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The Children Indigenous and the Doctrine of Plural Protection

As indígenas crianças e a Doutrina da Proteção Plural

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Abstract

In this article, I revisit the theoretical and normative foundations of the Doctrine of Plural Protection, a formulation that seeks to rethink the rights and care of indigenous children. Based on bibliographical research, I discuss the political-anthropological bases of the axiological inversion of indigenous children and the transversal application of children's rights with indigenous rights and the cultural integrity of indigenous peoples.

Keywords: Children indigenous; Doctrine of plural protection; Children`s rights; Indigenous rights; Interculturality.

Resumo

No presente artigo realizo uma revisitação aos fundamentos teóricos e normativos da Doutrina da Proteção Plural, formulação que busca repensar os direitos e o atendimento às indígenas crianças. Com base em pesquisa bibliográfica, discuto as bases político-antropológicas da inversão axiológica das indígenas crianças e a aplicação transversal dos direitos das crianças com os direitos indígenas e a integridade cultural dos povos indígenas.

Palavras-chave: Indígenas crianças; Doutrina da proteção plural; Direitos das crianças; Direitos indígenas; Interculturalidade.

Introduction

The year was 2015. In the midst of another (almost) endless wave of media reports on allegations of infanticide among indigenous peoples[1], accompanied by census diagnoses[2] and academic works[3] that legitimize such "finding", I sit down to write a few lines of this article previously concluding the inability of the State and the "law operators" in Brazil to understand and apply the normative field to indigenous peoples and, above all, to indigenous children or children indigenous.

Six years later, in 2021, I resume writing the article and note that the State's inability to deal with children indigenous took on the air of government policy, more specifically an "institutional cause" led by the, at the time, Minister of Women, Family, and Human Rights, Mrs. Damares Alves, in a salvationist-evangelizing saga of rescuing the alleged victims or threatened children of infanticide practices in their people[4].

The "operational incapacity" to which I come to the conclusion, in the two temporal moments narrated above, is based on a social misunderstanding of cultural differences and, therefore, on the naturalization of the moral and legal imposition of values considered universal towards indigenous peoples, reinforced by the maintenance of stereotyped ideas about who these subjects are and, in the specific case of the objective of this text, the understanding of the sociocultural complexity that involves "becoming a child indigenous", including for the field of Law.

What interests me in this article is not exactly diagnosing this operational insufficiency of the State in dealing with the right to difference of children indigenous, but pointing out ways to conceive care from other legal and epistemological perspectives. The

[1] Like the report released on the television program "Fantástico", by Rede Globo de Televisão, available at: <<https://www.youtube.com/watch?v=Hi8IyiFS76Q>>. Accessed on: 18 Jan. 2015.

[2] The fact that the 2014 Map of Violence, entitled "Os Jovens do Brasil" (Waiselfisz, 2014), identified the first place in the ranking of the mortality rate, among municipalities with more than 10,000 inhabitants in Brazilian territory, the municipality of Caracaraí, in the state of Roraima, which was the only one with a general mortality rate above 200 per 100 thousand inhabitants, more precisely 210.3 per 100 thousand inhabitants, despite the locality having a population of 19 thousand people, caused a wide debate. The problem is that the Secretary of Public Security of the State of Roraima, when interviewed, claimed that a good part of the homicide rate credited to the locality was due to the fact that the Yanomami people practiced alleged "infanticide" against their children, which were classified as homicides by public bodies. About the secretary's interview, see: <<http://www.roraimamusic.net/2014/07/sesp-contesta-dados-que-apontam.html>>. Accessed on: 15 Jul. 2020.

[3] That is about the book organized by the Attorney General in Mato Grosso do Sul, Ariadne Cantú (2012), which contains several articles that address the issue of infanticide and the way in which public institutions and indigenous peoples should deal with the subject.

[4] To better understand one of the moves of this "institutional cause", the creation of the Working Group on Vulnerable Indigenous Children and Youth, see: Oliveira (2021).

central problem, therefore, is to reflect on how a notion of rights of children indigenous can be structured that recognizes their cultural differences without neglecting the effects of colonial/modern imposition felt until today in their lives and in their peoples.

For this reason, in this article I seek to revisit the theoretical-normative foundations of the application of children's rights to children indigenous. I understand that such a foundation is only possible if its argumentative cores are rooted in a three-dimensional understanding of such rights, based on the dialogue between three legal orders: children's rights, indigenous rights and the cultural integrity of indigenous peoples. This dialogue is supported by theoretical contributions from Indigenous Ethnology and Anthropology of the Child, as well as the hermeneutic exercise of intercultural transversalization of legal orders for the formation of what can be recognized and applied as the rights of children indigenous.

Based on the bibliographic research, I propose a storyline based on the problematization of three elements: the inversion of indigenous children to children indigenous; revisiting the fundamentals of the Doctrine of Plural Protection (DPP); and, the challenges that children indigenous, indigenous peoples and their partners have and will have to ensure the consolidation of the DPP.

1. The inversion: indigenous children, children indigenous

In order to apprehend indigenous children as children indigenous, it is necessary to position such axiological inversion as a political-anthropological device that aims to highlight absences and evidence to indicate the urgency of the cultural factor in the dispute over the meaning of childhood and children's rights among indigenous peoples.

First of all, I understand, in agreement with Ariès (1981), Kohan (2008), and Sarmento (2007), that childhood, in the sense of the social condition of “being a child”, is a historically and culturally located category, forged in the molds as we conceive it today, in the historical-temporal plane of modernity, especially from the 17th century onwards in Europe. Multiple factors were responsible for the sedimentation of modern childhood ideals, such as the emergence of the school and the new family configuration, as well as the invention of the press (Portman, 1999), and the formulation and diffusion of the scientific paradigms of the “normal child” and the “child development” (Tumel, 2008).

Among all these considerations, nothing was more decisive for the structuring of the modern field of children's rights than the scientific contributions coming from Developmental Psychology (Oliveira, 2014a), which contributed to the establishment of parameters for defining child development on a number of aspects. I.e., in a way, evident and, at the same time, unconscious in the normative-discursive field of children's rights. And nowadays, under the aegis of the Doctrine of Integral Protection (DIP), just a little is realized that the recognition of the peculiar condition of the person in development - one of the elements of support of the DIP, along with the understanding of children as subjects of rights - is, otherwise, the lack of knowledge of the primacy of Developmental Psychology for the conformation of the legal way of regulating guarantees, services and competences for attending to children. More recently, neuroscience has gained ground in the dispute over the legitimacy of the hegemonic pattern of child development, especially in relation to early childhood.

The universalization of child development models is, on the one hand, the obliteration of the political, social, economic and cultural conditions that enabled the transformation of the Western way of conceiving childhood into a common sense, into a category that has become ahistorical and that intertwines a series of cultural values and conceptual elements (such as education, health, work and violence, among others) to establish parameters of normality, ideality and governability of “being a child”. Parallel to that, the production of the universalization of modern childhood was based on the invisibility, delegitimization and/or decimation of the plurality of cultural representations of “being a child”, intertwined with the oppression suffered by various racialized peoples of the globe[5], especially in the case under study, of indigenous peoples, disregarding or discrediting the specific ways of symbolizing *other* childhoods – which undoubtedly had an impact on the legal treatment (not) offered to children indigenous.

For this reason, the second and, I would say, main support for sustaining the axiological inversion of children indigenous lies in the understanding and recognition of the cultural plurality of indigenous peoples in the production of childhoods. Such diversity indicates that “being a child” “[...] can be thought of very differently in different sociocultural contexts, and an anthropology of the child must be able to grasp these

[5] In the sense of being immersed in the coloniality of power historically configured in the process of political-economic-military expansion of European empires, especially to Latin America, Asia and Africa. On the subject, see: Dussel (2002), Mignolo (2003) and Quijano (2010). In addition to my doctoral thesis: Oliveira (2020a).

differences" (Cohn, 2005, p.22). Complementing the author, not only the Anthropology of the Child must be capable of apprehending differences, but also the legal-institutional field of children's rights, supported by anthropological subsidies (Oliveira, 2019a).

At this point, the understanding of the sociocultural construction of the person and the body becomes relevant as prerequisites for the ethnic definition of childhood and the social performance of children indigenous. For Seeger, DaMatta and Viveiros de Castro (1987), the person, among indigenous peoples, refers to the consideration of corporeality as a symbolic language and cultural requirement for the configuration of social organization, cosmology and the human being, "because the person, in indigenous societies, it is defined as a plurality of levels, structured internally" (1987, p.13).

Thus, the sociocultural construction of the indigenous person and, equally, of the children indigenous, is based on interventions on the subjects' bodies by educational and sociocosmological processes. In short, corporeality orders and mobilizes specific cultural elements to found the generational identity of children indigenous.

Currently, the multiplicity of ethnographic studies on the sociocultural world of children indigenous, in different contexts, has revealed the differentiated character of the processes of entry, experience and exit from childhood, with greater or lesser degrees of interaction and exchange with Western (or national) markers of "being a child". In all cases, the mediation of the notions of person and body in a relational aspect with other socio-cosmological[6] beings is crucial to conceive the procedural and cultural-historical understanding of childhoods among indigenous peoples.

And, since the person is a "symbolic language" for understanding the sociocultural world of indigenous peoples, one has to consider: what extent does it end up becoming the central element of communication for the intercultural translation of children's rights? Thus, I arrive at the third support of the axiological inversion, which engenders the dialogue between Anthropology and Law for the (re)definition of the interculturality of human rights applicable to indigenous peoples.

[6] Tassinari (2007) systematizes characteristics common to ethnographic descriptions of indigenous childhoods: (1) recognition of children's autonomy and their decision-making abilities; (2) recognition of different abilities in front of adults; (3) the role of children as mediators of various cosmic entities; (4) the role of children as mediators of social groups; (5) education as the production of healthy bodies. Other ethnographic works on indigenous childhoods can be consulted in: Cohn (2000); DaMatta (1976); Rose (2008); Silva (2008); and, Viveiros de Castro (1992). For a broader list, consult the bibliography on the Anthropology of Children Blog, available at: <<http://antropologiadacrianca.blogspot.com.br/p/bibliografia.html>>. Accessed on: 15 Jul. 2020

In the theory of human rights, the study of the historical course of evaluative formulation of dignity is intertwined with the cultural formations of the person, and it is not possible to understand the evaluative dimensions undertaken to human dignity without mentioning the way in which the person is defined and vice versa" (Oliveira, 2014b, p. 76). Since the French Revolution of 1789 and, more categorically, with the promulgation of the Universal Declaration of Human Rights in 1948, the contemporary conception of human rights has structured the value of dignity as the matrix and ultimate purpose of the principles and rights included in the set of human rights. But it did so at the expense of reducing the importance of the value of the person, understood, then, as a discursive complement of dignity (the dignity of the human person) and not as an autonomous value, as well as something that guides the evaluative construction of dignity itself.

However, for the methodological construction of the interculturality of human rights, it is necessary to enhance the awareness of the mutual incompleteness of cultures to use as a tool for dialogue the idea that cultural incompleteness generates possibilities for intercultural complementation and, at the same time, that such dialogue will only be effectively developed if there is a meeting of common guidelines or themes (*homeomorphic equivalents*) that point out comparable functions of notions and symbols between different cultures (Baldi, 2004; Panikkar, 2004; Santos, 2006).

In the search for *homomorphic equivalents* that guarantee intercultural dialogue, I came across the following observation: if Indigenous Ethnology and Children's Anthropology have long revealed the primary prevalence of the person category – and the multiple forms of intervention and sociocosmological agency on corporeality – for the understanding of indigenous peoples, there is a need to effectively make it central in the debate on human rights, apprehending it as an evaluative reference in the intercultural dialogue with such collectivities. Thus, instead of paying attention to the way in which indigenous peoples conceive the value of the dignity of the indigenous person, an axiological inversion is now made, to understand as an adequate mechanism the preposition of the person with dignity. Therefore, from what cultural formulation of the person does it start to identify the way in which dignity, rights and childhood are constituted or affected (positively or negatively).

The person of dignity signals the primacy of the ethnic-cultural criterion for the definition of the generational marker of childhood - it is because they are indigenous

people, with sociocosmological interventions in their bodies, that such subjects are children, therefore, children indigenous - and their rights, whether they are nationalized or from indigenous legal systems[7].

Therefore, the person precedes dignity within the scope of the delimitation of the *homoeomorphic equivalent* with greater capacity for intercultural dialogue between indigenous and non-indigenous people. Thus, the non-indigenous ability to understand and dialogue with specific situations that involve their children (in terms of diversity or vulnerabilities and violations) will be better if we perceive such situations immersed in a broader field of construction of the person and the body, of multiples agents who participate in the interaction and education of such subjects, in short, that it is rather the *process of building the person*, and less *the moment of emergence of a problem-situation*, which should guide conduct, decision and socio-legal action.

Parallel to the anthropological foundations that enter the plane of resignification of the subjects of rights and human rights of children indigenous, there is also a political option for the axiological inversion: to highlight the normative absences in the treatment of cultural diversity in the context of children's rights. Taking cultural differences seriously by making them anticipate the very meaning of the existence of children's rights, childhood(ies) itself (themselves), not only thought of as an individual or singular reference, but now, and above all, in the collective dimension, or rather, in the apprehension of it as a culturally forged being, and, for that very reason, colonially forgotten about the children's rights.

2. Revisiting the proposition: the Doctrine of Plural Protection

The transition from the Irregular Situation Doctrine (ISD) to the DIP in Brazil, carried out throughout the 1980s and 1990s (and, certainly, until today), but, formally, with the promulgation of the Federal Constitution of 1988 (known in Brazil as CF/88), the ratification of the Convention on the Rights of the Child (CRC, via Decree n. 99,710/1990) and the implementation of the Child and Adolescent Statute (known in Brazil by the Portuguese acronym, ECA, Law n. 8,069/1990), was undertaken through the mobilization

[7] Therefore, it is articulated with the precepts of legal pluralism because it considers that the sociocultural construction of the person is also made by cultural practices of a legal nature, in the space of the internal jurisdiction of each indigenous people. On the subject, see: Amado (2020); Oliveira and Castilho (2019).

of civil society in favor of guaranteeing the universalization of rights to the universality of subjects included in the list of children and adolescents. Against the arbitrary definition of minors[8], which ended up attributing, as objects of the state power to punish or assist, mostly a single group of children, the sayings of the Brazilian popular classes, the discourse of the universalization of rights/subjects emerged as a reconfiguration mechanism of services and policies for children.

However, in welcoming the inclusion of "new subjects" and "new rights" in the Brazilian normative field, we forget to ask ourselves who would be the "new excluded" of this legal and institutional reorganization? Whom have we not known how to include - or guarantee rights - in the exact dimension of their identity condition as subjects? In other texts (Oliveira, 2014b and 2014c), I have already highlighted the interesting observation that the literal reading of the 267 articles of the ECA, as originally established in 1990, does not allow anything other than the signaling of a single article, 58[9], that could have a connection with the cultural diversity of "being a child", even if the normative text was far from the constitutional provision that deals with the subject: the right to indigenous school education.

In order not to fall into an anachronism, I will only say that the issue of children indigenous was not a central concern at the time of the normative structuring of the DIP in Brazil - despite having been at the international level, given the various articles that the CRC, implemented in 1989, but gestated throughout the 1980s[10], has on the rights of children indigenous, especially article 30[11]. With the elaboration of Resolution n. 91/2003 of the National Council for the Rights of Children and Adolescents (known in Brazil by the Portuguese acronym, Conanda), the reforms in the ECA arising from the Adoption Law (Law n. 12,010/2009) and the mobilizations around bills n. 1057/2007[12] and n.

[8] For an analysis of the historical construction of the minor, consult: Londoño (1991).

[9] Thus defined: "Art. 58. In the educational process, the cultural, artistic and historical values proper to the social context of children and adolescents will be respected, guaranteeing them the freedom of creation and access to cultural sources" (Brasil, 1990).

[10] On the subject, the analysis by Fonseca (2004) and by authors gathered in the UNICEF collection (2007) regarding the influence that the CRC had on the creation or reform of constitutional and infra-constitutional regulations around the world is interesting.

[11] I have endorsed article 30 of the CRC as the first normative support of the paradigm shift in children's rights for the treatment of cultural diversity (Oliveira, 2014b). For an understanding of the process that resulted in the dispute and consolidation of the normative text of article 30, see: UN (2007).

[12] The project proposes the provision of criminal measures against a series of elements classified as "harmful traditional practices". In 2015, the bill, which originated in the Chamber of Deputies, advanced to the Federal Senator and changed its numbering to 119, whose last movement is in October 2019. Substantial criticism of the legislative proposal is available at: Beltrão et al (2010), Netherlands (2015), Pacheco de Oliveira (s/d) and Segato (2014).

395/2009[13], public attention has shifted in relation to the legal treatment offered to children indigenous.

As can be seen, when analyzing the years of creation or entry into force of the regulations indicated above, more than a decade passed between the entry of the DIP into the national legal system and the beginning of its adaptation to the context of indigenous peoples. The first decade of the 21st century also highlighted geopolitical disputes in relation to public attention and legal-ideological formulations about problem situations and ways of serving children indigenous, sometimes reproducing the inferiorization and racial discrimination of people behind a rights protection language.

In the second decade of the 21st century, was prepared and came into force of Resolutions n. 181/2016 and n. 214/2018 of NCRCA, with emphasis on the formulation of guidelines for the adequacy of the services of the Rights Guarantee System (RGS) to the intercultural perspective and to the collective rights of traditional peoples and communities, a category in which peoples are included indigenous. The legal frameworks for early childhood, the infraction act and protected listening[14], brought new subsidies to reorder the logic of structuring and execution of care for indigenous children and children of traditional peoples and communities.

Children indigenous are part of a field of dispute over the place of ethnic diversity in children's rights, in which the work of building their foundations needs to be done based on an intercultural transversality of rights that establishes parameters for the foundation of the DPP, to be conducted as a hermeneutic-normative complement to DIP. I. e., in order to make it have better conditions to offer a more adequate treatment to

[13] The project proposed the creation of a specific chapter within the ECA – Article 69, which would be called: "On the Indigenous Child and Adolescent" – containing several normative changes in relation to various topics, such as infractions, adoption and life cycle. For further information, see: Gobbi and Biase (2009) and Oliveira (2014b).

[14] In the case of early childhood, the recognition of ethnic specificities occurred, initially, with the inclusion of a specific chapter to address indigenous peoples in the 2010 National Plan for Early Childhood, also covering quilombola communities and the black population. Subsequently, Law n. 13,257/2016, known as the Legal Framework for Early Childhood, established in its article 4, item III, the recognition of the diversities of Brazilian childhoods as a guideline for the implementation of public policies. And the revision of the National Plan for Early Childhood, completed in 2020, began to treat indigenous children in the broader field of early childhood in traditional peoples and communities. Regarding protected listening, Decree n. 9,603/2018 ensures a differentiated service to the situations of children and adolescents from traditional peoples and communities who are victims or witnesses of violence, especially in its article 17 in which it recognizes the equivalence of traditional practices with those developed by public bodies in the care of children of ethnic groups. Also, the National Council of Justice, both in Resolution n. 299/2019, regarding special testimony in court, and in Resolution n. 287/2019, which governs assistance to indigenous people in the criminal field, including socio-educational, presents interesting propositions regarding the mandatory presence of an interpreter in an indigenous language and the need for an anthropological report.

issues involving the cultural diversity of children indigenous– and children of different peoples and traditional communities.

I say *transversality*, in view of the contributions coming from the theory of transconstitutionalism, which advocates a relationship of reciprocal learning between different legal systems so that one has the power to influence the hermeneutic-normative construction of the other. According to Neves (2009), the postmodern legal system – or post-World War II – is marked by a plurality of sources or legal orders (international, regional, supranational, national, local, among others) in which certain problems in dispute in a legal order end up permeating (or having normative reciprocity) in other legal orders, "demanding solutions based on the intertwining between them" (2009, p. 121).

In this way, the author proposes the establishment of "transition bridges" between different legal systems, based on a concrete case and the lawful/illegal binary code, because

> "[the] relevance of the case-problem for both orders does not imply that the internal criteria of normative validity of one or both legal orders are denied, but rather that, in light of the problem, the normative contents are transformed into the concretizing process, enabling constructive coexistence between orders... In other words, starting from both normative texts and common cases, different norms can be constructed in view of the possible implementation processes that will develop in the colliding or partnering order" (Neves, 2009, pp. 126-127) (our translation).

Transconstitutionalism helps to think how international human rights treaties – and, above all, Convention no. 169 of the International Labor Organization (ILO) of 1989, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007 and the American Declaration on the Rights of Indigenous Peoples (ADRIP) of 2016 – as well as Indigenous legal systems can contribute to a reinterpretation of the rights of children indigenous in the intertwining between the national legal order and other legal provisions. Therefore, it is necessary to conceive of the problems or conflicts involving children indigenous who enter the administrative-judicial sphere as situations of existential reciprocity in other countries and legal systems in the world, especially in Latin American countries where indigenous peoples live.

As such, the rights of children indigenous go beyond the Brazilian constitutional and infraconstitutional limits, they are situated (or must be manufactured) in the transversal movement between legal orders, in which each one can offer subsidies to

concrete situations for "reciprocal learning" of human rights (Rodrigues, 2013; Serrano and Pazeto, 2013). And, in our case, for the construction of the DPP.

In the interaction between domestic and international law, transconstitutionalism benefits from the definition, by the Federal Supreme Court (known in Brazil by the Portuguese acronym, STF), of the supralegal character of international human rights treaties in the Brazilian legal system, that is, that they have a lower hierarchical level than the provisions constitutional norms, but superior to infra-constitutional norms[15], situation in which the ILO Convention 169. Maués (2013) observes that the STF has given international human rights treaties a broader character than the hierarchical level would allow them to assume, making them "*parameters of constitutional interpretation*, since they provide hermeneutic criteria to define the content of constitutional norms" (2013, p. 228. Italics added by the author).

Therefore, transconstitutionalism and the jurisprudential reading of the applicability of international law allow us to define the propositional character of international law, especially Convention 169 and the CRC, in Brazilian national law, that is, that it not only limits the infraconstitutional norms that are placed contrary to its provisions, but indicates the need to reread them – and constitutional law – in the light of international law, and, in the case of children indigenous' rights, to reorder children's rights through hermeneutic transversality with indigenous rights.

However, there is a limit to the theory of transconstitutionalism: the dialogue it proposes with indigenous legal systems and indigenous jurisdiction. The designation of "archaic orders" (Neves, 2013, p. 216) and the understanding that "strictly they do not admit legal-constitutional problems of human rights and legal limitation of power" (*Idem*), puts the option, by the author, of understanding that only a "unilateral transconstitutionalism of tolerance" (Neves, 2013, p. 217) is possible. This demonstrates the limits of a post-modern theory of the legal field in dealing with contributions more present in post-colonial and de-colonial theories of Law and, properly, in the intercultural construction of human rights.

For this reason, the *intercultural* aspect with which I designate the transversality of rights that underlies the proposal of the DPP. The intercultural is the recognition of

[15] Although Neves (2009) is against the idea of normative hierarchy, it helps to reinforce the enforceability of adopting international human rights treaties as part of the Brazilian legal system.

legal colonialism[16] (Ariza, 2015; Fernández Osco, 2000) that prevailed against indigenous legal systems and solidified the justification of the hegemony of state law and its prerogative of legal monism – or of the only right authorized to regulate the subjects and resolve social conflicts. It is also the realization that such a paradigm is no longer supported by the differentiated citizenship or ethno-citizenship acquired by indigenous peoples, especially after the CF/88, and which requires the reordering of the relationship between state – and international – jurisdiction and indigenous jurisdictions (Molina Rivero, 2008; Oliveira, 2013, 2019b; Yrigoyen Fajardo, 2016).

Thereby, the intercultural construction of human rights, as well as an aspect of the axiological inversion of children indigenous, is also a parameter for the foundation of the DPP, as it supports the production of a methodology for the equal participation of subjects from different cultural epistemologies (and jurisdictions) within the same territory and theme.

Thus, the intercultural perspective makes it possible to participate in the process of producing children indigenous' rights and promotes the valorization of subordinated knowledge, that is, of the cultural integrity of indigenous peoples, which includes legal systems and the prerogative of autonomy in resolving internal conflicts and regulation of the ways of life of indigenous peoples, and, with that, of children indigenous.

Because of this, the intercultural transversality of children indigenous' rights is based on a three-dimensional understanding of such rights, insofar as they are the result of the relational production between children's rights, indigenous rights and the cultural integrity[17] of each indigenous people.

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[16] According to Fernández Osco (2000), legal colonialism is the situation of subordination of indigenous legal systems to state law, as a result of the legal hegemony of the State and the legal discrimination suffered by indigenous peoples. For the author, the Law, like the rules about rights and duties, is a historical construction, the result of human activity and, in this sense, subordinate to the logics of history and power, thus constituting a privileged space for classifying maneuvers of inclusion. *versus* exclusion, legitimacy *versus* illegitimacy, rights *versus* uses and customs (customary law). In this way, legal discriminations are created, manifestations of internal colonialism and the constant tensions between colonizers and colonized, where the state historically constituted itself in a hegemonic way in front of the non-state, therefore, the indigenous. In a complementary way, Ariza works with the central hypothesis that "legal colonialism continues to permeate the constitutional reforms and the claims of change of the States and no matter how deep the constitutional changes are, the law does not change, it only reconfigures itself in another new form in the new phase and simply changes its nomenclature from State of Law to State constitutional, without resolving the historical problems and pending debts in matters of societies and nationalities excluded from power" (2015, p. 172), including identifying in the current situation the strengthening of multiculturalism – and not of the "after multiculturalism" – in the constitutional reforms of several Latin American states, with little progress in the way of interculturality.

[17] Gomiz and Salgado (2010) identify cultural integrity as a theoretical definition of the normative precept of article 5, item "b", of C169 – "the integrity of the values, practices and institutions of these peoples will be respected" (ILO, 1989) – that (in free translation) "it has the sense that the values, practices and institutions of indigenous peoples should be considered forming an organic whole that would suffer if changes were

The DPP seeks to highlight a complex field (still) under construction of adequate treatment for the cultural diversity of children indigenous, making use, in its main legal basis, of the most important principled assumption of differentiated citizenship: the self-determination of indigenous peoples (Oliveira, 2014b, 2014c, 2016).

This is because it considers the support of indigenous self-determination to be structural in the sociocultural construction of the person-child and their related rights (internal and/or external to indigenous jurisdiction), in order to invert the historical logic of subordination and protection of indigenous peoples to decisions and non-indigenous instances. Thus, recognizing the role of indigenous peoples in defining the rights of children indigenous and managing (when internal to the people) or participating (in the external sphere of indigenous jurisdiction) in the resolution of conflicts and problems related to them.

The evident conclusion of the discussion presented so far is that it is not only possible to imagine the inclusion of legal norms that support other rights for children indigenous, it is essential to transform the national (and international) legal culture of treatment of children indigenous and their peoples, a change substantiated by theoretical formulations and socio-state practices consistent with the size of the proposed challenge.

3. The challenges: ways to implement plural protection

In the lecture held at the II Indigenous Child/Childhood Seminar, I had addressed, on this topic, data related to one of the sessions of the book[18], at the time, recently released (Oliveira, 2014b). However, at the time of writing this article, I will refrain from repeating the issues already developed in another work and focus on new challenges that have mobilized me in the theoretical and investigative deepening of the rights of children indigenous and that, in a way, are fruit of the learning and exchanges established after the Seminar[19].

attempted to be introduced separately" (2010, p. 110). It is a term that enables a broader understanding of the cultural dynamics in which the legal system is one of the elements, holistically interconnected with the others.

[18] The topic "Eight Challenges for the Elaboration and Effectiveness of the Doctrine of Plural Protection" (Oliveira, 2014b, pp. 154-160).

[19] In particular, the dialogues with Adir Carsaro Nascimento, Andrea Szulc, Antenella Tassinari, Clarice Cohn, Elisa Costa, Estela Scandola, Humberto Miranda, Jane Beltrão, Lalan Pripan, Lucimara Cavalcante and Levi Marques. Likewise, I consider relevant the exchanges carried out at the Working Table "Construcciones

A first challenge relates to the concern of not turning the three-dimensional dimension of children indigenous' rights into a unilateral critique of children's rights. That is to say, in addition to the exchanges and influences arising from indigenous rights and the cultural integrity of indigenous peoples towards children's rights, one should consider what benefits and opportunities the latter can bring to the former? In short, what do children's rights add to indigenous peoples?

Certainly, children's rights – and the policies and institutions related to them – are knowledge in need of greater propagation and dissemination among indigenous peoples, not only for them to be informed, but also shaped according to their interests and ways of life. At the same time, another central element in the first challenge is the ability of indigenous peoples to implement the rights of children to strengthen their social struggles and political demands, not only in aspects related to education and health, which are commonly the most used, as well as in other áreas that have not yet been explored, such as those that can, for example, serve as a tool for accessing specific socio-assistance and psychological services for children or indicate new subsidies for previous studies of environmental impacts in the discussion of projects that may affect certain people and their territory.

In parallel, there are procedures and duties established by the rights of children towards parents, family and community members that need to be understood and agreed with indigenous peoples, so that they can be valid and functional locally. There is no doubt that the biggest challenge is the intercultural transformation of such rights, but they do not only represent guarantees of indigenous peoples vis-à-vis the State, there is a range of legal obligations and responsibilities, produced in the intercultural dialogue itself, and that need to be apprehended and respected by children indigenous and indigenous peoples, provided they are interculturally and not unilaterally agreed.

A second challenge is the complexity of the procedures to be taken in order to carry out the public debate and the consolidation of the children indigenous' rights in a country with more than 308 peoples distributed throughout the national territory,

diversas de niñez, crianza y aprendizaje en América Latina y su lugar en las políticas públicas de educación y salud" coordinated by Maria Adelaida Colangelo and Clarice Cohn, an integral part of the program of the I Latin American Biennial of Children and Youth, held in Manizales/Colombia, between November 17 and 22, 2014. Finally, some of the contributions indicated in this session are data resulting from the research project "Comparative analysis of application and (re)interpretation of the rights of children and adolescents to indigenous children: legal-theoretical contributions developed in the context of the indigenous peoples of Australia, Bolivia, Canada and Ecuador", coordinated by me, in force between 2014 and 2015.

speakers of 277 languages[20]. Indigenous cultural diversity requires a diversity of procedures to place the agenda of children indigenous' rights in the public debate. It is here that the intercultural emphasis will be further tested, to know the limits of its implementation in the spaces of participation of indigenous peoples, as it is not only a matter of guaranteeing it in conferences, public hearings and thematic seminars, but also of ensuring it in the very institutional structure of the RGS, in the judicial, legislative and administrative spheres, as well as in the direct debate with each people and in the mobilization of their organizations.

To this end, state and international agencies[21] play a strategic role in promoting and financing initiatives that propose the mobilization of children, organizations and indigenous peoples, as well as non-indigenous partners, to discuss and propose measures on the subject. In parallel, indigenous organizations also need to develop more projects that aim to broaden the debate on the rights of indigenous children within peoples.

The third challenge is the radical incorporation of the Anthropology professional as an essential member of the teams of public institutions of the RGS. Anthropological knowledge makes a decisive contribution to the production of working methods that achieve a better translation of the ethnic understanding of childhood and the interpretation of the problems targeted by institutional intervention. Whether in the internal debates of the technical team or in the development of field work, especially in the ethnographic aspect, the anthropologist "seeks to highlight the point of view of indigenous groups" (Leite, 2014, p. 14), to reveal knowledge and dimensions of the situation not perceptible to other professionals.

Matias and Andrade (2008) and Oliveira (2014a) indicate the need for at least one professional with a degree, master's and/or doctorate in Anthropology to make up the technical team of social assistance services in places where there are indigenous peoples. On the other hand, article 28, §3, of the ECA[22], reformulated by Law no. 12,010/2009, as

[20] The official datas for indigenous diversity in Brazil are 305 peoples and 274 languages, but these numbers do not consider the presence of at least three migrant indigenous peoples from Venezuela (Warao, Pemon, Panaré), and their respective own languages.

[21] Like the events promoted by Brazilian institution FUNAI between 2004 and 2008 (Gobbi and Biase, 2009), and, later, those sponsored by the United Nations, with the indigenous peoples of the Mato Grosso do Sul region, in 2010 (Scandola *et al*, 2014).

[22] "Art. 1st. To determine the Presidencies of the Courts of Justice (...). IX – promote non-onerous agreements with public and private bodies and entities working with indigenous communities and quilombo remnants, in order to select and accredit anthropologists who can intervene in events involving children and adolescents from these and other ethnic groups, in compliance with the provided in art. 28, §6, item III, of Law No. 8,069/90" (CNJ, 2014).

well as article 1, item IX, of Provision no. 36/2014 of the National Council of Justice (known in Brazil by the Portuguese acronym CNJ), indicate the need for the presence of the anthropologist in judicial intervention when dealing with a conflict involving the right to family and community coexistence[23].

However, the best proposal would be to edit a regulatory reform in the ECA, with content equal to that found in the amendment promoted by Law no. 13,046/2014, has as its content the obligation of public and private entities, "to have, in their staff, people capable of recognizing and reporting to the Guardianship Council suspicions or cases of mistreatment practiced against children and adolescents" (Brazil, 2014). By analogy, a normative text that required entities to have a professional in the field of Anthropology in municipalities where the Brazilian Institute of Geography and Statistics (known in Brazil by the Portuguese acronym, IBGE) identified, via the Census, the presence of indigenous people, would be an effective alternative.

The fourth challenge is the concern to identify the agenda of children indigenous' rights as a challenge for the indigenous peoples of the planet, and not only those of Brazil. Here, in particular, reflecting the interactions, exchanges and articulations that can be promoted at the level of Latin America and/or with States, indigenous peoples and university centers that have socio-state experiences outside Brazil.

In particular, attention should be paid to the measures developed by countries transforming themselves into plurinational states (Bolivia and Ecuador), which have promoted an intercultural constitutionalism of broad recognition of indigenous rights and have the potential to carry out normative-institutional innovations in the rights of children indigenous, if they know mediate constitutional advances with effective gains in the production of new socio-legal treatments.

Final considerations

As a conclusion, I consider it necessary to return to the two basic categories formulated in this article. First, the axiological inversion of children indigenous is a political-

[23] Without neglecting the observation made by Pacheco de Oliveira that "the anthropologist should not replace indigenous participation, even if his work promotes intercultural encounters carried out in a mutually respectful and fruitful way" (2012, p. 136) (our translation). Therefore, it is necessary to distinguish the participation of the anthropologist from that of indigenous peoples, as each represents a specific field of action.

anthropological resource that aims to apprehend and value the culturally differentiated ways of conceiving, socializing and caring for children and childhood in indigenous peoples, linked to the notions of body and person. By inverting the terms, I emphasize the need to calibrate the gaze to the sociocultural process in which the child is inserted, and not just to the temporal instant in which a certain demand is established. In addition, this inversion proposes a political and legal consideration of the potential of each indigenous people in the care and even in the resolution of conflicts involving indigenous children, in order to deconstruct tutelary and racist meanings that still hover in the services and end up disqualifying native initiatives of intervention.

The second category dealt with in this article, the DPP, is a theoretical formulation with full possibility of application to the broader set of traditional peoples and communities, and not just indigenous peoples. Basically, what is being discussed is how the self-determination of indigenous peoples – and traditional peoples and communities, in a broader sense – reverberates in the legal and institutional conceptions of the rights of children indigenous. And this "how" means not only establishing theoretical premises and foundations, but also methodological and practical guidelines to build intercultural transformations in children's rights and public policies[24]. The use of the plural term, in addition to the integral, is made to point out the plurality of conceptions and cultural foundations that condition the way in which childhood and the protection of children can be symbolized.

The four challenges highlighted in the last section of this article represent part of the practical challenges to be exercised by the State and Brazilian society in taking the rights of children indigenous seriously, including the connections it may have with other contexts in Latin America and elsewhere in the world. world. On the one hand, it means considering the relationship between children's rights and indigenous rights, and what the first legal component can add to the second, especially in terms of reinforcing political uses in the social struggles of indigenous peoples. On the other hand, there is the reference to the insertion of indigenous professionals – and of other peoples and traditional communities – and of professionals with training in Anthropology in the services of the protection network to climb a modification of the institutional logics since the internal dispute that the presence of such subjects can opportunize.

[24] I consider that these guidelines were well summarized in Resolutions n. 181/2016 and 214/2018 of Conanda, especially in article 3, single paragraph, from Resolution 181, in which there is a systematization of seven (items "a" to "g") recommendations to make services culturally appropriate.

The hope I have is to know that more than legal or methodological theorizations, we seek to point out that the ethnic diversity of children is not an exotic, negative or peripheral issue, it needs to be treated as a central and fundamental aspect of any debate involving rights of children and adolescents. There are ongoing experiences, some of which I sought to analyze (Oliveira, 2020b), but there is still much to be done in this challenge.

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