seat operates since then as a trading post, attracting several buyers of basic consumer goods in the surrounding areas and providing for

<sup>4</sup> The Tuxaua performs a political-administrative function, being elected for firm periods or while he/she is serving the community well, making the connection between it and the “exterior world”, claiming rights etc, and he/she represents the community in the leadership meetings (BARRETO, 2006).

the circulation, stay and life of non-indigenous people inside São Marcos Indigenous Land.

## 2.2 Initiatives to solve the conflicts

In face of the consolidation of that city, the National Indian Foundation – FUNAI and, later on, the Public Prosecution, handled lawsuits to remove non-indigenous people from the area, more specifically from Pacaraima’s city seat. Those lawsuits have been suspended and the Supreme Court’s decision is pending since 1996<sup>5</sup>. Due to the inertia of the State for a long period of time, Pacaraima’s urban area grew and invaded São Marcos Indigenous Land even more, producing large amounts of solid waste as seen during a visit to the despised area.

Conflicts between indigenous and non-indigenous populations increased even more. During an assembly that took place at the Association of Indigenous People in São Marcos Land, Ouro Preto Community, located at the border of the urban expansion of Pacaraima, was set to be a barrier against the invasion of that indigenous land, pursuant to the communication issued by Alzemiro Tavares, everything recognized by FUNAI and other indigenous organizations in the State of Roraima.

The population settled in the Ouro Preto Community lives nowadays in poor social and environmental conditions, undermined by what happens about the disposal of the garbage produced by the city of Pacaraima. Local indigenous people, most of them from the *Macuxi* and the *Wapichana* ethnicities and already having a lot of contact with the surrounding society, try to culturally rescue their history and lifestyle, but they face serious environmental limitations that are mainly substantiated by the lack of basic infrastructure (electrical power and drinkable water) and the proximity to the community’s garbage dump<sup>6</sup>.

As a result of that contentious relationship, Roraima’s Public Prosecution Office issued a recommendation for Pacaraima City Hall to improve the conditions of local waste disposal, as an emergency measure, immediately clearing the access road that had been covered by the urban

5 Originaly Civil Lawsuit (ACO-RR) no. 499 and Petition 1191 (RR).

6 It is interesting to highlight that, in several assemblies followed up *in loco*, the fragility of the population was so deep that there were all kinds of claims all the time, taking the focus away from the community discussions in the agenda for the solution of conflicts. Everything seemed important and aggregating the same priority order, may that be the garbage, the health of the population, water or power shortage, illegal mining in the surrounding areas, indigenous people being run over on the local roads, prostitution, territory invasions, alcohol addiction, among others.

waste.

Due to the failure of previous initiatives, the above mentioned popular lawsuit was filed. In the proceedings, after the description of the environmental impacts, it is evidenced that the garbage dump was irregularly installed and also that it was illegally and criminally operating once it failed to have a permit or the suitable structure, especially in reference to recognized and approved indigenous land, and that, due to the proximity between the waste and indigenous and non-indigenous populations, has been causing several environmental and health problems.

It is important to stress the fact that the area has no geomorphological and pedological structure that allows for the safe disposal of waste according to unpublished studies carried out by the National Research Institute of the Amazon – INPA (Celso Morato de Carvalho, a Researcher at INPA Roraima in a technical opinion attached to the lawsuit). The slurry from the decomposition of waste percolates the soil and pollutes the local springs, especially Saman and Miang rivers. The results are obvious and regrettable: indigenous people, mainly children, directly intoxicated by the water.

Additionally, air pollution was observed during the visits to the place due to the waste that is constantly burnt by urban residents from the surrounding areas and by public agents who daily throw the garbage and then burn the piles. Moreover, the high rate of harmful insects that find in the abundance of garbage a highly beneficial environment for proliferation has aggravated the situation. Those facts were supported by the documents attached to the popular lawsuit.

In spite of the conditions described above, the indigenous people usually distribute their activities, dedicating part of the time to subsistence agriculture and to plant extractivism to produce coal for their own consumption. As reported by community members, São Marcos Indigenous Land was occupied years ago by farmers who promoted deforestation and burning. Nowadays, there is still a certain number of dead trees or “toothpick holders” as they are called there.

According to INPA (Celso Morato de Carvalho in a technical opinion attached to the lawsuit), those resources are traditionally explored by indigenous people, who produce coal in trenches dug in the middle of the plantation fields. The Federal Police and IBAMA have been promoting actions to avoid that practice, harming the cultural habits of local indigenous people in addition to putting the community’s food safety at risk. They

depend on the coal to cook their food, to supply heat and lighting.

Thus, the situation exposed led to the popular lawsuit, which mainly aims at the immediate interdiction and removal of the garbage dump from São Marcos Indigenous Land, making it possible to implement the fundamental rights to health and to an ecologically balanced environment that are essential for indigenous people to have access to a decent lifestyle.

### 3 LEGITIMACY AND INDIGENOUS PROTAGONISM

It was only after native people were recognized as *locus* of a soul and as human beings by the Catholic Church, from the issue of the 1537 Papal Bull and after a long, violent and well-structured official assimilation process<sup>7</sup>, that they were – even though precariously – accounted for as subjects of individual rights (CUNHA, 1987).

However, connecting the rights of indigenous people to the possession of land is part of the Brazilian law tradition and culture. That is a strong and contumacious idea that also occupied the current text of the 1988 Constitution and this is so true that all the seven paragraphs that complete the text of article 231 are aimed at regulating that issue, except for article 232, which recognized the active legitimacy of native people, their communities and organizations to take legal action in order to defend their rights and interests as in the protagonism reported in this concrete case.

As a constitutional novelty, article 232 creates the possibility for an indigenous individual, without requiring the protection of the Brazilian State, to take legal action in the defense of his/her rights and interests. However, it is important to recognize that, since the creation of the current Indian Statute<sup>8</sup>, it was already possible to take legal action to claim for individual indigenous rights such as suitable work conditions (articles 14, 15 and 16); specific education, culture and health (articles 47 *usque* 55), but always running through government representation guardianship, under the perspective of integration to the national hegemony society.

This official policy for assimilation and subjugation of the

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<sup>7</sup> The strategy of integrating indigenous people to government troops dates back to the beginning of the fair wars when, in the early 16th century and on behalf of the king, primitive people in America were notified so that, in case of resistance to capture and slavery, the extermination process against them was authorized (CUNHA, 1987).

<sup>8</sup> Federal Law n. 6001, dated December 19, 1973.

indigenous individual to the exclusive interests of the National State is evidenced in article I of the Indian Statute, which confesses the preservation of the indigenous culture on the one hand and, on the other, explicitly declares the intention to “progressively and harmoniously integrate them to the national fellowship”.

Nonetheless, since 1988, the Native Brazilian as an individual subject of rights was able to get rid of State ties to enter the path of full self-determination. Despite that historic process of recognition in regards to collective rights, it is not possible to say that native Brazilians were not entitled to individual rights, especially the ones connected to labor relationships and after their legal freeing in 1755 (SOUZA FILHO, 1998).

However, to have access to the list of fundamental rights, the indigenous person had to deny or to disguise his /her real identity at first, stating to be integrated to the colonizer society to validate the respect to his/her sphere of individuality, similarly to any other national citizen. With the 1988 Federal Constitution, the Native Brazilian no longer has the need to deny his/her respective ethnicity, but he/she mandatorily has to try to align to the lines of the state, once to guarantee and even to make fundamental rights possible means to grant to their holders the full exercise of active citizenship at the state level, even if the indigenous individual is not looking for such prerogative and not even wants it (SOARES, 2004).

That new citizenship (active once it is the result of a democratic rule of law) consists in the capacity to take part in the exercise of political power and the management of the public assets, in the technical terms of a formal participative democracy (SOARES, 2004).

Thus, the Brazilian State ends up by attracting the indigenous subject with a list of individual rights that are going to be protected by it and recognized as fundamental, guaranteeing that he/she is “cataloged” as a national citizen and, exactly due to that, under the pallium of its jurisdiction.

It was under that perspective that article 5, item LXXIII, of the Federal Constitution, with no prejudice against Native Brazilians, set forth that any citizen is a legitimate party to take popular action in order to cancel any harmful act against public assets or entity to which the State is a part, the administrative morality, the environment and the historic and cultural heritage, the plaintiff being, except in case of proven bad faith, exempt from court fees and from defeated party’s fees.

Due to that heroic remedy and because it is a native Brazilian

citizen (refer to voter identification card and Administrative Register for Indigenous Birth – RANI attached to the lawsuit), is that they searched in the popular lawsuit referred to the immediate and necessary guardianship of the environment in all its constitutional aspects, besides trying to take care of the good health of the Ouro Preto Community's indigenous population, whose leadership is lawfully exercised by the Plaintiff.

Standing up for the physical and cultural integrity of the community, the indigenous leadership operated with the support of article 232 of the Federal Constitution, which granted active legitimacy to the native population to take legal action in the defense of their rights and interests.

Thus, touched by the issue, an indigenous lawyer (*Wapixana*), born in Serra da Moça Indigenous Land, State of Roraima, offered the services of his office to his “relatives”<sup>9</sup> free of charges. He signed the environmental popular lawsuit, which was registered at the 4th Judicial Office of the Federal Justice of Boa Vista – Judiciary Section of Roraima.

It is within that legitimacy and protagonism context that the legal claim takes place, with the peculiarities related to a popular lawsuit that is handled by an indigenous citizen, represented by an indigenous lawyer to protect the environment at indigenous land, as showed below.

#### **4 THE INDIGENOUS LAND AS A SPECIAL UNIT FOR THE CONSERVATION OF NATURE**

The contrast of political interests over indigenous land takes to the need to think about legal means to strengthen the guardianship over those spaces that are more and more disputed and controversial. On that purpose and specifically about the reality in Roraima, Loureiro (2010) reminds us that indigenous land started to be questioned after the population growth in the State with the migration from northeastern Brazil and also from Rio Grande do Sul in the 1980's. According to IBGE (2015), the population of Roraima increased vertiginously, going from about 79,100 inhabitants in 1980 to almost 500,000 inhabitants in 2014; from those, about 315,000, in the city of Boa Vista. Despite that growth, IBGE's 2010 Demographic Census estimated that 6.6% of Roraima's population consisted of native people.

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9 “Relative” is usually used among indigenous people in Roraima to refer to an indigenous individual in the sense of brotherhood and to identify themselves as indigenous people.

With the demographic growth mentioned above, the non-indigenous population requires more and more land, while the indigenous people observe the conflicts intensified in the constant fight between the economic activity and the traditional lifestyle of native populations. In that context, it is possible to notice the intersection between indigenous land and nature conservation units, as a result of the pressure from the social-environmental movement in Brazil. It should be emphasized that this movement started to strengthen in Brazil in the 30's especially motivated by the 1934 Constitution that, for the first time, recognized indigenous rights directly connected to territory issues (BARRETO, 2006).

The possession of land by indigenous people kept rebounding in the 1937, 1946 and 1967 Constitutions, this last Constitution merged native people and the environment, once the exclusive right over the natural resources and over all the existing utilities in their land was granted to them<sup>10</sup>.

With the 1988 Federal Constitution, that prescriptively growing link between the environment and indigenous people ended up narrowed even more once the land traditionally permanently occupied by them now also has to be essential for the preservation of environmental resources necessary for their wellness, insuring the exclusive usufruct of existing soil wealth, river and lakes<sup>11</sup>.

A kind of nature conservation unit with special destination appears with the 1988 Constitution, result of the recognition by the primary constituent of the fact that indigenous people interact with nature in a sustainable way, without which they would not be able to reproduce physically and culturally according to their uses, customs and traditions<sup>12</sup>(SILVEIRA, 2010).

That other and new destination of the indigenous land is based on the positioning of the Minister of the Superior Court of Justice, Antônio Herman Benjamin, who defends a broader classification of conservation units, which should be divided into typical and atypical conservation units (BENJAMIN, 2001). For the author referred to, only the conservation units that integrate the respective national system – SNUC are *numerus clausus*, other modalities being admitted as, pursuant to the law, an extrasystem, which does not mean an antisystem.

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10 Art. 186.

11 Art. 231, § 1 and 2.

12 Art. 231, § 1, last part.

Among the conservation units pursuant to article 225, § 1, item III of the Constitution, but excluded from the system of Law 9.985/00 – SNUC (and, for that reason, extrasystem), it included those that benefited traditional populations, considering their indigenous lands of all hues. Thus, indigenous lands may be seen as nature conservation units with special destination once they are necessary for indigenous people for the exclusive usufruct of soil wealth, rivers and lakes (BENJAMIN, 2001).

That classification logic reinforces the argument that article 231, § 1 of the Constitution (environment for indigenous people) addresses a fundamental environmental standard, while article 225, § 1, item III (environment for all, indigenous and non-indigenous people) addresses a fundamental environmental principle, only differentiating one from another by the peculiar normative opening presented by each one of them (SILVEIRA, 2010).

Moreover, historical surveys reveal that indigenous lands were the first conservation units conceived by men and that, unfortunately, were excluded from the protected areas system by the Brazilian law, possibly due to the myth of the untouched and wild nature that guided the creation of the conservation unit model in the western society and that disregards the complete integration between native populations and the environment (BENSUSAN, 2004).

Unfortunately, they are not an express part of the National System of Conservation Units (Law n. 9.985/00) in Brazil, but they have recently been involved in the National Policy for the Territorial and Environmental Management of Indigenous Lands – PNGATI, pursuant to Decree 7.747 dated June 5, 2012. The diploma referred to, in its axels 4 and 5, defines several conservation strategies for biodiversity, culture, usufruct, giving incentive to sustainable practices such as agroforestry, ecotourism and ethno-tourism, which reinforces even more the thesis that those spaces would be extrasystem conservation units, according to Benjamin (2001). That framework directly benefits indigenous communities in São Marcos Indigenous Land, giving support to the environmental popular lawsuit and highlighting even more the need for indigenous people to assume protagonism in the definition of their livelihoods and the occupation of their lands, as seen in this case.

That integration between indigenous lands and conservation units in the form of a mosaic, as seen in the Amazon and especially in Roraima, may substantiate an ecological corridor that allows for the integration

of discontinuous units, making it easier to plan the occupation and the improvement of environmental conditions regarding the instertice areas that exist between them (SANTILLI, 2004).

Thus, it is implied that a feasible conservation strategy requires the integrated management of larger territorial extensions, lacking sense to give priority to full protection conservation units to the detriment of sustainable use ones, or even, any kind of conservation units to the detriment of indigenous lands or of other land occupied by traditional social groups that can be involved in the process of participative management and appropriately handling natural resources.

In those circumstances, according to IMAZON (2015), a natural resource and biodiversity conservation policy should consider the importance that indigenous territories have in the national context (12,5% of the Brazilian territory) and in the Amazon (20,96% of the Legal Amazon) and especially in the State of Roraima (over 46% of its territory). There are concrete possibilities to share the conservation of nature with the projects for the future of all peoples, even because the Federal Constitution sets that indigenous lands are used for the preservation of the environment necessary for the wellness of the indigenous people and their physical and cultural reproduction, according to their uses, customs and traditions<sup>13</sup>. Notice that the primary demand of São Marcos Indigenous Land is perfectly aligned to that regional and normative context.

The realization of that constitutional command leads to the creation of a Democratic Social-Environmental Rule of Law in Brazil, in a progressive and emancipatory line, that bequeaths to the present and future generations an environmentally preserved and socially sustainable planet.

## **5 THE ENVIRONMENTAL POPULAR LAWSUIT AND THE EXERCISE OF THE INDIGENOUS PROTAGONISM**

As mentioned above, the approach of the environmental popular lawsuit under the legal point of view fails to indicate itself as important to understand its role as an indicator of the maturation of the indigenous movement, as well as of the exercise of protagonism in the search for better life conditions, cultural maintenance and especially the guarantee of the right to difference. On that purpose, start from the assumption that the popular lawsuit serves as the procedural means for the guardianship of an

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<sup>13</sup> Article 231, § 1.

ecologically balanced environment, a fundamental right that is foreseen by the 1988 Federal Constitution, also accepting in its scope the precautionary guardianship, once its formal requirements are present (DERANI, 1997).

Being restricted for now to the fundamental right to an ecologically balanced environment, it is important to highlight that the idea of ecological balance is precarious from the technical standpoint once the different elements (biotic and abiotic) that constitute the ecological systems interact dynamically, looking for balance that is renewed at each moment. The environment, whenever it is disturbed (naturally or artificially), tends to look for new balance towards the *status quo*. The largest the capacity to go back to that state, the highest its resilience capacity (BEGON; TOWNSEND; HARPER, 2007).

The concept above exceeds the limits of ecology, serving as a paradigm of social and cultural organization. Thus, when article 231 in the 1988 Federal Constitution guarantees the way of social organization and the maintenance of the culture of indigenous people, it implicitly granted them the right to rescue their memory and ways of life, towards an authentical “social resilience”.

On that purpose, the environmental popular lawsuit is an instrument to implement those constitutional rights that are now hampered by the undue use of their lands both by maintaining Pacaraima’s city seat in an inappropriate place and the disposal of *in natura* waste near the indigenous settlement, making the relationship between the waste disposal mentioned above and the environmental damages and the damages to the health of indigenous people living there obvious.

However, the damages are more subtle. When the 1988 Federal Constitution recognized the primary right to the land traditionally occupied by native people, it implicitly brought to the legal sphere the peculiar relationship between native Brazilians and nature. The above mentioned paragraph 1 in article 231 clearly states the destination of indigenous lands for the preservation of the environmental resources necessary for the wellness of indigenous people as well as for their physical and cultural reproduction, according to their habits, customs and traditions.

Effectively, indigenous people have a close cultural relationship with nature and it is that culture exactly that changes land into territory. They are different paradigms. Land is the asset that belongs to the Federal Government with a constitutional destination. Territory is the cultural item that conditions and allows for the ways of life and social organization of

indigenous people. One may infer that topophilia is a central element of the formation of the ethnical identity of a group that interprets the territory through a peculiar cosmology, interspersed by myths, beliefs and rituals that shape a complex network of relationships between human groups and the environment (SOUZA FILHO, 1998).

When the physical or the natural environment is negatively impacted, the reflexes on the culturally built territory are immediate, causing intense cultural erosion that affects the entire imaterial heritage (memory and culture) of the people, hurting its own identity and the fundamental rights that are associated to it, especially the collective dignity.

It is interesting to notice that those impacts produced at least a positive effect that was to strengthen the feeling of community among the indigenous people. The union around the solution of a problem that affects all was seen in several opportunities in the field during the assemblies held in the Ouro Preto Community. The relationship between the families in the community and the leadership allow understanding the importance of the political role of the Tuxaua, socially empowered to exercise the interface between the two worlds: the indigenous and the non-indigenous ones.

The need for indigenous people to appropriate a logic that does not belong to them emerges from that empowerment, formalizing a lawsuit to guarantee that they are allowed to live as they have always lived. And that is where the claim for the right to difference appears, while social resilience permits and supported by the Constitutional text in force.

On the other side and in the social-environmental context of the Ouro Preto Community, the sanitary issues reinforce that union even more. The right to health, intimately related to the right to an ecologically balanced (and beneficial) environment, depends on the integrity of the physical environment (biotic) that immediately rebounds on the health of people inserted into that systemic context. As told in several assemblies and in the popular lawsuit, it is possible to see that close relationship between water pollution and diseases that strike indigenous people in the Ouro Preto Community, who still depend on the availability of water from springs and local rivers, all of them contaminated due to the huge limitation of treated water made available by the public network. Thus, the fundamental right to health emerges within that context as one additional aspect of the environment to be protected by the environmental popular lawsuit.

According to Celso Morato de Carvalho (technical opinion attached to the lawsuit), the poor use of the area highly compromised the

local ecological resilience capacity. Indigenous people noticed that fact once they have broad empirical knowledge over the ecology of the area and the natural resources they depend on. That knowledge was evidenced by means of several field observations. Many of the talks in assemblies and individual conversations indicated full understanding of the relationship between pollution and diseases in the community. The forest ecological dynamics themselves are perfectly known by the native people in the area, who use the charcoal production as a kind of sustainable management of the forest by removing dead trees and making forest succession easier.

It is interesting to notice that the multiple problems faced by the community are not enough to blur the performance of the indigenous movement, even if it momentarily hinders that movement from progressing in the political sense as seen in other countries in America, especially in Mexico, Colombia and Ecuador.

In the experiments carried out by Garcia (2015), the Mexican State historically weakened the indigenous identity to the detriment of the creation of a mestizo national identity. Although internationally urged, the Mexican Constitution submits acts of self-determination and the application itself of the indigenous jurisdiction to the approval of State institutions, mainly the ones connected to the Judicial Power.

For that same author, the indigenous movement reached the peak of its protagonism when it tackled drug trafficking in Cherán. The fight between indigenous people and drug dealers resulted in the creation of community tools to defend the indigenous territory and in the holding of elections according to the indigenous traditions in order to choose their government. It is important to remember that those accomplishments were judicially recognized, strengthening the traditional occupation of the territory and the interaction with the non-indigenous community through indigenous politicians elected pursuant to local customs.

In Ecuador, according to Fernández (2012), the opposition between indigenous people and the interests of transnational companies was historically seen in the exploration of natural resources in indigenous lands. That conflict of interests led, in several occasions, to the non-recognition of the indigenous jurisdiction as a way to invalidate the movement and favor transnational companies. It is interesting to notice, according to that same author, that such weakening policy concerning the indigenous movement takes place in a country that undersigned the 169 Convention of the International Labor Organization, as Brazil did.

The traditional Ecuatorian criminal justice has similar contours to the Brazilian one. However, the National State there tries to associate the indigenous jurisdiction to the private collective revenge systems, invalidating community decisions. Nonetheless and differently from Brazil, the Ecuatorian Constitutional Court recognized the indigenous jurisdiction, imposing to it territorial limits as well as limits regarding the legal good protected, excluding crimes against life and sexual dignity from the judgement of that justice (FERNÁNDEZ, 2012).

In Colombia, Rubio writes (2015), already in the 80's, the indigenous movement claimed recognition of collective rights in what regards the territory, their own forms of development and government, the maintenance of culture and forms of social organization, in addition to the right to exercise traditional medicine. The 1991 Colombian Constitution also guaranteed indigenous participation in the National Congress and in several government agencies. Meantime and in the 90's, The Colombian Constitutional Court had already consolidated vast jurisprudence stating indigenous collective rights.

As one can notice after that short description, although the Brazilian indigenous movement has substantially progressed post the 1988 Federal Constitution, it is more timid than in Mexico, Colombia and Ecuador. In Brazil, the state integration policy took roots that are still present nowadays, both in the resistance recognizing the indigenous jurisdiction and in the irregular and violent occupation of their land. The result of those actions led to the biological, social and cultural extinction of several civilizations from the American Continent (RIBEIRO, 2007).

In this respect, the quick social organization around common problems indicates an early maturation of the indigenous movement, besides the potential to state collective rights and forms of government as constitutionally supported "new rights", in the field of the protagonism belonging to subjects of rights at the level of National States.

## **6 THE SELF-DETERMINATION OF INDIGENOUS PEOPLE**

Resuming the concrete case, an important aspect to be highlighted is the lack of alternatives for waste disposal. Pacaraima city seat is inside indigenous land, a place that is unsuitable for waste disposal, both for its conservation unit nature and for the local geological characteristics. The fact that other cities are not forced to receive garbage from other areas

aggravates the situation.

However, if the autonomy of indigenous people over the management of their territory was respected, the destination of the waste inside São Marcos Indigenous Land would, in thesis, be legal – if they decided so – *ex vi* articles 6 and 7 of the 169 Convention of the International Labor Organization enacted by Decree 5.051 dated April 19, 2004; and pursuant to the National Policy of Territorial and Environmental Management of Indigenous Lands – PNGATI (Decree 7.747 dated June 5, 2012), article 4, axels III and IV.

One may infer from those normative texts that indigenous people have mandatorily to be consulted on waste disposal in their lands. The manifestation of community will is defended, *prima facie*, as a limited review prejudgment to bind the administrative decision that may allow for the development of any activity that interferes in the life of the group and the environmental quality of their lands.

Before that understanding, it is at least possible in thesis to consider that, in case of an agreement between the indigenous people, Pacaraima City Hall and the Federal Government, it would perfectly be feasible to dispose waste in the indigenous land referred to since all the procedures and cautious measures in the national environmental legislation were respected.

A sanitary landfill should go through a feasibility study process and the due environmental permitting pursuant to article 10 of Law 6.938 dated August 31, 1981, which addresses the National Policy of the Environment, its purposes and formulation and application mechanisms. Still according to the above mentioned legislation, the construction of a sanitary landfill is rated as a “utility service” having medium impact potential<sup>14</sup>.

The issue to be discussed is whether the self-determination of indigenous people would be enough to shape the usufruct of their land before situations that are apparently offensive and impacting the environment in all its aspects. Finally and in a systematic interpretation, one can deduce that the Federal Constitution and the ordinary legislation establish limits for the indigenous over their lands and waste disposal is obviously encompassed by that right.

Thus, and as the law itself sets forth, it is important to insure that

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<sup>14</sup> They are: “production of thermoelectrical power; treatment and disposal of liquid and solid industrial waste; disposal of special waste such as: agrochemicals and their packaging, used and from the health service and similars; disposal of sanitary sewage waste and urban solid waste, included those originated from sumps; dredging and rock removal in water bodies; recovery of contaminated or degenerated areas.”

the (impacting) activities developed within that land do not hinder cultural maintenance and reproduction, as well as indigenous people's way of life. Therefore, any supervening decision during the corresponding lawsuit has to be supported by an anthropological opinion in order to assess the impacts of waste disposal in the communities that live there.

Once those foundations have been organized, one can notice that the legal situation is complex and the environmental fragility of the area is evident, as well as the susceptibility of the local populations to the strong impacts resulting from the disposal of waste require urgent and safe measures. In short, it is possible to conclude that:

- (i) Waste disposal has irregularly been carried out by the City Hall;
- (ii) The accumulation of waste in the indigenous land is highly pollutant and the impacts are not limited to the environment and the health, they go beyond that, interfering in the social organization itself and hindering the sustainable use of the area in accordance with the desire of the indigenous people;
- (iii) Taking the peculiar situation of Pacaraima city seat, undergoing a desintrusion process, and the legal impossibility to regularly dispose of waste produced in one city to the other into consideration, a local solution has to be found in the long and medium terms;
- (iv) the indigenous communities have to be consulted and the result of that procedure binds the acts of the Public Power in what concerns the subject;
- (v) in case all the parties involved agree on the appropriate disposal of waste inside the indigenous land, the implementation of the project has to follow all the legal procedures so that the technical feasibility of the project is assessed, carrying out the due environmental permitting; and
- (vi) once the peculiarity of the case is considered, an anthropological opinion has to be attached to the lawsuit.

## CONCLUSION

The case reported and duly based on the inflow of about two years of legal and field observation demonstrates the protagonism of indigenous people in the defense of their interests, even more when it involves an indigenous lawyer who is able to operate the legal apparatus of the state.

That reality illustrates the effectiveness of article 232 of the current Federal Constitution in its main dimensions, that is, legal standing to sue, capacity to sue and especially self-determination in its intent. All

in order to definitely overcome the ill-fated representation guardianship from a pseudo-assisting state that was very detrimental and harmful for indigenous people.

By now, not even the result of the provisional claim is available, but the conclusion of the merit is really not relevant for the purposes of this analysis, combining the exercise of the indigenous citizenship in the defense of their territory with the capacity to postulate in order to guarantee their fundamental rights in the perpetuity of their people before the Court. This case may be one of the very few in Brazil in which that protagonism was taken to its extreme, and the only thing missing for the composition of the procedural relationship was a magistrate from an indigenous origin to decide the claim (as already existing in the State of Roraima).

It is important to understand that even if it is handled under the inflow of new constitutional paradigms, that is, the self-determination of indigenous people and the abandon of the ancient representation guardianship by FUNAI – official institution that was absent at all initiative moments -, the popular action referred to turns against a state apparatus that proved to be detrimental to the most undisposable fundamental rights, that is: - health and quality of human lives.

Commanded by the harmful action of the city of Pacaraima and the damaging omission of the relevant environmental offices, the Brazilian State actually changed itself into an agent that once again violated the dearest values of historically discriminated, pursued and mistreated ethnical minorities. In that concrete case, the constitutional commands in article 20, item XI; 215, 216 and 231 – and that encompass the protection guardianship concerning those peoples – were not even recalled by the respective authorities on the purpose of preventing and even deciding that serious environmental aggression exclusively promoted by citizens who should not stay there once the State itself recognized it concerns demarcated and approved indigenous land.

Anyway, one has to recognize that the regrettable facts mentioned above stimulated the indigenous protagonism so that they could themselves, against the state apparatus and still to the disadvantage of an involving non-indigenous civilization, stand for their rights in an institutionalized way and using the correct judicial means, granting to the current indigenous movements an unusual political-social maturity and also regarding the way they relate to the official protection institutions themselves.

Instead of claiming for judicial initiatives on the part of the

Public Prosecution Office, FUNAI or even the Public Defender's Office, they decided to file and manage their own lawsuit through an indigenous lawyer and as they thought it would be more appropriate. Thus, they showed an institutional maturity and power of organization that had rarely been registered before. May that be used as an example for new judicialized claims whenever they are really necessary.

Also as an effective learning regarding the case, it is evidenced that the indigenous land is – from any angle one may forecast – an authentic nature conservation unit since it is expressly set forth in the Federal Constitution, which granted it this additional special destination that mattered all, indigenous and non-indigenous people, both directly and indirectly.

Environment and indigenous land enclose in this case study an intimate dependence relationship, the indigenous people defending a healthy environment against the harmful action of urbanized non-indigenous people, taking account of the headwaters and springs located in that area that benefit all indistinctly.

It is repeatedly evidenced that indigenous land empirically changed into large natural reserves receiving impacts from the surrounding civilization with the approval of one of the state powers. And who comes in defense of those same resources that interest all and against a system that is predatory of nature? Once again, the indigenous people, who bequeath acts of respect in favor of the environment and protagonism in the fight against its real polluters.

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