

HUMAN RIGHT TO SAFE DRINKING WATER AND POVERTY OF INDIGENOUS PEOPLES IN BRAZIL: AN INTERSECCIONAL CRITICAL ANALYSIS

DIREITO HUMANO À ÁGUA POTÁVEL E POBREZA DOS POVOS INDÍGENAS NO BRASIL: UMA ANÁLISE CRÍTICA INTERSECCIONAL

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ABSTRACT: This paper aims to assess the tension between competing social markers of difference, specifically ethnicity and poverty, by adopting intersectionality as a critical analysis lens for human rights to evaluate whether a one-dimensional approach may contribute to a violation of human dignity. This qualitative research is undertaken by deductive method and is carried out through bibliographic study and document analysis. The paper delves on the issues raised by the “Human rights to drinking water and sanitation for indigenous peoples: situation and lessons from ancestral cultures” report, prepared by Pedro Arrojo Agudo and presented before the UN General Assembly, to analyze the context of Brazil’s guarantees of access to drinking water for indigenous peoples as a public policy aimed at eradicating poverty in the country. It concludes that such right, since it is already recognized internationally, must also be introduced into the Brazilian legal order in order to create positive obligations for the Executive Branch to act towards its fulfillment. Nevertheless, it is also considered at the end that, within the current administration, the right to water would hardly be affirmed due to the (negative) government’s position towards indigenous rights and the protection of the environment.

KEYWORDS: Poverty; Multidimensionality; Intersectionality; Indigenous Peoples; Right to Water.

RESUMO: A presente pesquisa tem como objetivo analisar a tensão entre concorrentes marcadores sociais da diferença, especificamente raça-etnia e pobreza, a partir da adoção da interseccionalidade como lente crítico-analítica para os direitos humanos, sobretudo quando reveladora de violação à efetividade da dignidade humana decorrente de uma perspectiva unidimensional. De caráter qualitativo e a partir de uma análise bibliográfica e documental, a investigação toma como ponto central o relatório “Direitos humanos à água potável e ao saneamento de povos indígenas: situação e lições de culturas ancestrais”, elaborado por Pedro Arrojo Agudo e apresentado perante a Assembleia Geral da ONU, para analisar o contexto de garantia de acesso à água potável aos povos indígenas por parte do Estado brasileiro enquanto política pública voltada à erradicação da pobreza no país. Conclui-se, ao final, que tal direito, uma vez que já reconhecido internacionalmente, também deve ser introduzido no ordenamento jurídico doméstico para criar obrigações positivas para o Poder Executivo atuar em seu

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cumprimento. No entanto, também se considera que, em virtude do posicionamento da atual gestão, o direito à água dificilmente seria positivado devido à posição (negativa) do governo em relação aos direitos dos povos indígenas e à própria proteção do meio ambiente.

PALAVRAS-CHAVE: Pobreza; Multidimensionalidade; Interseccionalidade; Povos Indígenas; Direito à Água.

INTRODUCTION

Acting as Special Rapporteur on the human rights to safe drinking water and sanitation, Pedro Arrojo Agudo⁴ issued the “Human rights to safe drinking water and sanitation of indigenous peoples: state of affairs and lessons from ancestral cultures” report, presented at the 51st session of the Human Rights Council and the 77th session of the United Nations (UN) General Assembly, focusing on how “the construction of immense hydroelectric dams, the development of large agricultural and livestock farms, massive land and water grabbing processes and the development of large tourism projects” are damaging and contaminating water sources in indigenous territories and putting its residents at risk (UN, 2022, p. 1).

As clarified by Arrojo Agudo’s report, indigenous peoples’ sovereignty over their watercourses, which includes the use of rivers, wetlands, lakes and springs, makes it possible not only the access to safe drinking water, hygiene and domestic uses, but also to access important sources of food, through fishing, irrigation purposes and watering livestock (UN, 2022). However, access to water by indigenous peoples is notably constrained by government actions and omissions that put in practice and reinforce colonial and discriminatory patterns against those peoples (JACKSON, 2018; ROBISON *et al.*, 2018), leading to the deepening of poverty and social inequality imposed to indigenous individuals and making the fulfilment of their human rights more difficult.

Throughout the report, Brazil is expressly mentioned four times, which shows strong evidence on how the country has been actively adopting measures to hinder and nullify indigenous peoples’ right to water and sanitation, or remaining omissive and allowing for illegal acts especially by non-governmental agents. The points that regard Brazil vary from legal initiatives seeking to permit the use of water indigenous lands for mining and hydropower

⁴ Pedro Arrojo-Agudo was appointed Special Rapporteur on the human rights and sanitation in September 2020 by UN the Human Rights Council and started his mandate on 1 November 2020. As a Special Rapporteur, his role is to carry out research, undertake country missions and gather good practices on the issue of human rights obligations related to access to safe drinking water and sanitation.

initiatives; illegal mining activities, mercury pollution and deforestation; COVID-19-related measures; and to greater risks of indigenous children of being affected with diarrhea due to unavailability of safe drinking water and sanitation services (UN, 2022).

This report only lists a few examples of the impacts of the misuse of water, demonstrating how it directly affects human beings and their rights, and how important it is to safeguard it as a standalone human right. Nevertheless, on top of its late and somewhat disputed (BLUEMEL, 2004; FANTINI, 2019) road to recognition as a human right by the UN (2010), access to drinking water and basic sanitation remains inaccessible to a large portion of the world's population. Estimates point to approximately 2 billion people around the globe who lack access to drinking water and 3,6 billion that lack sanitation services (WHO; UNICEF, 2021, p. 8-9). The problems goes further: “water and poverty are inextricably linked. Poor access to water and insufficient sanitation affect the health of the poor, their food security, and their prospects for making a living” (ADB, 2006), creating a “water divide” (CIAMPI, 2013, p. 256).

This perspective is also reflected in Sustainable Development Goal 1 (SDG1) of the 2030 Agenda for Sustainable Development (or 2030 Agenda), which prescribes for the end poverty in all its forms, everywhere. The unidimensional poverty as material deprivation approach has been in decline in face of the emergence of other conceptions, such as the multidimensional approaches (ALKIRE; FOSTER, 2011; BOURGUIGNON; CHAKRAVARTY, 2003). By this multidimensional approach, on top of the income dimension, poverty also takes into consideration the deprivation of access to social rights, services and goods routinely experienced by people in these conditions, such as poor health, work and education, lack of empowerment, threat of violence, poor housing conditions, electricity, and, among others, access to water (UNPD, 2021, p. 2)⁵.

In Brazil, water poverty is a reality, especially when seen through racial lens. The government's actions and omissions in guaranteeing access to water (and sanitation) have deepened historical and structural inequalities, exacerbating the economic and political crises

⁵ For a further analysis of current applicability of multidimensional poverty today, see AGUILAR, Gisela Robles; SUMNER, Andy. Who are the world's poor? A new profile of global multidimensional poverty. **World Development**, v. 126, p. 1-15, 2020.

that are conjoined to the global water and sanitation crisis⁶. The adverse effects of the State's non-compliance in guaranteeing access to water are disproportionately faced by indigenous peoples in Brazil, whose reality demonstrate at least two interactions. First, belonging to a racial-ethnic group seems to bring those who belong to racialized groups to a state of poverty, both in monetary terms and in terms of access to social rights, services, and public goods, causing relegation to the margins of society (OLAREWAJU; OLEWARAJU, 2021; CHURCHILL; SMYTH, 2017). As such, race-ethnicity and poverty, as social markers, are often intertwined.

Secondly, tackling multidimensional poverty, as sought by SDG 1, does not seem possible without jointly tackling other aspects that discriminate against certain social groups. One particular aspect that deserves attention is SDG 6, dedicated to ensuring availability and sustainable management of water and sanitation for all. As reported by the United Nations Environment Program (UNEP), improved sanitation and wastewater management are central to poverty reduction and improved human health, since the poor are affected first and foremost by the current global crisis (UNEP, 2010, p. 11).

Hence, by adopting intersectionality both as critical social theory (COLLINS, 2022) and as a critical analysis lens, the objective of this paper is to study the symbiotic relationship between race-ethnicity and poverty, turning to the lack of access to safe drinking water and sanitation services and how this inaccessibility represents different forms of violence caused or aggravated by Brazil in relation to indigenous peoples of its territory, as reported by Arrojo Agudo. This research aims to provide an insight into how race-ethnicity intersect and act conjointly with poverty, resulting in the violation of human rights and human dignity, as illustrated by the case of indigenous peoples in Brazil.

This qualitative research is undertaken by deductive method and is carried out through bibliographic study (LIMA; MIOTO, 2007) and document analysis (BOWEN, 2009), as it anchors its scrutiny premises in Arrojo Agudo's report, and in other documents published by national and international organizations. Intersectionality is elected as the lens of analysis as it

⁶ See, for example, RAUPP, Ludimila *et al.* Condições de saneamento e desigualdades de cor/raça no Brasil urbano: uma análise com foco na população indígena com base no Censo Demográfico de 2010. **Revista Brasileira de Epidemiologia**, v. 20, n. 1, p. 1-15, 2017; RAUPP, Ludimila *et al.* Saneamento básico e desigualdades de cor/raça em domicílios urbanos com a presença de crianças menores de 5 anos, com foco na população indígena. **Cadernos de Saúde Pública**, v. 35 (suppl 3), p. 1-14, 2019.

provides a contextualized, dynamic and structural analysis (RIOS; SILVA, 2005, p. 24) and serves as an “*lente analítica sobre a interação estrutural em seus efeitos políticos e legais*” (AKOTIRENE, 2019, p. 63).

AN INTERSECTIONAL ANALYSIS OF INDIGENOUS PEOPLES’ MULTIDIMENSIONAL POVERTY

Racism not only promotes inequalities among classes, but also establishes differences of cultural value among social groups, considering the political dimension of the racial identity (MOREIRA, 2019). In that sense, it resembles the hierarchy established by class discrimination and, more generally, by social hierarchy, which influences intergroup contact, individual behaviors and identity self-construction of its members (PEPELS; HAGENDOORN, 2000). Thus, it can be argued that race can be interpreted as an indicator of class, even if not as the sole indicator (GANS, 2015, p. 96). This correlation can be visualized through indigenous peoples in the flawed⁷ political systems of the Latin America countries.

Research points to indigenous peoples being the poorest in most of Latin America (UNDP; OPHI, 2021, p. 13). The Economic Commission for Latin America and the Caribbean (ECLAC) also demonstrates that certain groups characterized by membership to an ethnic or racial group⁸ are more likely to live in poverty than the rest of the population, with higher poverty rates than non-indigenous and even afrodescendent peoples (ECLAC, 2022, p. 70-71)⁹.

Almost 690 million out of 2.4 billion in 41 countries with race-ethnicity and caste data available live in multidimensional poverty, with nearly 128 million belonging to ethnic groups (UNDP; OPHI, 2021, p. 12). In the Latin American region, in 2021, 204 million people were living in poverty, and 81 million of them were living in conditions of extreme poverty, which translates into 33% and 13.1% of its population, respectively, not having enough income to ensure due access to fundamental rights (ECLAC, 2022, p. 63).

⁷ The term “defective” is adopted by Gargarella to describe Latin America’s democracies, considering factors like deep inequalities that lead to social injustice, economic oppression and political exclusion, as well as systematic violation of social, economic and cultural rights, widely foreseen or incorporated into domestic legal orders and not realized (GARGARELLA, 2019, p. 153-154), inspire great concern over the effectiveness and access to human rights by the poor and discriminated population of society.

⁸ Considering the countries in which information on ethnic or racial status are available (ECLAC, 2022, p. 70).

⁹ In 2017, the poverty (51%) and extreme poverty (19.1%) rates were, respectively, 23.2 and 9.2 percentage points higher than among the non-indigenous, non-afrodescendent population (ECLAC, 2019, p. 93).

Poverty and extreme poverty have a direct correlation with unmet basic needs related to the access to basic services, such as clean running water and sanitation, as roughly 28% and 8.9% of those living in poverty and extreme poverty have access to drinking water (ECLAC, 2019, p. 99). 2020 data highlights that more than 8 million indigenous persons in five countries that account for 80% of Latin America's indigenous population – Chile, Colombia, Guatemala, Mexico and Peru – lack access to safe water and have very limited access to basic sanitation services (ECLAC, 2021, p. 18).

The analysis of Brazilian indigenous peoples' human rights violations must be guided by an element that allows the perception of the interconnection of various analytical tools, which is done here through the concept of intersectionality. Originally, intersectionality was already the object of feminist sociological studies (DAVIS, 2015, p. 212) and black feminism activism (BRAH, 2006, p. 358) before being translated to legal terms by Crenshaw (1989, p. 166). Crenshaw (1989; 1991) aimed to elucidate the nuances and complexities of the oppression and violence to which black women were subjected, primarily due to race and gender, and how the subordination by which some individuals that are simultaneously subjected to more than one discrimination factor cannot be explained by a unidimensional approach.

In this sense, the interaction between two or more axes of subordination leads to a dynamic overlapping of identities (AKOTIRENE, 2019), in which concurring identities reinforce each other to aggravate one's subordination while creating a unique form of vulnerability (DE BECO, 2017), relegating certain social groups into the margins of societies. "Intersectional subordination need not be intentionally produced; in fact, it is frequently the consequence of the imposition of one burden that interacts with preexisting vulnerabilities to create yet another dimension of disempowerment" (CRENSHAW, 1991, p. 1249).

As intersectionality illustrates, when systems of oppression overlap, discrimination occurs in more violent ways, revealing the multiple inequalities existing in social reality and deepening the marginalization of a person or a social group (COLLINS; BILGE, 2020). In addition, the critical lens of intersectionality addresses how government actions and public policies can generate oppression that interact with these axes of subordination, constituting dynamics of power and disempowerment (AKOTIRENE, 2019; VARGAS VERA, 2016).

Therefore, intersectionality as a critical analysis lens for investigating social problems reveals an intertwined structure between social and economic inequalities as measurement of

overall social inequality. Categories such as race, gender, age and others place persons differently in social relations, causing indicators of economic inequality such as employment, income, and affluence to affect social groups differently (COLLINS; BILGE, 2020, p. 35).

Through intersectionality lens, the relationship between wealth disparity and social markers of difference reflects interconnected systems of power. Thus, it can be argued that poverty is racialized and gendered, arising from an economic model of wealth accumulation produced by a racialized structure that intersects bodies and engenders inequalities (BELKHIR; BARNETT, 2001). In this scenario, State actions have a direct impact on the reduction or worsening of economic inequality among people who bear the weight of the intersections (COLLINS; BILGE, 2020, p. 38).

This racialized structure of socio-economic inequality requires poverty to be understood beyond the one-dimensional criterion, whereby poverty is measured purely in monetary terms. Through his capabilities approach, Sen (2010) interprets poverty as a multidimensional phenomenon, encompassing the elements related to the so-called basic needs approach (STEWART, 1985), emphasizing the ability of individuals and their particular notions of well-being and how to achieve it, so that the quality of life is not limited to assets and income, but by other conditions that surround human life in its fullness. This includes the fulfilment of certain standards of water access – not only in material terms, but also in terms of capabilities, as Sen (1993) advocates for.

From this perspective, the multidimensionally poor are essentially deprived – when the instrumental freedoms that would guarantee access to public goods and services, as well as when the opportunity to make decisions about private goods, are denied, the individual's capabilities are reduced, since there are no basic conditions that allow them to develop their skills (SEN, 2010). Poverty, in a multidimensional paradigm, “is essentially a situation in which a person finds himself unable to meet not only the basic needs required for physiological survival but also to maintain a quality of life desired for physical, mental, and social efficiency” (YENNETI, 2021, p. 354). Thereby, multidimensional poverty rates are expected to differ from those associated with one-dimensional poverty, especially considering the intersection of several axes of inequality in terms of race-ethnicity to identify greater likelihood of deprivation.

Understanding the intersections between race-ethnicity and class requires the capability of conceptualizing each of the components, which entails an analysis of each as a socially

construed category – as construed groups in opposite, binary terms (white/black; rich/poor; man/woman); as categories of individual and group identity located in systems of power (and inequality) and; neither race, class nor gender as fixed categories, since they are subject to a social interrelationship that change its forms over time (ANDERSEN; COLLINS, 2015, p. 53).

Intersectionality is therefore able to clarify how poverty keeps many indigenous peoples in subjugation due to racial stratification, an institutional phenomenon that structures racial inequality and shapes experiences of diverse racial-ethnic groups in light of power discrepancies between racial groups in a society (DUNNING, 1972). Racism – as a system of power and privilege that sets advantages and disadvantages of different groups based social hierarchy (ALMEIDA, 2020) – is premised on the understanding of race not by a biologically standpoint, but from specific social, historical and political contexts that determines certain cultural values to groups based on racial and social criteria (ANDERSEN; COLLINS, 2015, p. 56-57).

Racism is linked to and develops from its relationship with class thus continuing to shape the life of certain groups, such as indigenous peoples and their likelihood to poverty. The Inter-American Court of Human Rights has addressed this situation in multiple occasions.

The most outstanding one is the *Xakmok Kasek Indigenous Peoples vs. Paraguay* decision. In this case, the Court understood that such community is affected by extreme poverty, and that this situation is caused by their segregation, which originates from a racially-oriented disregard of the State to the indigenous right of (communal) property (IACrHR, 2010, par. 171-182). It also affirmed that such situation implies in the systematic denegation of human rights, especially those related to the “fulfillment of the right to life (food, *water*, health)” (IACrHR, 2010, par. 21).

Another recent case that also touches specifically upon this situation is the *Buzos Miskitos (Lemoth Morris et al.) vs. Honduras*. In this judgment, the Court openly pointed out that “the victims were found in patterns of structural and intersectional discrimination, as they were people belonging to an indigenous people and lived in a situation of poverty” (IACrHR, 2021, par. 107), since the rates of “illiteracy, unemployment, chronic malnutrition, lack of *sanitation* and energy and *water*” (IACrHR, 2021, par. 29) were very high where they lived.

The States were found responsible for the situations the indigenous peoples were submitted to in both cases, and were urged to bring an end to them, either by recognizing the

right to communal property or to their culture, which encompasses their relation to the environment. Moreover, both States were obliged to adopt positive measures to overcome any situations of violation of rights that they are inserted in, including that of poverty and marginalization. Therefore, indirectly, the Court determined that States must adopt measures to guarantee their access to certain social, economic, cultural and environmental rights, including water.

In this sense, it is important to stress the Inter-American Court's role to recognize water as a human right, guiding States towards its fulfillment, as prescribed not only by regional agreements and their interpretation, but other international documents, such as the SDGs, as it will be explored next.

THE HUMAN RIGHTS TO WATER AND SANITATION AND THE SUSTAINABLE DEVELOPMENT GOALS

Unanimously adopted by the 193 Member States of the United Nations (UN) in 2015, the 2030 Agenda for Sustainable Development represents “an unprecedented effort that embodies universal aspirations for a better, more just, equitable, peaceful, and sustainable future” (AIT-KADI, 2016, p. 107). SDG 6 is specifically dedicated to ensuring availability and sustainable management of water and sanitation for all, not just to satisfy global concerns over the world's increasing demand for water resources but also to meet water supply and sanitation needs for all, considering its effects on the global development agenda.

The first UN Conference dedicated to water was held in 1977 in Mar del Plata, Argentina, marking the initial concerns about water resources on the political scene, with the International Conference on Water and the Environment in 1992, developing an integrated approach to managing water resources (ORTIGARA; KAY; UHLENBROK, 2018). Those concerns were expanded in 2000, when the UN Millennium Declaration was adopted by world leaders, setting eight goals of development policy (the MDGs) to be achieved by 2015, including target 7C, to halve “the proportion of people who are unable to reach or to afford safe drinking water and basic sanitation” (WHO, 2018).

The access to drinking water rate rose from 76% in 1990 to 88% in 2015, and access to sanitation facilities from 54% to 77% in the same reference years (WHO; UNICEF, 2021, p. 4-5). Shortly after the adoption of the MDGs, the UN Committee on Economic, Social and



Cultural Rights (ECOSOC) interpreted, in its General Comment n. 15 of 2002, that the right to water implies both a freedom, prohibiting arbitrary/illegal contamination of water resources, and a prerogative, so that access to water supply and management systems must occur free of discrimination and on equal terms at local and national levels (ECOSOC, 2003).

The paradigmatic shift in the international normative on the right to water can be attributed to the emergence of a “new” constitutionalism identified in Latin America. The adherence of multiethnicity and multiculturalism by the constitutions of Guatemala (1985) and Nicaragua (1987) and the influence of indigenous legal pluralism as opposed to monism in the constitutions of Colombia (1991), Peru (1993) Paraguay and Mexico (1992), Ecuador (1998), and Venezuela (1999), express transformations that drove the Andean constitutions of Ecuador (2008) and Bolivia (2009) (FAJARDO, 2001, p. 141-146).

This new paradigm is guided by *Buen Vivir*, originated from indigenous peoples’ and other ethnic-racial minorities’ experiences in Latin America, as an alternative model for understanding environmental sustainability guided by harmony, respect, and balance with life in all its expressions (WOLKMER; AUGUSTIN; WOLKMER, 2012, p. 56-58). Thus, the “new” Latin American constitutionalism is guided by the reconstruction of cultural identity and ancestral heritage, enabling the resignification of an idea of human dignity influenced by indigenous cultures.

Faced with the depletion of resources and the destruction of ecosystems, this perspective guides a legal project based on the interests of *Pachamama*¹⁰, proposing an antidevelopment model centered on the preservation of the environment in all its dimensions (ACOSTA, 2016). Opposing the market matrices of neoliberalism, this “new” legal framework establishes water as (i) a human right; (ii) a strategic national good for public use; (iii) a heritage of society; and (iv) a fundamental component of nature, which holds its own rights about its existence and the maintenance of its vital cycles (WOLKMER; AUGUSTIN; WOLKMER, 2012, p. 59).

Access to safe and clean water and basic sanitation was recognized in Resolution A/RES/64/292 by the UN General Assembly in 2010 as a human right (UN, 2010a). In September of the same year, the UN Human Rights Council adopted Resolution A/HRC/RES/15/9, which affirms the human right to safe drinking water and sanitation as

¹⁰ In the Andean culture, Pachamama is “Mother Earth”, creator of all the elements of human life.

derived from the right to an adequate standard of living and inextricably linked to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity (UN, 2010b).

The 2030 Agenda and the SDGs were built on the foundation created by the MDGs and the evolution of the right to water and sanitation (UNESCO, 2019, p. 35). There is a correlation between SDG 6 and other SDGs, in a way that it cannot be addressed in isolation and can only be achieved if these are jointly attained. As an implication of this interconnectedness, the unequal access to water and sanitation can be translated as an expression of poverty, with repercussions on fundamental dimensions of life that can deteriorate its quality and create great difficulties for people's basic abilities to function (KLIKSBERG, 2002, p. 17).

The understanding that SDGs are integrated and indivisible and balance the three dimensions of sustainable development (economic, social and environmental) can be both positive – with mutually beneficial outcomes – and negative – to minimize negative impacts (UN, 2015, p. 5). In that matter, 2030 Agenda states that vulnerable people must be empowered and indigenous peoples, among other groups, “should have access to life-long learning opportunities that help them acquire the knowledge and skills needed to exploit opportunities and to participate fully in society” (UN, 2015).

In 2018, the Brazilian Institute on Applied Economics Research (IPEA) released a report listing the interconnections between SDG 6 targets to be achieved by 2030 and those of other SDGs (IPEA, 2018, p. 159-177). Target 1.4 (ensure that all people, especially the poor and the vulnerable, have equal rights to economic and natural resources, access to basic services, property, among others) was deemed linked to 6.1 (universal and equitable access to safe and affordable drinking water for all) and 6.2 (access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations).

The 1.5 target concerning building resilience of the poor and vulnerable to reduce their vulnerability to climate-related events and other economic, social and environmental shocks and disasters, was portrayed as linked to targets 6.1 and 6.2, as well as with 6.4 (increase water-use efficiency and ensure sustainable withdrawals and supply of freshwater to address water scarcity and reduce the number of people suffering from water scarcity) (IPEA, 2018). Although the aforementioned study is dynamic, its results and discussion can be combined to understand

the way in which SGD 6 is affected by the social environment rather than specific aspects of basic public services or isolated health issues.

“For indigenous peoples, water provides lifeways, subsistence, and has undeniable spiritual significance” (OHCHR, 2018). Many of the indigenous communities in Brazil live on the banks of rivers and streams, from where they extract fish for their sustenance, bathe and perform their hygiene routine, wash their utensils and clothes, irrigate their crops, feed their cattle, and use it in their traditional rituals, among other aspects that denote the close relationship between indigenous peoples and water.

Historiography demonstrates that Brazil’s demographic formation, marked by colonization and the conquest of territories, is characterized by the extermination and expulsion of indigenous peoples, who first inhabited the region (NADALIN, 2003, p. 223). The “*descimentos*”, referred to as the processes of forced displacement of these peoples to the vicinity of European enclaves, sought to facilitate their objectification and mercantile exploitation. This resulted in these peoples being articulated as groups and disposed in social layers, and then arranged in unfavorable geographical positions (ALENCASTRO, 2000, p. 120-144).

Still relegated to such conditions, there are rare exceptions of communities who have infrastructure, with artesian wells, drinking water and basic sanitation. However, in most cases, these indigenous communities are in degraded regions, living in areas that are the stage of constant disputes to exercise their right to property, enduring threats, violence, and death, with access to contaminated streams or rivers.

In the legal domestic order, the Brazilian Constitution did not formally recognize the right to water as a social right (BRAZIL, 1988). However, as corollary to the ideals of human dignity and formal and material equality, the right to drinking water comprises the right to its physical access in order to ensure human existence and the realization of other rights, prevent dehydration, mitigate the risk of disease, and meet basic personal and domestic hygiene needs, thus equating to other institutionalized social rights (such as the right to life, health, food, education, and a healthy environment), which require positive action by the State to promote administrative and legislative measures necessary for its realization (RESENDE, 2017, p. 268).

Therefore, the right of access to safe drinking water and basic sanitation services represents a guarantee of the dignity of the human person in the State’s protection of those

residing in the country (ALMENDROSI, 2018, p. 5). Access to water and sanitation are part of the list of minimum and inalienable rights to all without distinction, observing the foundation of the Federative Republic of Brazil to guarantee the dignity of the human person (article 1, item III, of Constitution) (MEDEIROS; MOZETIC, 2016, p. 5), as well as the objectives of the Republic to eradicate poverty and marginalization and reduce inequalities (MAIA, 2017, p. 334), and to promote the welfare of all, without discrimination (article 3, items III and IV of the Constitution).

Parting from this paradigm, it is imperative to address the Report referred to in the Introduction, where it is prescribed that Brazil does not guarantee the right to water (and sanitation), leaving indigenous communities susceptible to clear violations of rights, which, in turn, should be fought against not only in the light of the aforementioned constitutional framework, but also in virtue of the international documents to which the country is subject to, as previously discussed.

OVERVIEW OF THE BRAZILIAN INDIGENOUS PEOPLES STATE UNDER THE FRAMEWORK OF THE “HUMAN RIGHTS TO SAFE DRINKING WATER AND SANITATION OF INDIGENOUS PEOPLES: LESSONS FROM ANCESTRAL CULTURES” REPORT TO THE UN GENERAL ASSEMBLY

In his report to the UN General Assembly, Arrojo Agudo summarizes the challenges that indigenous peoples face to make their human rights to drinkable water and sanitation services effective in the context of the global water crisis. These challenges include adverse effects of climate change; land and water grabbing; establishment of conservation and protection areas; megaprojects and extractivism; criminalization, attacks and killing of indigenous groups; and impact on health caused by a lack of access to water (UN, 2022, p. 13-16).

The unsettling reality of the discrimination, oppression and extermination experimented by indigenous peoples in Brazil and the systematic violation of their rights has increased since the ascension of the President Jair Bolsonaro administration in 2019, resulted from the strengthening of the extreme right conservative political wing and its project of “*passar a*

*boiada*¹¹, related to indigenous discrimination and extermination as an excuse to attend powerful economic interests linked to agri-business in the context of an economic and political crisis caused by the government itself (DOURADO, 2022).

The “*Violência Contra os Povos Indígenas no Brasil*” reports commissioned by the Indigenous Missionary Council (CIMI) analyzes annual data of the systematic state of violation of indigenous peoples’ rights to their territories, bodies and cultures. CIMI’s reports between 2019 to 2022, which analyze data from the previous prior to their publication, when opposed to the 2018 data (prior to Bolsonaro’s term) to verify the increase of violence, highlight three different categories of violence that can be used as an analysis tool related to the violations of indigenous peoples’ human rights to safe drinking water and sanitation: violence against property; violence by State omissions; and violence against persons.

These three types of violence are connected, directly or indirectly, to the constraints and failures in the fulfilment of water rights by indigenous peoples addressed by Arrojo Agudo. These are (i) the lack of recognition of the existence of indigenous people and their collective rights; (ii) the lack of respect of their right to free, prior and informed consent and participation in water and sanitation decision-making processes; (iii) the specific challenges for indigenous women and; (iv) the lack of data on the adequate access of indigenous peoples to safe drinking water and sanitation (UN, 2022).

Concerning violence against indigenous property in Brazil, there is an evolution of cases, from 941 cases in 2018 to 1,120 in 2019, 1,191 in 2020 and 1,294 in 2021 (CIMI, 2019, p. 150-151; 2020, 210; 2021, p. 242; 2022, p. 278). The reported cases are subdivided in omissions and delays in regularizing lands; conflicts related to territorial rights and possessory

¹¹ “Pass the cattle herd”, a colloquial expression in Brazilian Portuguese adopted by the former Environment Minister Ricardo Salles during a ministerial meeting with President Bolsonaro in April 2020, in a viral video recording that became public, meant sending or approving reforms mainly related to Environmental Law and sustainability agenda, that demands participative debates, during the pandemic period caused by the Coronavirus disease, while society’s main attention was turned to health issues. Salles’ objective was reached through a series of amendments to normative instructions from the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA) between March and April of 2020. Amendment n. 4 authorized the regularization of rural properties on indigenous lands, allowing the invasion, exploitation and commercialization of indigenous lands that have not been approved yet (practices that seek standardization by PL 2633/2020, while the Amendment n. 13 allowed the reduction of the distance between populated areas and those in which pesticide spraying occurs. On May 2020, the Federal government authorized the restructuring of Chico Mendes Institute for Biodiversity Conservation (ICMBio) reducing from 11 to 5 in the number of civil servants responsible for 335 protected areas throughout the country, besides allowing that 4 of those positions could be occupied by people outside the ICMBio, which led to the composition of 4 members of the military police and only 1 career agent (NICOLAV, 2020).

invasions¹²; and illegal exploitation of natural resources and diverse types of damage to property¹³.

While cases of omission and delay in regularizing lands are exclusively related to State matters (notwithstanding other aspects that contribute to the violation of constitutionally established indigenous rights), the conflicts over territorial rights involve both armed conflicts and judicial disputes over these rights that end up impeding their exercise by indigenous peoples. The lack of access to traditional territories not only makes it impossible for indigenous peoples to fully live by their customs and traditions, but also restrains their access to safe drinking water and sanitation services (UN, 2022; SQUEFF; ROSA, 2020).

The conflicts are usually related to land grabbing, “large-scale acquisition or leasing of land, including water rights attached to that land, for wide-ranging farming and ranching, biofuel, mining and logging concessions or tourism facilities” (UN, 2022, p. 14). Indigenous lands subjected to land grabbing “are *de facto* expropriated and sold or leased without the agreement of indigenous peoples, often under the pretext that the territories or their tenure are not legally registered” (UN, 2022, p. 14). This, for example, was the case of the aforementioned Xakmok Kasec indigenous peoples, whose territories were divided and sold by Paraguay without their consent (IACrtHR, 2010, par. 58).

There are other factors related to violence against indigenous peoples’ property in Brazil. Among them are the socio-environmental collapse brought about by megaprojects and its devastating effect on access to water and sanitation by those peoples and the extractive ventures for activities such as mining, oil and gas extraction; hydropower projects, including and the construction of large dams and logging; industrial fishing and farming; livestock grazing; and tourist developments¹⁴. Another challenge faced by indigenous peoples is tied to

¹² This scenario is illustrated by cases such as the situation experienced by the Chiquitano peoples of the Portal do Encantado Indigenous Land, from the Mato Grosso state in 2021, which had its access to the waters of the Tatumã River hindered by a bridge built illegally by a rancher in the region (CIMI, 2022, p. 80).

¹³ It was reported that farmers have been pouring poison on the crops that are close to the Buriticupu River, which the families of the indigenous peoples Awá-Guajá and Guajajara of Araribóia land (Maranhão) survive on and use for their daily activities. The pesticide-contaminated water caused health problems, such as diarrhea and abdominal pain, especially in children and the elderly (CIMI, 2020, p. 116).

¹⁴ In 2018, it was reported that the Cateté River, in Pará, was polluted by the metals iron, copper, chromium and nickel without any containment measures by the Onça-Puma Plant, of the mining company Vale. The waters of the river, a fundamental asset for the Xikrin indigenous peoples that drink from it, bathe in it, eat their fish, and wash their clothes and pots in it, became reddish from iron oxide and green from nickel, deposited along its banks, some of them darkened by copper oxide (CIMI, 2019, p. 62-63). In Bahia, 2020, the indigenous people Pataxó Hã-Hã-Hã expressed great concern over the megaproject of the construction of a pipeline – the second largest in the

the establishment of protected areas, that although aimed at safeguarding biodiversity and ecosystems, has had adverse effects on indigenous peoples (UN, 2022, p. 15)¹⁵.

The number of cases of violence by State omission during the period under scrutiny went from 142 in 2018 to 267 in 2019, 177 in 2020 and 221 in 2021 (CIMI, 2019, p. 151; 2020, p. 211; 2021, p. 243; 2022, p. 279). The cases under this category are segmented by lack of assistance in general, lack of schooling and poor education, lack of health services, greater rates of addiction to alcohol and other drugs, and death by lack of health assistance.

In the matter of the impact of lack of access to safe drinking water on health, presented as a challenge by Arrojo Agudo (UN, 2022, p. 16), it must be pointed out that the consumption and use of untreated and polluted water kills more than any type of violence. The lack of clean water kills 1.8 million children under 5 years of age annually in the world (CIMI, 2021, p. 170). Diarrhea, mainly caused by dirty water, kills about 2.2 million people a year. More than half of the hospital beds in the world are occupied by people with diseases linked to contaminated water, in addition to the various socioeconomic and environmental impacts linked to water pollution. The lack of these services for the most vulnerable groups in society gained greater prominence in the context of the pandemic caused by COVID-19 which, in Brazil, brought aggravated effects to a large part of society that lives in inadequate housing, without access to water, without basic sanitation, without health services and precarious food (CIMI, 2021, p. 39; JUBILUT *et al.*, 2021).

The examples above reveal that race and class are systemic forms of inequality, built into the social structure. This social fact drives the analysis of race and class as intersectional systems of inequality, functioning as systems of power that creates advantages and disadvantages to groups depending on their social and cultural status. In fact, race and class operate within a system of simultaneous, interrelated social relationships called matrix of domination (ANDERSEN; COLLINS, 2015, p. 51).

world – by Sul Americana de Metais (SAM), a Brazilian company with Chinese capital, which intends to exploit the iron mining and dispose of it near their lands, monopolizing control of the region's water and making the community's way of life unviable, since they were not consulted before construction began (CIMI, 2021, p. 111).

¹⁵ As occurred with the families of the Kamakã Mongoió people, who took back a preservation area in the metropolitan region of Belo Horizonte in search of better living conditions than they had in the city and, despite being an abandoned site that was revitalized by these people, they were notified by the city government to leave the area, and since then they suffer with invasions, threats, monitoring by drones, and theft of their planting tools (CIMI, 2022, p. 83).

Racism plays a key role in the development and implementation of public policies and government welfare actions by systematically subjugating racialized individuals in relation to the hegemonic white standard (SQUEFF; DAMASCENO, TAROCO, 2022), which not only informs and shapes assistance public policies, but also results in outcomes that significantly affect the life chances of racialized poor people (THEODORO, 2008). By disregarding racial bias and discrimination in society at large, racial groups are put at a disadvantage in terms of successfully exiting public assistance programs and achieving self-sufficiency (HENDERSON; TICKAMYER, 2015, p. 122).

In terms of legislation, Bolsonaro chose as one of his campaign directives during the election period the criticism of Brazil's environmental inspection system, promising that, once elected, he would not allow any demarcation of indigenous territory due to the richness underneath those lands (RAMOS, 2018). The promise has been kept: besides not having initiated any demarcation process to date, Bolsonaro exercised anti-politics that stimulate the denial of rights through a premeditated omission and dismantle of protection, inspection, and execution organs responsible for actions and services in indigenous territories behind a smokescreen of actions seeking the reduce of bureaucracy and economic benefits (CIMI, 2022, p. 53).

In September 2019, Bolsonaro enacted Bill n. 3.715/2019, which was turned into Law n. 13.870/2019, amending the Disarmament Statute of 2003 (Law n. 10.826/2003) and authorizing the possession of firearms throughout the extent of rural properties (BRAZIL, 2019). The previous legislation authorized the possession of firearms only at the farm's headquarters. In December 2019, Bolsonaro issued Provisional Measure n. 910/2019, also known as "*MP da grilagem*"¹⁶, that increased the size of occupations eligible for simplified registration rules from 4 fiscal modules up to 15 fiscal modules, which represents 1,500 hectares (ha) in Amazonia, where more than 115 million ha out of the 117 million ha of indigenous territories in Brazil are located (ARAÚJO, 2020)¹⁷.

¹⁶ "Land grabbing MP" in Portuguese (free translation).

¹⁷ After its effect of 120 days, MP n. 910/2019 was transformed into a Proposed Law (PL n. 2.633/2020), which is currently under appreciation of the Federal Senate, at risk of legalizing the violent expel of indigenous individuals by land grabbers and their hired gunslingers, as self-made declarations by these individuals are able to legitimate any occupation since the bill makes it legal.

The Articulation of Indigenous Peoples from Brazil – APIB expresses concerns over other bills that are under consideration of the National Congress to integrate the legal domestic order: Bill n. 2.633/2020 and n. 191/2020 (TERENA; GUAJAJARA, 2021). The first – PL n. 2.633/2020, also known as “Land Grabbing Bill” – proposes alterations to Law n. 11.952/2009, to encourage the expropriation, sell or leasing of lands, which in many cases are part of indigenous territories, without the consent of indigenous peoples, often under the pretext that the territories or their tenure are not legally registered.

Even though Bill n. 2.633/2020 was proposed by the Legislative branch, its intentions are aligned with Bolsonaro administration’s project. Bill n. 191/2020, proposed by the Executive branch, intends to authorize the mining and construction of hydroelectric power plants on indigenous lands, validating all mineral exploration requirements that were requested or filed before the Bill implementation. In addition, PL n. 191/2020 intends to exempt from the obligation of consulting indigenous residents of the lands on policies and projects affecting their rights.

On the occasion of the approval of Bill n. 1.142/2020 in July 2020, proposed by federal deputies from opposition parties of the parliament, Bolsonaro vetoed 22 sections intended to implement urgent measures to protect indigenous peoples from COVID-19, including ensuring availability of safe drinkable water (as well as hygiene, cleaning and disinfection materials, hospital beds, ventilators and oxygenation machines and information materials and contingency plans for indigenous people under isolation)¹⁸.

On August 2020, indigenous peoples, through APIB, filed a lawsuit¹⁹ against the Brazilian State at the Brazilian Federal Supreme Court, accusing Bolsonaro’s government of omission in protecting indigenous peoples in the context of pandemic caused by COVID-19, with its first case confirmed in Brazil in February 2020. Even though the Court unanimously ruled in favor of APIB, determining that all states should take immediate and concrete actions to protect indigenous communities, the situation of inefficacy and insufficiency of public

¹⁸ To justify Bolsonaro’s veto, his Vice-President Hamilton Mourão stated that the water supply is not necessary, since indigenous individuals are supplied from the water of the rivers that are in its territories (CIMI, 2021, p. 180), demonstrating unfamiliarity and certainly indifference with external factors that prevent to access to water by indigenous peoples, such as climate changes, pollution due to illegal actions of land invaders and the toxic contamination that affects the quality of the water and the aquatic life of rivers.

¹⁹ Action Against the Violation of a Constitutional Fundamental Right (ADPF) n. 709 (Reporting Justice Minister Luis Roberto Barroso).

policies from the federal government was camouflaged by legal strategies to delay the assistance (APIB, 2021).

President Bolsonaro's posture has even motivated the first ever international criminal complaint addressed directly by indigenous peoples brought to the International Criminal Court, for crimes perpetrated against themselves since the beginning of his government's term, with special attention over the period of COVID-19 pandemic. APIB has presented a report, aiming for an investigation for crimes against humanity (article 7, 1, "b", "h" and "k" – extermination, persecution and other inhuman acts of the Rome Statute), and genocide (article 6, "b" and "c" – severe physical and mental damage and deliberately inflicting conditions aimed at the destruction of the Rome Statute) (APIB, 2021).

In 2020, the Inter-American Commission granted precautionary measures to Brazil in light of the urgent risks faced by indigenous peoples Yanomami, Ye`Kwana e Munduruku in the context of invasions of their lands, contamination by mercury (derived from mining) and the Coronavirus pandemic, exposing those peoples to threats, attacks, sexual violence and health issues by the spread of diseases such as malaria and COVID-19. However, given the worsening of the reported events, the measures that the government previously announced were considered insufficient (IACoHR, 2022).

As requested by the Inter-American Commission, the Inter-American Court of Human Rights granted interim measures for the Brazilian government in July 2022, demanding actions to effectively protect the life, integrity, health and guarantee access to food and drinking water for members of indigenous peoples, after Bolsonaro's government rejected of the Commission's request, considering those unfounded due to the uncharacterized state of extreme seriousness and urgency (IACrtHR, 2022).

At last, regarding violence against persons, during the first three years of Bolsonaro's government, the violence rates against indigenous individuals, including cases of power

abuse²⁰, death threats²¹, threats in general, murders, manslaughter, bodily injury²², racism and discrimination, murders attempts and sexual violence²³, went from 245 in 2018 to 277 in 2019, 304 in 2020 and 355 in 2021 (CIMI, 2019, p. 150-151; 2020, p. 210; 2021, p. 242; 2022, p. 278).

The alarming growth of criminalization, attacks and killing represents one of the challenges tackled by indigenous peoples defending their natural resources and territories (UN, 2022, p. 16), particularly facing invasions in areas where illegal mining and logging occurs. The murders of Bruno Pereira and Dom Phillips in the Javaru Valley, Amazonas state, in June 2022 (whose travel Bolsonaro classified as a “non-recommended adventure” to be taken) (TERRA, 2022) shows that the violence is extended to indigenous activists as well (MOTORYN, 2022).

As an intersectional analysis showcases, race and class as social structures, not just individual identities or experiences, are supported by ideological beliefs (ANDERSEN; COLLINS, 2015, p. 52). Bolsonaro’s discrimination against indigenous peoples and disregard with their rights are known long before his election through racist statements such as considering a shame that the Brazilian cavalry was not as efficient as the American in exterminate indigenous individuals, wondering how indigenous peoples manage to have 13% of the national territory since they “do not speak our language, have money or culture” and that indigenous individuals should forcefully be “integrated to society” (SURVIVAL, 2019).

In other opportunities, statements such as “indigenous peoples do not speak our language, have no money, are extremely poor and need to be integrated into society, and not raised in millionaire zoos”, or even criminalizing indigenous reserves and environmental laws,

²⁰ In December 2021, for example, the military police violently attacked the indigenous people of the Pium community in the state of Roraima in compliance with a legal order for the repossession of property requested by ranchers who are contaminating the water sources of the source of the Pium Igarapé River and the diversity of plants and herbs used in traditional medicine. Although there was no resistance that justified the truculence, tear gas bombs, pepper sprays, and rubber bullets were used against the residents of the indigenous land that was retaken after being left out of the demarcation process, even though it had always been used by the community (CIMI, 2022, p. 152).

²¹ As it can be exemplified by the case of the Truká-Tupan people, from Bahia, victims of constant and daily threats in the process of thirteen years of struggle for the retaking and recognition of their lands as indigenous reserves, having the water pump that supplies the community frequently plundered by invaders (CIMI, 2022, p. 162).

²² Such as the case of the nine Guarani-Kaiowá indigenous people rescued on a cattle ranch in the Mato Grosso do Sul region, housed in canvas shacks with no sanitary installations and using water from the stream to cook, wash their clothes, bathe and quench their thirst, can also be mentioned (CIMI, 2022, p. 163).

²³ Pointing out the rape of a 3 year-old infant and a 100 years old woman, and rape and murder of a 11 years old and a 14 years old, all occurred only in 2021 (CIMI, 2022, p. 197-198)

pinning it has obstacles to mining, agri-business and economic growth of Brazil (SURVIVAL, 2019), became part of the President's vocabulary, demonstrating his discriminatory and racist thinking patterns.

After his election, Bolsonaro stated that the indigenous individual "has changed, is evolving", and "more and more is becoming a human being just like us" (SURVIVAL, 2019), which is not in compliance with Brazil's obligations to international human rights laws and standards, especially with the International Labor Organization (ILO) Convention n. 169, ratified by Brazil, and the UN Declaration on the Rights of Indigenous Peoples, that recognizes "the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development" (UN, 2007, p. 5-6).

Especially in cases involving vulnerability and multiples forms of discrimination against indigenous women, gender can also be subsumed under race and class to analyze the interaction between these social structures. Arrojo Agudo draws attention to the cases of sexual violence that reveal the vulnerability and lack of assistance state of indigenous women as specific challenges that leads to the constraint of their human rights to safe drinking water and sanitation, "including in access to health care and land ownership, while suffering the risks of domestic violence and sexual abuse" (UN, 2022, p. 12).

CONCLUSION

Even though studies indicate that indigenous customs and techniques were essential for colonizers to live and to find water resources in Brazil during the colonial period (SANTOS, 2008, p. 18), nowadays most indigenous peoples are relegated to live in marginal territories with harsh conditions to access safe drinking water and sanitation services. More so when compared to other segments of the population that were not submitted to centuries of domination, oppression, violence and exterminations, continuously having to handle discrimination in its multiple forms.

Despite the current relevant status of access to water and sanitation in the constitutional order, the situation of a large portion of the Brazilian population, especially the poorest, most vulnerable and marginalized, is still unsteady and unable to enjoy these rights, which prevents their fulfillment, in particular for those who are distinctly racialized as per the indigenous

communities. Thus, it is possible to notice the intersectionality of power relations over indigenous peoples in Brazil, who are excluded from the right to water and sanitation.

From the analysis of the increase in the number of cases of violence of various natures against indigenous peoples in Brazil, it is possible to conclude that the worsening of attacks on indigenous territories, leaders and communities in general is related to the measures taken by the Executive Branch and its allied base to dismantle the constitutional protection of indigenous peoples and their territories, as well as to the intersectional discriminatory discourse that mitigates the access of these racialized peoples to potable water and basic sanitation services, relegating them to a situation of (extreme) poverty, and thus culminating in the implementation of the water divide within our society.

In an attempt to guarantee that indigenous peoples in Brazil may effectively grasp their right to water, there are some measures to be adopted in this regard. The lack of recognition of the existence of indigenous people and their collective rights and the lack of respect of their right to free, prior and informed consent and participation in water and sanitation decision-making processes are cited by Arrojo Agudo as external factors that prevent indigenous population to access to safe drinking water and sanitation services, allowing States to take actions that disregard the practices, knowledge and consent of indigenous peoples including water management (UN, 2022, p. 11-12).

As Arrojo Agudo points out in his report, in order to address the existing discrimination gap in water and sanitation in indigenous peoples' territories, the implementation of programs related to safe drinking water and sanitation must be promoted through an intercultural approach that seeks to enhance the engagement of indigenous peoples "from the beginning of all negotiations and increase their autonomy over the management of their systems, including budget allocations for adequate training, technical support and maintenance" (UN, 2022, p. 19).

It is also possible to address the right to water through transformative constitutionalism. In international law, the right to drinking water is seen as inherent to article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognizes the right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions. By such categorization, it is also possible to say that it is also indirectly prescribed by the American Convention on Human Rights in article 26, which provides for the full realization of the rights implicit in economic, social,

educational, scientific and cultural standards, as the Inter-American Court of Human Rights found in the *Lhaka Honhat (Nuestra Tierra) vs. Argentina* case (IACrtHR, 2020).

Therefore, in light of the American Convention and the mandate it bestowed upon the Inter-American Human Rights System to promote substantial changes in Latin America to address its structural problems (BOGDANDY, 2019, p. 232), transformative constitutionalism reveals itself as a strategy to address the right to water provided for in domestic legislation (even if indirectly foreseen) through a human rights perspective that privileges its guarantee and access to all without distinction.

Because of this, considering that the right of access to drinking water is not yet positively prescribed by Brazilian legislation can only be extracted from other fundamental rights expressly established, such as the rights to life (art. 5, *caput*, of the Constitution) and the social rights to health, food, one cannot say the State shall not act towards its fulfillment in regard to those under its jurisdiction, such as the indigenous communities. Moreover, the approval of the Proposal of Amendment to the Constitution (PEC, in the Portuguese acronym) n. 6/2021, presented in 2018, and still being discussed by the Congress (BRAZIL, 2021), aims to recognize drinking water as a fundamental right on the Federal Constitution.

Nevertheless, currently, the Brazilian Government is anti-indigenous, meaning that the discussions surrounding the granting of rights that may benefit this part of the population may not become a reality. The treatment of indigenous peoples during the COVID-19 pandemic, as well as the disregard for the environment itself (which, as alluded to, is a fundamental element of indigenous culture) during the current administration shies away from any belief in concrete change at this moment (although that is crucial if we are to combat *racism*, *poverty* and the *water divide* in the Brazilian State – characteristics that are considered “structural” and whose rupture is demanded by international bodies, as seen not only by the IACrtHR precedents, but also by the report which this research parted from).

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