

INTERCULTURALITY IN SOCIAL SECURITY LAW RELATED TO THE INDIGENOUS PEOPLE OF THE JAMÁ Tÿ TÁNH COMMUNITY

A INTERCULTURALIDADE NO DIREITO PREVIDENCIÁRIO RELACIONADO AOS INDÍGENAS DA ALDEIA JAMÁ Tÿ TÁNH

Article received on: 11/25/2022

Article accepted on: 12/18/2023

Luís Fernando da Silva Laroque

Universidade do Vale do Taquari (UNIVATES), Lajeado/RS, Brazil

Lattes: <http://lattes.cnpq.br/6550642682865922>

Orcid: <https://orcid.org/0000-0003-1861-4679>

lflaroque@univates.br

Débora Pires Medeiros da Silva

Universidade do Vale do Taquari (UNIVATES), Lajeado/RS, Brazil

Lattes: <http://lattes.cnpq.br/2367232920931225>

Orcid: <https://orcid.org/0000-0003-4642-9411>

debora.silva1@universo.univates.br

The authors declare no conflict of interest.

Abstract

The colonial matrix is present in Brazilian legal norms so that interculturality consists of a proposal that aims to open new paths that confront aspects of coloniality. Brazil has 896 thousand indigenous people, of which 572 thousand live in rural areas and 324 thousand live in urban areas. The investigation uses experience cases from the Kaingang ethnic group, which is distributed across four Brazilian states and has a population of 39 thousand people. This paper aims to understand which aspects of interculturality are used in Social Security Law in relation to the Kaingang indigenous people of the Jamá Tÿ Tánh community, located in the municipality of Estrela/RS. Experience reports about access to Social Security from eight indigenous people from

Resumo

A matriz colonial está presente nas normas jurídicas brasileiras de modo que a interculturalidade consiste em uma proposta que visa abrir novos caminhos que confrontam os aspectos da colonialidade. O Brasil conta com 896 mil indígenas, dos quais 572 mil são moradores de áreas rurais e 324 mil vivem em áreas urbanas. A investigação utiliza casos de experiência da etnia Kaingang, a qual se encontra distribuída em quatro estados brasileiros e soma 39 mil pessoas. O objetivo deste trabalho é compreender quais aspectos da interculturalidade são utilizados no Direito Previdenciário em relação aos indígenas Kaingang da comunidade Jamá Tÿ Tánh, localizada no município de Estrela/RS. Foram utilizados relatos de experiência acerca do acesso à Previdência Social de oito indígenas



the Jamá Tj Tânĥ community were used. The case study method was adopted, being the research qualitative, whose technical instruments were bibliographic and documentary research, observations recorded in field diaries and oral history. It is concluded that interculturality seeks to confront the colonial matrix present in the Brazilian legal system, which makes access to Social Security benefits difficult, especially when it comes to indigenous populations.

Keywords: Social Security Law; indigenous people; interculturality; Kaingang.

da comunidade Jamá Tj Tânĥ. Adotou-se o método de estudo de caso, sendo a pesquisa do tipo qualitativa, cujos instrumentos técnicos foram a pesquisa bibliográfica, documental, observações registradas em diários de campo e história oral. Conclui-se que a interculturalidade busca confrontar a matriz da colonial presente no ordenamento jurídico brasileiro, a qual dificulta o acesso aos benefícios da Previdência Social, especialmente, quando se trata de populações indígenas.

Palavras-chave: Direito Previdenciário; indígenas; interculturalidade; Kaingang.

Introduction

The Brazilian population comprises diverse cultures, including Indigenous cultures, accounting for 896 thousand individuals. Among these, the Kaingang ethnic group stands as one of the largest Indigenous communities in the country, totaling around 38 thousand people presently. Kaingang communities are spread across four Brazilian states: Rio Grande do Sul, Santa Catarina, Paraná, and São Paulo. The specific community under examination resides in Vale do Taquari, within the urban area of Estrela, located in the state of Rio Grande do Sul. This study delves into the themes of interculturality as a societal practice and public policy, alongside Social Security Law concerning Indigenous populations.

Indigenous groups are entitled to rights as guaranteed by the Constitution of the Federative Republic of Brazil (Constituição da República Federativa do Brasil, CRFB) of 1988. These encompass rights to their social structure, customs, languages, beliefs, cultures, traditions, and original rights over the land they historically inhabited, among other related provisions. It turns out that, despite the existence of numerous norms within the Brazilian legal system recognizing the rights and cultural disparities of these communities, Indigenous peoples continue to advocate for the recognition of their fundamental rights, notably the right to land, which is crucial for cultural sustenance. Access to essentials such as drinking water and food remains a struggle for Indigenous communities, often perceived as privileges rather than basic rights. This stems from the historical-cultural oppression experienced by traditional peoples, compounded by the lack of awareness and bias among the local populace, as well as the lack of action of authorities responsible

for upholding Indigenous rights.

The colonial matrix is ingrained in Brazilian legal norms so that interculturality, as far as it is concerned, consists of a proposal for a social, political, ethical, and epistemic process and initiative that charts alternative courses challenging colonial facets. Thus, employing social practices and public policies is recommended to realize the objectives of interculturality, recognizing it as an active practice rather than merely a theoretical concept. It is essential to note that social practices encompass relationships, religions, organizations, and ways of life prevalent in traditional communities. Meanwhile, public policies function to actualize social processes and initiatives toward affecting fundamental rights.

This study aims to discern the social practices and public policies of interculturality applied in Social Security Law concerning urban indigenous contexts, specifically examining the Kaingang community of *Jamã Tÿ Tãnh* in Estrela, Rio Grande do Sul, Brazil. The study employed the case study method, with qualitative research techniques. Data collection involved various technical tools such as bibliography review, documentation analysis, observations documented in field journals, and oral history gathered via interviews. Consent was obtained from the community leadership through a formal prior consent form (*termo de anuência prévia*, TAP), while all interviewees manifested their agreement via an informed consent form, ensuring protection of their identities.

Semi-structured interview questions guided the discussions, involving four Indigenous individuals directly interviewed and dialogue with three others. Conversations and interactions were recorded in field journals. Additionally, researchers indirectly assisted two other Indigenous individuals through community leaders.

To achieve the objective, the work was split into three sections. The first explores the concept of interculturality as both a social practice and public policy. The second focuses on aspects concerning the Kaingang ethnic group and the specific community under investigation. Lastly, the third section delves into Social Security Law and related legislation concerning Indigenous populations, incorporating the shared experiences narrated by members of the *Jamã Tÿ Tãnh* settlement.

1 Interculturality

Throughout history, many deliberate efforts have been made to eradicate Indigenous and Black populations. For instance, the 19th-century whitening

policy regarded white European men as the ideal standard, aiming to uplift other ethnicities by adopting universal cultural norms, customs, and knowledge which was justified as a means to forge a national culture and modern society (MAIA; ZAMORA, 2018). Despite being considered an old-fashioned occurrence, its aspects are currently manifested through structural racism. Regarding the latter, it is understood as an element integrated into the political and economic structure of society—a manifestation typically addressed without surprise or disapproval, albeit often covertly (ALMEIDA, 2019).

Similar to its neighboring Latin American countries, Brazil's societal identity was crafted by denying its ancestral roots and embracing an idealized identity based on the values of the white European man. Walsh (2012) highlights that it was in South America that the aspirations for global dominance, imposition of modernity, and perpetuation of coloniality were given shape, practice, and meaning. The concept of whitewashing, both in physical appearance and culture, continues to operate as a systemic influence across all societal strata, enforced by coloniality, which established a power structure based on racial ideas. The term “coloniality” was introduced by sociologist Anibal Quijano between the 1980s and 1990s (MIGNOLO, 2017).

Quijano (1992) posits that coloniality lingers due to a persistent sort of dominance of European or “Western” culture over others, defining societal relationships. In essence, coloniality is the perpetuation of colonial principles, which originally involved explicit political, social, and cultural domination by Europeans over the colonized regions of Africa, Asia, and Latin America, culminating in their independence (QUIJANO, 1992). Therefore, while colonialism might appear eradicated, its objectives are kept alive through coloniality, which also embodies the constitutive darker side of modernity (MIGNOLO, 2017).

Utilizing the modern dichotomy between the civilized and the barbaric, coloniality established a hierarchy where non-Indigenous and European peoples were considered superior and placed at the apex of the social pyramid. Mixed-race individuals take up the intermediate layer within this social hierarchy, symbolizing a new identity. Meanwhile, Indigenous and Black individuals are relegated to the lower levels, comprising a homogeneous and subordinate category (WALSH, 2009). Quijano (1992) notes that during that time, the dominant standards of expression, beliefs, and imagery were enforced by the dominant cultures, not just to hinder cultural production among the dominated but also as effective tools for social and cultural control. Also, according to Walsh (2009), this means of

domination established a social classification system that promoted the global spread of capitalism through labor exploitation and the development of the national society.

In this context, Indigenous individuals were viewed as submissive and infantilized, while capable of assimilation and acculturation. Thus, their elimination was not conceived purely in ethnocidal terms¹ but rather from a civilizational standpoint (WALSH, 2009). However, it was observed that individuals from traditional cultures resisted and continue to resist the impositions of the colonial matrix. Contrary to the intended acculturation, the sociocultural dynamics of these groups allowed them to reinterpret and adapt everything available to them according to their needs and interests, giving this material both a new meaning and use, challenging the assumed power structure of non-Indigenous groups while perpetuating their own dominant culture (WALSH, 2009).

Culture manifests as an inseparable aspect of Indigenous themes since social groups shape their way of existence through culture. This highlights the intrinsic relationship between interculturality and culture, necessitating a detailed examination of this connection. The term *culture* stems from the Latin *colere*, meaning ‘to cultivate’, as it was initially related to agriculture. Over time, diverse scholarly opinions on its definition have sparked extensive discussions regarding multiple conceptions in recent centuries.

While referencing Frederik Barth’s theories, Poutignat and Streiff-Fenart (2011) suggest that culture is continually shaped by individual experiences, serving as a platform for learning. It is a process marked by continuous variation, influenced by personal relationships and experiences, constantly fluid and evolving. “The culture accumulated and lived by each individual undergoes constant reformulation, not only due to its expansion, but also because it is limited and channeled” as a result of processes of control, silencing, and erasure of experiences (POUTIGNAT; STREIFF-FENART, 2011, p. 22). It is imperative to comprehend that culture:

[...] signifies and distinguishes: the organization of human experience and action through symbolic means. The people, relationships, and things that populate human existence manifest themselves, essentially, as values and meanings—which

1 The concept of “ethnocide” originates from the work of French anthropologist Robert Jaulin, notably discussed in his book “La paix blanche: introduction à l’ethnocide” (1970) [...] being a process aimed at the systematic destruction of a specific way of life—subsistence techniques, production relations, kinship systems, community organization, language, customs, and traditions—of people differing in these aspects from the entity or State undertaking the destructive enterprise. In contrast to genocide, which involves the deliberate physical elimination of an ethnicity or population, ethnocide targets the ‘spirit’ (morale) or the differentiated sociocultural collective of a people (VIVEIROS DE CASTRO, 2020, p. 2).

cannot be determined based on biological or physical properties (SAHLINS, 1997, p. 41; our translation).

This understanding corroborates the postulates of Almeida (2015, p. 32; our translation) when describing that

[...] society, in producing culture, continually reconstitutes the individual, perpetuating a cycle of social representations—both hegemonic and non-hegemonic— [...] being a social process that continuously generates new meanings from lived experiences.

Culture operates as an ongoing process of reproduction and modification, revealing its dynamic nature. This is because individuals can challenge standards in place while appropriating and assigning new meanings to external elements, aligning them with their interests without altering the cultural axis, that is, its essence. Understanding this dynamism is vital to alleviate intergenerational clashes and prevent biased behaviors, Laraia (2001) highlights:

[...] human beings are a product of the cultural environment in which they are socialized—a culmination of a cumulative process reflecting knowledge and experiences acquired across numerous preceding generations. The appropriate and creative manipulation of this cultural heritage allows for innovations and inventions (LARAIA, 2001, p. 30).

Essentially, individuals perpetuate and evolve the knowledge inherited from their ancestors. Diverse cultural groups, their continuities, and transformations across time have engendered conflicts and confrontations globally. Specifically concerning Indigenous aspects, the situation seems to be replicated, as history indicates that this social group also faced significant violence due to their cultural differences. These observations underscore the necessity for dialogues that assess and establish social practices and public policies within the framework of the interculturality movement. This movement proposes a social, political, ethical, and epistemic process aiming to challenge the persistent coloniality within society and forge alternative paths, positions, relationships, and structures (WALSH, 2009).

Cultural diversity was recognized in the field of multiculturalism, which, according to Hall (2003), is a universally used term that cannot be confused with the concept of “multicultural”. For the author, while the term “multicultural” is qualitative and describes the social characteristics and governance issues emerging from the coexistence of diverse cultural groups attempting to forge a shared life, “multiculturalism” is substantive and concerns strategies and policies governing the diversity and multiplicity inherent in multicultural societies (HALL, 2003).

Despite not delving deeply into multiculturalism here, it is notable that this aspect predates interculturality, originating in the United States in the mid-1960s due to mobilizations within the African American social movement. This movement emerged from endeavors to redress ethnic inequalities and democratize higher education opportunities (GAIVIZZO, 2014).

However, the mere identification and cohabitation with a different culture did not guarantee respect and acceptance of the “other”. Criticisms of the multiculturalism perspective arose, failing to foster enriching relationships between individuals carrying distinct cultures, often allowing the dominance of a particular culture (WALSH, 2019). This theoretical approach to identifying cultural diversity as a given did not promote subsequent interrelationship enhancement, a facet covered later by interculturality (SILVA, 2006).

Interculturality has been a topic of discussion in Latin America since the 1980s within debates on educational policies advocated by indigenous peoples. By the 1990s, this discourse expanded to encompass not only educational concerns but also ethnic-racial diversity. The goal was to foster positive intercultural relationships, combat discrimination, racism, and social exclusion, and nurture conscientious citizens striving together for a fair, equitable, and pluralistic society (WALSH, 2009). Astrain (2003) underscored that the prefix “inter” denotes a positive interaction aimed at breaking down existing barriers between peoples, ethnic communities, and human groups. Consequently, “[...] the pursuit of dialogical instances is assumed to center on mutual acceptance and collaboration among intersecting cultures” (ASTRAIN, 2003, p. 327; our translation).

Interculturality, as a concept, project, practice, and process, embodies contact and exchange between cultures. Yet, this potential should not be limited solely to ethnic considerations but, instead, focus on continual interaction, communication, and learning among individuals, groups, diverse knowledge, values, traditions, logic, and rationalities. The aim is to foster, generate, construct, and advocate for mutual respect and the holistic development of all individuals, regardless of their cultural or social affiliations, transcending their cultural and social disparities (WALSH, 2009). The author contends that interculturality should be conceived not as a noun but as an active verb, aiming to influence institutional structures, relationships, and mindsets that perpetuate differences like inequality. This approach also enables the reconstruction of societies, structures, systems, and processes within the educational, social, political, legal, and epistemic realms, fostering encounters, dialogues, and collaborations between individuals, knowledge, meanings, practices, diverse logic, and rationalities.

Astrain (2003, p. 327; our translation) emphasized that interculturality “[...] alludes to an emerging society where ethnic communities, groups, and social classes acknowledge each other’s differences and strive for mutual understanding and appreciation through dialogical instances”. Pozzer, Cecchetti, and Díaz (2021, p. 576; our translation) underscore that “[...] intercultural relations exist amid tensions, conflicts, and clashes of interest because they challenge the standardizing logics of the contemporary world, supported by capitalist modernity, which typically oppresses and disregards plurality and diversity [...]”. The intercultural proposition aims not solely at traditional groups but at society in its entirety, intended to address the challenges of a multicultural society and foster human coexistence. It is crucial to note that as interculturality emerges as a trending topic, it has been implemented in various socio-political contexts, some of which contradict its essence and objectives (WALSH, 2012). Therefore, it is pertinent to present the interpretation of interculturality from three distinct perspectives.

The first concerns the relational aspect, involving the exchange among diverse cultures, practices, knowledge, values, and cultural traditions (WALSH, 2012). This perspective has always been prevalent in Latin America, evident in the undeniable interactions and relationships between indigenous and Afro-descendant peoples and the white/mixed-race society. These encounters and exchanges between different cultures are visible in historical and contemporary processes. However, they have also been exploited to justify and dismiss racism and gender differences. In this context, the relational perspective masks the power dynamics and ongoing dominance within intercultural relationships. Likewise, it confines the scope of interculturality to mere contact and relationships, obscuring the social, political, and economic structures that typically position cultural differences as superior or inferior.

The second perspective of interculturality is termed functional (WALSH, 2012), acknowledging cultural diversity and difference while striving to incorporate historically marginalized groups into an established social framework. The notion of functional interculturality has been perceived as a new form of multicultural logic, as it fails to uncover the roots of asymmetry and social-cultural inequality. It confines itself to “[...] promoting tolerance for diversity and accepting its coexistence in society but not fostering their exchange” (GAIVIZZO, 2014, p. 77). According to Walsh (2012), this recognition and respect for cultural diversity signify a new strategy of dominance aimed at managing ethnic conflicts and preserving social stability by integrating historically invisible groups into society.

The third perspective is referred to as critical interculturality (WALSH,

2012). Unlike the functional approach, critical interculturality does not merely start from the premise of tolerance and cultural inclusion; it addresses the structural-colonial-racial issues that persist in society. Critical interculturality questions and strives to dismantle institutional-structural power models and the pattern of racialization responsible for perpetuating discrimination, inequity, and inequality. While functional interculturalism confines itself to catering to the interests and needs of social institutions, critical interculturality advocates for peoples who have endured historical subjugation through reforms, social decolonization, and the creation of alternative frameworks (WALSH, 2012).

Critical interculturality has gained prominence in the Ecuadorian context, supported by the Indigenous movement, which has been advocating for the reform and transformation of colonial structures, institutions, and relationships. This change is not limited to Indigenous groups but encompasses the entirety of society. Notably, interculturality does not solely address ethnic-cultural diversity; it also confronts the differences perpetuated by a colonial power structure that continues to permeate all spheres of society in the 21st century. It stands as a political, social, ethical, and epistemic endeavor that diverges from Eurocentric legacies and the ideals of modernity. Its purpose lies in dismantling the structures, conditions, and mechanisms of power perpetuating societal issues, the marginalization of people, the relegation of knowledge, ways of life, logics, and rationalities, directly engaging with the matrix of coloniality (WALSH, 2012). While present across all aspects of contemporary life, understanding coloniality can be facilitated by highlighting four interconnected axes: the axis of coloniality of power, coloniality of knowledge, coloniality of being, and the cosmogonic coloniality of mother nature and life itself.

The 'coloniality of power', a term coined by Quijano (1992), traces its roots to debates about whether Indigenous people possessed souls, reflecting the classification of the world population based on race. This classification served as a criterion for distribution, domination, exploitation, and the overall control of labor in the economic realm. This axis hinges on the identification of race as a supposed biological structure, inherently placing individuals in a position of inferiority relative to others, underlying the formation of a hierarchical identity division, positioning white Europeans at the top, followed by mixed races, and finally, Indigenous and Black people (WALSH, 2012).

The concept of race, as addressed by the coloniality of power, facilitated the dominion established through the conquest of the Americas. Europe, in turn, adopted a new identity as it propagated colonialism worldwide, fostering the

Eurocentric perspective on knowledge and naturalizing colonial relationships between Europeans and non-Europeans. The notion of racialization rendered conquered and subjugated peoples naturally inferior, thereby deeming their phenotypic traits, mental capacities, and cultural contributions inferior as well (QUIJANO, 2007).

Before delving into the second axis—the coloniality of knowledge—it is crucial to examine the concepts of ethnocentrism, sociocentrism, and Eurocentrism, as these are integral to interculturality. According to Restrepo and Rojas (2010), ethnocentrism arises when an individual considers their knowledge, lifestyle, and associated perspectives from their cultural background as superior to those from other cultural formations. Sociocentrism entails discrediting and rejecting the culture of social groups other than one's own, attributing inferiority to both cultural and social differences in these concepts. Both cultural and social differences are regarded as reasons for inferiority within these concepts. Authors assert that Eurocentrism represents the amalgamation of ethnocentrism and European sociocentrism, establishing itself as a universal standard for history, politics, aesthetics, ways of life, and particularly, knowledge.

Hence, it can be stated that the axis of the coloniality of knowledge pertains to the role of epistemology and the functions of knowledge production in perpetuating colonial thought regimes (MALDONADO-TORRES, 2007). Walsh (2012) underscores this as a Eurocentric stance that, with an exclusive hierarchy of reason, knowledge, and thought, aims to discredit the existence and viability of alternative epistemic rationalities and knowledge beyond that of white European or Europeanized men. Coloniality of knowledge can be interpreted as “[...] the suppression of alternative forms of knowledge production [...], endorsing a Eurocentric perspective on knowledge and negating the intellectual heritage of indigenous and black communities, reducing them to primitive and inherently inferior categories and races” (WALSH, 2005, p. 130, our translation). In this context, this axis becomes “[...] the epistemic facet of the coloniality of power and consequently, a fundamental aspect of coloniality” (RESTREPO; ROJAS, 2010, p. 136; our translation).

The coloniality of knowledge embodies an epistemic arrogance of those who perceive themselves as modern and equipped with the most appropriate means to produce knowledge, presuming they can manipulate the world according to their interests (RESTREPO; ROJAS, 2010). Colaço and Damázio (2018, p. 131; our translation) argue, “[...] it is, thus, impossible to alter power dynamics without challenging the existing knowledge relationships that continue to foster colonial

distinctions, even if veiled by discourses purportedly acknowledging local knowledge”.

The third axis is the coloniality of being, which emerges from discussions on the ramifications of the coloniality of power across various societal domains, along with the imperative to elucidate inquiries concerning coloniality in individuals’ lived experiences, intertwining genetic, existential, and historical aspects (MALDONADO-TORRES, 2007). The invisibility and dehumanization of subaltern subjects are normalized by the coloniality of being; Walsh (2012) emphasizes that the human worth of these groups is often determined by their skin tones and ancestral roots.

The fourth and final axis, labeled the cosmogonic coloniality of mother nature and life itself, remains largely unexplored. Nevertheless, it is pertinent to talk about it as it intersects with Indigenous cultural themes, particularly that of the Kaingang. This axis prominently distinguishes itself in the dichotomy between nature and society, dismissing the cosmologies of Indigenous, traditional peoples, and their connections between the human and spiritual realms (spirits, gods, orisha) that underpin and sustain the lifestyles of these communities (WALSH, 2012). As per Walsh (2012, p. 68; our translation), “[...] mother nature—the source of all beings—establishes and imparts order and significance to the universe and life, interweaving knowledge, territories, history, body, mind, spirituality, and existence within a cosmological framework of relational and complementary coexistence”². The author also underscores that this axis within the colonial matrix endeavors to obliterate groups that hold such beliefs, aiming to exploit and dominate nature while highlighting the supremacy of the modern civilized individual.

It was noticed that, within the dialogue of interculturality, social practices manifest as an important aspect to be discussed, as when cultures converge, their social practices intersect and interact. In turn, public policies emerge as one of the tools for implementing the discourse of interculturality, that is, to address this aspect it is necessary to present the particularities of social practices and public policies.

Social practice encapsulates how society organizes and structures itself, encompassing a series of actions, tasks, functions, and ways of living that shape individuals’ lives. It integrates seamlessly with interculturality, rooted in social and cultural relationships and interactions. Marx (1982[1845]), in the eighth of the

2 La madre naturaleza – la madre de todos los seres – es la que establece y da orden y sentido al universo y la vida, entretejiendo conocimientos, territorio, historia, cuerpo, mente, espiritualidad y existencia dentro de un marco cosmológico, relacional y complementario de convivencia (WALSH, 2012, p. 68).

11 Theses on Feuerbach, introduced the concept of social practice, asserting that “[...] social life is fundamentally practical. All the mysteries that invite theory into mysticism find their rational solution in human practice and the understanding of this practice”. Traditional communities manifest distinct forms of organization, relationships, and religions, among other aspects, diverging from those prevalent among non-Indigenous populations (BRANDÃO, 1986). Even within communities of the same ethnicity, distinct social practices can be observed, highlighting the diversity present. Regarding interculturality as a social practice contributes significantly to fostering dialogue, nurturing positive relationships among diverse cultural groups, and promoting critical awareness for societal transformation, which is crucial as society continuously perpetuates discrimination, racism, and exclusion (WALSH, 2012).

Public policies gradually gain significance as they aim to secure rights, uphold social balance, and enhance the quality of life, impacting various aspects of individuals’ lives including health, housing, education, human dignity, culture, and more. According to Holanda (2015), public policies manifest as intricate constructs materializing via programs, actions, and projects that uphold constitutional principles of equality. They serve to foster cultural and social changes while addressing prevalent societal discrimination. Such demands are championed by public authorities in collaboration with civil society, aiming to facilitate discussions and substantiate fundamental rights (MUNHÓS; AGUILERA URQUIZA, 2021).

Walsh (2012) highlights the presence of interculturality across public policies, educational reforms, and constitutional changes, serving as a significant aspect within national-institutional spheres and in transnational cooperation realms. Interculturality as a public policy is an effect of the struggles of socio-political-ancestral movements, resulting from their demands for recognition of fundamental rights and strive for social transformation (WALSH, 2012). In this context, public policies emerge as a means to facilitate the application of the intercultural aspect, thereby becoming instrumental in implementing and nurturing interculturality.

2 *Jamã Tj Tãnb* Community of the Kaingang Ethnic Group

The Kaingang Indigenous community consists of approximately 39,000 individuals within the Jê linguistic trunk, of the Macro Jê linguistic family (IBGE, 2012). In Rio Grande do Sul, the Kaingang inhabit regions stretching along the

hydrographic basins from the Jacuí River to the banks of the Uruguay River (LAROQUE, 2009). According to Mota (2004), the term ‘Kaingang’ was first used by engineer Franz Keller in 1867 and later by sertanista Telêmaco Borba in 1882.

According to Tommasino (2000), the term “Kaingang” translates into “people of the forest”, a designation that refers to the concept of the environment which also shapes the identity of this group. This is due to the strong connection its members maintain with nature and their place of residence (ASSMANN; LAROQUE; MAGALHÃES, 2021). As per Tommasino (2000), land and nature embody the so-called “Great Mother” for the Kaingang, as those are the spaces where they reproduce their sociocultural practices, and which provide the elements necessary for their subsistence.

The *Jamã Tÿ Tãnh* community lives along Federal Highway BR-386 in Estrela/RS, within the Vale do Taquari municipality. Its name can be translated as “the coconut trees also live there” or “us and the coconut trees”. Vale do Taquari encompasses 36 municipalities in the central-eastern region of Rio Grande do Sul. While predominantly settled by German and Italian immigrants, it maintains a strong ancestral link to the indigenous peoples who previously inhabited the territory. Currently, along with the *Jamã Tÿ Tãnh* community, there are three other settlements of the Kaingang ethnic group in the area: the *Fosá* community in Lajeado, the *Tãnh Mág* community in Cruzeiro do Sul, and the *Pó Mág* community in Tabaí.

Jamã Tÿ Tãnh is formed from the descendants of Mr. Manoel Soares, a former resident of Santa Cruz do Sul, who initiated his migratory journey in the mid-1960s, rooted in the territories of the Taquari-Antas river basin (SCHWINGEL; LAROQUE; PILGER, 2014), so it is customary for the Kaingang to traverse their ancestors’ territories. Initially, the inhabitants settled close to the access junction to the municipality of Bom Retiro do Sul. Later, they relocated to the ‘old settlement’, situated 2 kilometers (1,24 miles) away, where they resided for 40 years. In 1990, Mr. Manoel Soares passed away, and leadership transitioned to his daughter, Maria Antônia Soares, an Indigenous woman highly respected for her influential role within the Estrelense community and her advocacy for indigenous rights (SILVA, 2016). Since then, the leadership of the *Jamã Tÿ Tãnh* community has been predominantly comprised of women, a less common occurrence within Kaingang culture.

In 2002, the efforts of Chief Maria Antônia and her sisters, Indígena, Maria Sandra, and Maria Conceição, led to the group’s recognition as part of the Kaingang ethnic group, facilitating the establishment of the Manoel Soares

Indigenous School by the State Department of Education via Decree No. 41.700/2002 (SILVA, 2016). However, the school received official recognition from the State Education Council of Rio Grande do Sul only two years later, via Ruling No. 447/2004, thereby becoming the Manoel Soares Indigenous Elementary State School (LAROQUE; SILVA, 2013).

The year 2005 marked the commencement of the BR-386 duplication project, directly impacting the *Jamã Tj Tãnh* community. By 2008, technicians initiated work on the environmental impact study. Upon approval from the Brazilian Institute of Environment (IBAMA), the project was granted the license required to commence work. FUNAI intervened in the process in 2009, and by 2010, the Support Program for Kaingang Communities was launched. This program identified the *Jamã Tj Tãnh* and *Fosá* areas as directly influenced zones (PRESTES, 2018).

The present-day territory of *Jamã Tj Tãnh* was granted as compensatory measures under the oversight of the National Department of Transport Infrastructure (Departamento Nacional de Infraestrutura de Transporte, DNIT). Construction of the settlement began in 2014 and was completed by mid-2015 (PRESTES, 2018). The settlement encompasses residences, a school, a cultural center, and a kiosk utilized for selling handicrafts, serving as one of the community's income sources (SILVA, 2020). At present, leadership is held by Márcia Soares Silva and Taiane Soares Silva, serving as chief and vice-chief, respectively (DIÁRIO DE CAMPO..., 2021a).

3 Reports of experiences from the *Jamã Tj Tãnh* community with social security rights

Enacted on October 5, 1988, the CRFB established the Democratic State of Law and, outlined in its preamble, ensured the protection of social and individual rights, freedom, security, well-being, development, equality, and justice. The Magna Carta was promulgated and grounded on the fundamental principles of a fraternal, pluralistic, and unbiased society, built upon social harmony and dedicated, both domestically and internationally, to resolving disputes by peaceful means (BRAZIL, 1988). It was the 1988 Constitution that introduced innovative provisions safeguarding the primary rights of Indigenous peoples as articulated in Articles 215, 231, and 232.

Section III of Articles 201 and 202 address rights related to Social Security, as it is one of the branches of Social Security, provided for in Article 194 of

the CRFB. It is important to note that, alongside safeguarding fundamental rights concerning Indigenous communities and Social Security, the Magna Carta also diverged from the interpretation outlined in the Indigenous Statute of 1973, which suggested the integration of Indigenous peoples into the non-Indigenous society. This Statute still holds legal validity. Thus, it is crucial to highlight the need for caution in its application, as it erroneously views indigenous individuals as subjects to be ‘acculturated’. Specifically, Articles 14 and 55 of the Statute guarantee Social Security rights for indigenous groups.

Presently, key legislations governing social security encompass Law No. 8,212/91, focusing on the funding plan, Law No. 8,213/91, addressing various social security benefits including disability, involuntary unemployment, advanced age, length of service, family responsibilities, and dependence due to the death or imprisonment of a family provider (BRAZIL, 1991a, 1991b), alongside Decree No. 3,048/99. An essential amendment to social security rights is EC No. 103 of 2019, known as the Social Security Reform, which further restricted access to these rights. Additionally, significant international agreements such as Convention No. 169 of the International Labor Organization (ILO) and the United Nations Declaration on the Rights of Indigenous Peoples are pertinent.

The Convention particularly addresses Social Security in its part “V – Social Security and Health”, specifically within Articles 24 and 25 (BRAZIL, 2004). These provisions underscore the necessity for the extension and unbiased application of social security systems to indigenous communities, along with the provision of adequate healthcare services (BRAZIL, 2019). Sanctioned on September 13, 2007, the United Nations Declaration on the Rights of Indigenous Peoples specifically addresses Social Security. Article 21 states that “[...] indigenous peoples have the right, without discrimination, to improve their economic and social situation, particularly regarding education, employment, professional training, housing, sanitation, health, and social security” (UN, 2008).

The General Social Security Regime (*Regime Geral de Previdência Social* – RGPS) encompasses various benefits such as programmable retirement benefits, disability benefits, and family and maternity protection benefits. Programmable retirement benefits cover scheduled retirement, retirement based on urban and rural age, retirement based on contribution time, teachers’ retirement, special retirement, and retirement for insured individuals with disabilities. Disability benefits include temporary disability benefits (formerly sickness benefits), permanent disability pension (formerly disability retirement), and accident benefits. Family and maternity protection benefits comprise survivor pension, prisoner’s dependents pension, maternity benefit, and family allowance benefits.

Eligibility for Social Security benefits requires individuals to be insured, mandatorily or by choice, or to be dependent on insured individuals. For Horvath Júnior (2011, p. 26; our translation), “[...] mandatory insured individuals are those who, by legal determination (*ex lege*), are linked to Social Security since they carry out some remunerated activity of an urban or rural nature, whether effective or occasionally”. Under Article 11 of Law No. 8,213/1991, mandatory insured individuals encompass employees, domestic workers, self-employed individuals, individual taxpayers, and specially insured individuals, a classification that can include Indigenous people (BRAZIL, 1991b).

Normative Instruction (IN)³ No. 77/2015 from the National Social Security Institute (Instituto Nacional do Seguro Social, INSS), in its Article 39, V, § 4º, designates Indigenous persons as special insured individuals, specifically as artisans (INSS, 2015). IN 128/2022 succeeded this directive, reinforcing this right with Article 109 V, § 4º (INSS, 2022). Moreover, the IN outlines other rights and responsibilities pertaining to Social Security and Indigenous individuals. For instance, Article 8th, VII, §§ 4th and 5th state that if an Indigenous person is unable to obtain an identification number due to a lack of civil registration, the INSS must inform the National Indigenous People Foundation (Fundação Nacional dos Povos Indígenas, FUNAI), which will assist these individuals in acquiring the necessary documentation. Moreover, the Social Security Administration (INSS) will not utilize the administrative records of birth and death provided by FUNAI to determine eligibility for social security and assistance benefits in cases where a civil registration certificate is absent (INSS, 2022).

The NI also stipulates that if an Indigenous individual lacks certification from FUNAI or if a non-Indigenous spouse or partner, despite engaging in activities on Indigenous lands, seeks recognition as a special insured person, proof of such status will require a certificate from the FUNAI. This certificate will affirm the Indigenous status of rural workers, aligning with Article 109, V, § 5, and Article 116, X, of NI 128/2022. This certificate, issued either physically or digitally by FUNAI, must bear the identifying information of the entity and the issuer of the declaration. Its validation is contingent upon approval by the INSS, following Article 116, § 6º (INSS, 2022).

On August 20, 2021, during discussions with leaders of *Jamã Tj Tãnh*, the deputy chief mentioned that FUNAI assists in processing social security benefit requests but highlighted considerable confusion in evaluating these benefits. An

³ The Normative Instruction (NI) stands as an administrative regulation established and employed by the INSS. Consequently, there might be differing interpretations within the judicial realm.

Indigenous woman emphasized their categorization as rural workers due to handicraft production, citing numerous challenges in substantiating their activities to qualify as special insured individuals (rural workers engaged in handicrafts, etc.). She also disclosed that the birth certificates of non-Indigenous individuals often note their Indigenous status, whereas many Indigenous individuals lack the Administrative Registration of Indigenous Birth (Registro Administrativo de Nascimento de Indígena, RANI), further complicating the administrative process (DIÁRIO DE CAMPO..., 2021a; our translation).

During another interview with members of *Jamã Tj Tãnh* on June 18, 2022, researchers revisited this issue to corroborate information documented in a field diary from August 20, 2021. Consequently, concerning the impact of civil registration on the allocation of Social Security benefits, indigenous women relayed the following: Researchers: [...] And tell me something, when I came here the other day, Indigenous B, I think you will recall, uh... you mentioned that sometimes documents don't match because of the birth certificate, which sometimes doesn't say 'Indigenous'. How do these things work? Remember that? That we were there, I think it was the same day I was with Juciane... that sometimes there's discrepancies in the documentation because the birth certificate sometimes doesn't say 'Indigenous' and we go to the INSS and don't... how does that work? I don't know if you remember saying that, right...

Indigenous A: When they ask about your race, Danda... so, when the child is born, many won't say 'Indigenous'. I think that's what she means. So, there's no way to tell for sure that the child is Indigenous, right?

Researchers: That's more or less what you told me that day, I just wanted to go through that again.

Indigenous B: Yes.

Researchers: But has any case ever happened?

Indigenous B: It is happening to this day. Now they asked [for it] in the case that... INSS is now demanding [this information] when the mother is about to give birth, right? Here in the settlement, you currently have to notify that you are Indigenous and that you are from here.

Indigenous A: Then, on the yellow paper, they'll write down 'Indigenous...' and it has to read 'Indigenous', it cannot say 'brown'.

Researchers: What is this yellow paper?

Indigenous A: It's the paper [they give you] when the child is born.

Researchers: The birth certificate?

Indigenous B: No. The one for registration.

Indigenous A: Who makes the registration?

Indigenous B: It is a yellow paper they give you.

Indigenous A: They give you this at the hospital when the child is born, with the details of the parents and the child.

Researchers: oh, I see.

Indigenous B: [It also says] where you live, whether it is a rural area, or if you are from a settlement.

Researchers: That paper has to say you're Indigenous.

Indigenous B: That one, then you send it and do... you take it to FUNAI. FUNAI demands it. [You] don't take it there anymore, now you send everything using that thing...

Indigenous A: A computer.

Indigenous B: Yeah, computer. And then they see that it doesn't say it... that the hospital did not put it there. It's just... we now have to notify and ask... when we are going to have the baby, we have to notify [them] beforehand—"Look, I'm from a settlement and I'm Indigenous".

Researchers: But does this end up hindering maternity benefits?

Indigenous A: Of course, it does! They end up denying FUNAI's document saying you are Indigenous if the certificate does not say so... if there's another race listed (ENTREVISTA..., 2022, p. 4).

Freitas (2016) emphasizes that, in numerous cases, the certificate issued by FUNAI—likely referring to Circular Letter No. 46 (Self-declaration of Special Insured Person – Rural), a document verifying the status of a special insured person—is insufficient. This is due to discrepancies in its completion during data cross-referencing, as well as many indigenous individuals temporarily working for companies, which misrepresents their special activity.

Disability benefits, such as temporary disability benefits (previously sickness benefits), retirement due to permanent disability (previously disability retirement), and accident benefits, are accessible to all Social Security insured persons who, due to any reason, face permanent or temporary work incapacitation. This includes those with a reduction in working capacity caused by either a casual or work-related accident.

During field visits to *Jamã Tj Tãnb*, researchers did not engage with Indigenous individuals seeking disability benefits. Regarding experiences with retirement benefits, researchers only spoke with an Indigenous interlocutor who had recently retired. Despite the brief conversation, the retiree mentioned that FUNAI assisted in their retirement process, with the benefit approved three months after the request. In his experiences with the INSS, the interlocutor did not encounter significant obstacles. Typically, retirement requests can take years, but in this instance, it took three months, an exceptional and reasonable timeframe for evaluating and granting such a benefit (DIÁRIO DE CAMPO..., 2021a).

Family and maternity protection benefits encompass maternity benefits, family allowance, survivor pension, and prisoner's dependents pension. The maternity benefit is stipulated in Article 71 *et seq.*, granting "[...] 120 days of benefit

starting sometime between 28 days before the birth and the delivery date” (BRAZIL, 1991b; our translation). There is no waiting period, requiring only the insured status of the worker, self-employed worker, and/or domestic worker (CAS-TRO; LAZZARI, 2022). Experiences with accessing Social Security benefits are notably more frequent among women from *Jamã Tj Tãnh*, primarily due to most mothers being granted the maternity benefit (DIÁRIO DE CAMPO..., 2022a).

On August 20, 2021, concerning experiences with the maternity benefit, leaders mentioned that their benefits were granted without significant hindrance with assistance from FUNAI at the time. When inquired about the delay in receiving the maternity benefit, an Indigenous health agent interjected, stating that the INSS typically takes up to four months to process. The deputy chief added that a significant number of Indigenous individuals do not immediately receive the maternity benefit after childbirth, consequently losing the right to the benefit over time. The leadership asserted that the deadline for claiming the maternity benefit is five years. However, the chief mentioned being informed that the deadline would be changed to a full year (DIÁRIO DE CAMPO..., 2021a).

To inform and raise awareness, researchers stated that the statute of limitations for claiming the maternity benefit is five years. In this sense, the leaders’ discussion about the time limit aligned with the prescription for claiming the maternity benefit, with the vice chief’s information coinciding with legislation, particularly Article 103, sole paragraph, of Law No. 8,213/1991, stating: “[...] establishes a five-year limit from the date when payments should have been made for pursuing any legal actions regarding overdue installments, refunds, or owed discrepancies by the Social Security, excluding the rights of minors, disabled individuals, and absentees (BRAZIL, 1991b; our translation)”. Moreover, on August 20, 2021, a brief conversation with an Indigenous woman holding her 1-month-old baby revealed that although she had applied for the maternity benefit via FUNAI, she had not yet started receiving the benefit, mentioning that its implementation takes around three months, corroborating the information previously shared by the Indigenous health agent (DIÁRIO DE CAMPO..., 2021a).

The dependents of the insured are granted the survivor pension, as outlined in Article 74 et seq. of Law No. 8,213/991 and Article 201, V, of the CRFB, disbursed to insured individuals’ dependents. The prerequisites for claiming the survivor pension are: (a) the insured person’s death; (b) dependency of the deceased; (c) the existence of beneficiaries; and (d) a minimum of 18 monthly contributions and at least two years since marriage or the beginning of the stable union (BRAZIL, 1991b). Among the key changes introduced by EC No. 103/2019

regarding the survivor pension, it is noted that the amount corresponds to 50% of the retirement allowed to the insured person or whatever they would have been paid if retired due to permanent disability on the time of death, which is increased in quotas of 10% per dependent, capped at a maximum of 100%. Similarly, it was determined that, in case of concurrent survivor pension and retirement benefits granted under the RGPS or RPPS, the beneficiary would receive the full value of the most advantageous benefit along with a portion of each additional benefit, calculated cumulatively, according to the following thresholds: 60% of the amount exceeding one minimum wage up to two minimum wages; 40% of the amount exceeding two minimum wages up to three minimum wages; 20% of the amount exceeding three minimum wages up to four minimum wages; and 10% of the amount exceeding four minimum wages⁴ (BRAZIL, 2019).

During a field trip on June 18, 2022, one of the community leaders reported that when their patriarch, Mr. Manoel Soares, passed away in 1990, the documents for processing compensation were handed over to an individual who visited the community. The Indigenous community could not recall the individual's name. At that time, Maria Antônia handled the matter, subsequently passing away. This individual visited the community, delivered some funds, and since then, no further updates have been received. Leaders inquired whether there was a means to verify if a survivor pension application had been placed in the name of Mr. Manoel's widow (DIÁRIO DE CAMPO..., 2022a). Researchers responded affirmatively, committing to check for information. Following inquiries on the Court of Justice, Federal Court, and INSS websites, no administrative or judicial records were found.

Thus, the field trip on July 29, 2022, aimed to provide feedback to the leaders on the aforementioned demand. During the meeting, researchers explained the process undertaken to explore the possibility of applying for a survivor pension for the Indigenous widow of the community patriarch, offering detailed explanations to all involved parties that:

Maria Conceição provided Dona Lídia's Social Security number so that the volunteer could access her INSS registration. However, the volunteer could not log in to Ms. Lídia's "Meu INSS" (My INSS) account due to a registered password. Through WhatsApp messages, the volunteer explained to Maria Conceição that platform

⁴ For instance, an individual receiving three minimum retirement wages, when eligible for a survivor pension, must opt to receive the most advantageous benefit in full, while the subsequent benefit would be capped at 40%. This determination is based on the most advantageous benefit, which falls between two and three minimum wages. The cutting percentage applied to the second benefit depends on the amount received from the most advantageous benefit.

access was needed to verify if a survivor pension request had been made, as well as its implications. Maria Conceição informed that she did not have the password and neither did her sisters. The volunteer requested that Maria Conceição send a photo of Ms. Lídia holding her ID card and a photo of the document itself to issue a request for a new password to the INSS. Maria Conceição complied, and the INSS provided them with a new password. Débora successfully accessed Dona Lídia's "Meu INSS" platform (DIÁRIO DE CAMPO..., 2022b, p. 1; our translation).

After a briefing on their actions and the information gathered, researchers found three retirement requests in the Indigenous widow's record, all filed in 2004, and that they would have to request copies of the administrative files to review each process. Examination revealed two of them were rejected and one was granted, which constituted her current retirement benefit. In all processes, the widow stated Mr. Manoel was a farmer, and she relied on him and further help from their daughters for assistance. Researchers noted the absence of survivor pension applications in the "Meu INSS" registry. This absence might be due to the applicant's age, considering the insured person's death occurred in 1990 (DIÁRIO DE CAMPO..., 2022b).

The researchers clarified that survivor pension applications do not expire, allowing leaders to submit one, although retroactive salaries wouldn't be granted, only potential benefits post-application if successful. They cautioned that success wasn't guaranteed due to the 32-year gap since the death. However, it was crucial to attempt, citing court decisions indicating that prescription did not affect the applicant's rights, except for benefits unclaimed within five years due to beneficiary inaction (GOIÁS, 2019).

The leaders expressed their interest in applying for the benefit. Therefore, the researchers asked for copies of the widow's documents—her marriage certificate to Mr. Manoel, as well as his death certificate. Indigenous B complied with their request and was also asked to provide FUNAI's certificate confirming the Indigenous person's status as a rural worker. Indigenous C expressed her intent to request the certificate via *WhatsApp*[™] application, which served as a contact method between the community and FUNAI. Finally, the leaders were advised that the initial request would proceed administratively and, if rejected, they could explore the judicial route (DIÁRIO DE CAMPO..., 2022b). Upon returning to the settlement on September 1, 2022, and inquiring about FUNAI's document, the researchers were informed that FUNAI would make the request themselves, considering it the most favorable approach. They emphasized, however, that the widow would not be entitled to retroactive payments, as previously mentioned by the researchers (DIÁRIO DE CAMPO..., 2022c).

Questions concerning the possibility of a survivor pension for the Indigenous widow emerged, particularly regarding why FUNAI, aware of her status as the widow of a Social Security insured person, had not informed her of her rights or applied for the benefit. This might reflect the foundation's neglect of Indigenous rights. Additionally, researchers were aware that Mr. Manoel had two other wives (SILVA, 2020). In this scenario, if all widows applied for the survivor pension, how would the municipality proceed? Article 371, § 1st, of IN 128/2022 provides the answer to this question:

Article 371. The survivor pension, in the case of more than one pensioner, will be distributed among all dependents, in equal shares, considering:

[...]

§ 1 For applications made from February 24, 2016, the allocation of a survivor pension among partners of a polygamous Indigenous insured or partners of a polyandrous Indigenous insured is permissible, provided that the dependents are also Indigenous and furnish a declaration from the local FUNAI body affirming the benefactor's residence in a community with a polygamous/polyandrous culture, alongside other requisite documents (INSS, 2022).

Prisoner's dependents pension is provided for in Article 80 of Law No. 8,213/1991 and Article 201, V, of the CRFB. This is a benefit paid to the dependents of low-income insured individuals incarcerated under a closed regime. Castro and Lazzari (2022) assert that individuals aged over 16 and under 18 affiliated with the RGPS, and institutionalized in educational institutions under the care of the Children and Youth Court, are considered equivalent to being detained. Freitas (2016, p. 75; our translation) emphasizes that "[...] dependents must then prove their prisoner status, the prisoner's insured status and Indigenous status".

Special insured Indigenous individuals, according to Freitas (2016), can apply for this benefit, with many cases arising from land disputes. Contrary to common belief, the prisoner's dependents pension is not universally granted to all prisoners. It serves to safeguard the insured inmates' families, ensuring their rights are upheld if they meet benefit requirements, including insured status, a 24-month waiting period, and being a low-income insured with a maximum gross income of BRL 1,655.98 in 2022 (this amount is subject to yearly updates) (CASTRO; LAZZARI, 2022).

During a field trip on August 20, 2021, the then-chief reported filing for the prisoner's dependents pension and being informed of an approximate 30-day decision timeline. Initially, INSS had taken measures as her partner was listed as a fugitive, meanwhile, he was detained and serving his sentence at a different prison system (DIÁRIO DE CAMPO..., 2021a). A few weeks later, during another field

trip, the chief confirmed the approval of her prisoner's dependents pension (DIÁRIO DE CAMPO..., 2021b). Subsequently, researchers assisted the Indigenous woman in obtaining the prisoner's dependents pension, which must be renewed every three months at the INSS. The chief highlighted a similar situation faced by another Indigenous woman in the settlement. The leadership mentioned that although the prisoner's dependents pension had been initially rejected, the provision of additional information to the request, as done in the previous case, was sufficient to resolve the situation.

A field trip on October 5, 2021, aimed to assist in a prisoner's dependents pension request that had been presented two times and twice rejected by the municipality. The applicant, a non-Indigenous woman, had a long-standing relationship with an indigenous man from the community. She clarified that the benefit was denied because it was filed under her Social Security number instead of her husband's dependents, i.e., her children, as advised by an INSS phone operator. Before delving into the case, the researchers requested authorization from the leadership, who agreed positively to aid in the matter (DIÁRIO DE CAMPO..., 2021c).

Upon scrutinizing the administrative process to discern the reason for denial, it was discovered that while the FUNAI server had accurately provided data and documents for all dependents, the rejection was due to the absence of a judicial certificate of imprisonment, a document proving actual incarceration, and lack of evidence regarding the insured individual's rural worker status, distinct from the reasons given by the Indigenous woman. Researchers assisted in procuring the judicial certificate of imprisonment and emphasized to the Indigenous woman the importance of liaising with FUNAI's employee to verify proof of rural activities since the foundation issues such documents, emphasizing that the special insured status is established not merely by Indigenous identity but by evidence of activities (rural, artisanal, etc.) (DIÁRIO DE CAMPO..., 2021c).

Although the judicial certificate of imprisonment was forwarded to the municipality, the benefit was again denied, this time on the grounds that the incarcerated Indigenous individual had not successfully proven rural/handicraft activities. Researchers recommended that the Indigenous woman seek advice from FUNAI's attorney to potentially file a lawsuit in court. However, she clarified that FUNAI solely provided documents. In an effort to raise awareness among the Indigenous community, researchers explained that she could personally approach the Federal Special Court to initiate legal action without a lawyer, especially considering the demand's value fell below 60 minimum wages (DIÁRIO DE CAMPO..., 2021c).

The researchers were approached to assist another Indigenous woman in obtaining a judicial certificate of imprisonment to seek the prisoner's dependents pension. However, upon presenting the document to the leadership, the Indigenous woman clarified that the referral would not succeed as the incarcerated person was non-Indigenous. Additionally, the individual had resided in the settlement for only a year, falling short of the required five-year cohabitation period for FUNAI to extend him Indigenous rights (DIÁRIO DE CAMPO..., 2021c).

Jamã Tÿ Tãnh is a *sui generis* community in several aspects, one of them being the permission to form unions between Indigenous and non-Indigenous individuals. The leadership highlighted recurrent issues at the INSS due to this social practice, where benefits sought by non-Indigenous individuals residing in the settlement with Indigenous people are rejected. The municipality disputes their Indigenous status, stating “[...] they are not Indigenous” (DIÁRIO DE CAMPO..., 2021b). Regarding this interethnic contact⁵ not acknowledged by the INSS, based on the theory of Frederik Barth, Poutignat, and Streiff-Fenart (2011), recognizing another person as a member of the same ethnic group requires a sharing of criteria for evaluation and judgment, regardless of how different the members' behaviors may be. That is, if they say they are A, as opposed to another category B, they are seeking to be treated and have their behaviors judged as those of A, not B. It is paramount that both are “playing the same game”, demonstrating that there is the potential for diversification and expansion of their social relations—a partnership, an agreement, a common understanding—not necessarily due to phenotype but rather due to culture, in a way that eventually covers all the different sectors and domains according to their interests. In this context, the dialogue persists between researchers and the “non-Indigenous woman”, partner of an Indigenous individual from *Jamã Tÿ Tãnh*.

Indigenous A: It's like when I recently went to get a duplicate of my ID... they asked me about my race, and I selected 'Indigenous'. Because I've been living here for years, you know, I already have a connection within the community, I feel like an Indigenous person.

Researchers: Hmm. I get it. How long have you been living here?

Indigenous A: Over 10 years.

Researchers: She is your sister-in-law, right?

Indigenous B: Yes. (ENTREVISTA..., 2022, p. 5).

⁵ Biological contrasts (skin color, eye, or hair type) and cultural distinctions (community work structures, marriage customs, behavioral norms, religious convictions) that were previously categorized as racial disparities can now be deemed ethnic differences. A collection defined by these kinds of criteria constitutes an ethnic group (e.g., gypsies, Lapps, or Tapirapé Indians), with ethnicity forming the basis upon which it is identified. The encounter between these groups and other tribes, ethnic minorities, or white colonizers can be referred to as interethnic contact (BRANDÃO, 1986).

As observed, the Indigenous population may fall under any of the categories of Social Security benefits. However, typically, they are categorized as special contributors due to their activities being similar to those of rural workers. Notably, there are no privileges or benefits specifically tailored for Indigenous individuals based on their circumstances, contrary to popular belief.

During discussions on social security with the Indigenous community of *Jamã Ty Tân̄b*, challenges arose as they struggled to articulate their experiences with the INSS. It was observed that they are aware of their rights, and for the most part, also know when to apply for social security benefits. However, things could get complicated when something goes wrong during the process, as they do not have access to suitable legal assistance. When faced with the bureaucracy of the Brazilian legal system, which, as mentioned, was inherited from colonization, many end up waiving their rights.

The enduring bureaucratic structure inherited from colonial times persists in the Brazilian system, regardless of this hierarchical legal framework, predominantly shaped by individuals with economic and political influence, having proved unsuccessful in addressing conflicts and societal issues (RIBEIRO, 2021). Together with its intricate legislation, Social Security Law is compounded by the INSS's authority, which issues normative instructions and resolutions, further complicating access for policyholders.

The narratives provided by Indigenous individuals often challenged the researchers' understanding. Despite utilizing straightforward language to broach the topic and gather data, researchers encountered hurdles in identifying the root causes for denied benefits, occasionally due to the Indigenous community's lack of awareness. The intricate and frequently changing landscape of social security legislation often leads to misunderstandings. Matters still under discussion in the legislature or short-term temporary measures often create confusion among citizens, who will consequently spread conflicting information. It should be noted that, despite the complexity of norms primarily formulated mostly without Indigenous participation, these communities have sought to appropriate these codes and use them to their advantage.

Conclusion

As one of its main characteristics, the Law finds its roots in positivism and the principles of legality. Its thought, formulation, and application are directed towards Western ideations, often disregarding social particularities and realities.

The colonial matrix manifests itself in various facets of society, particularly within institutions responsible for shaping and implementing legal norms. Consequently, these mechanisms, intended to safeguard justice, frequently fall short of their primary purpose. Brazil's Social Security Law exemplifies this disparity. While theoretically founded on legality, in practice, it often fails to fulfill its social role due to its increasingly narrow perspective. Interculturality, as both a social practice and public policy, serves as a mechanism to depart from universal, homogenizing ideologies, thus aiming to eliminate the disregard for the unique characteristics and realities of traditional populations, such as the Indigenous people of the *Jamã Tjĩ Tãnh* community.

In this context, social practices and public policies emerge as essential elements of interculturality, with social practice delineating how a society organizes and structures itself, while public policies serve as instruments for implementing intercultural facets. These concepts are inherently intertwined and cannot be separated. Observation indicates that the Indigenous individuals of the *Jamã Tjĩ Tãnh* community generally access their Social Security rights because they are categorized as special insured individuals based on their labor. Furthermore, considering that Social Security Law is based on legality—which at various points disregards social reality and Brazilian cultural diversity—and that interculturality aims to intervene in this structure in terms of institutional practices, approaches, and the application of the law, we demonstrated the dialogue between Social Security Law and interculturality as a social practice and public policy. It is considered a social practice and public policy as it involves action rather than being solely a theoretical perspective.

Insights gleaned from dialogues with Indigenous interlocutors suggest that the Kaingang Indigenous people are increasingly seeking to adopt non-indigenous codes to their advantage, notably in laws concerning their territories and education. Additionally, the intricate, bureaucratic nature and frequent modifications in social security legislation contribute significantly to the challenge of comprehending Social Security benefits, leading most Indigenous individuals to predominantly pursue benefits solely through administrative channels. Most Indigenous individuals opt for the administrative route, at times making multiple attempts, without endeavoring to contest unfavorable administrative decisions through the courts. This reluctance is primarily due to the bureaucratic system's complexities and the absence of legal assistance beyond administrative issues since FUNAI exclusively aids with administrative matters. Thus, with a view to a more equitable society and a more comprehensive Law, we recommend the application of interculturality both as a social practice and a public policy.

References

- ALMEIDA, G. G. F. *A identidade territorial gaúcha no branding das marcas regionais: caso da marca da cerveja Polar*. 2015. f. 175. Dissertação (Mestrado em Desenvolvimento Regional) – Universidade de Santa Cruz do Sul, Santa Cruz do Sul, 2015.
- ALMEIDA, S. L. *Racismo estrutural*. São Paulo: Pólen, 2019.
- ASSMANN, B. F; LAROQUE, L. F. S; MAGALHÃES, M. L. Saúde indígena em tempos de pandemia: relações de respeito às especificidades culturais dos indígenas Kaingang no campo da saúde. *Destques Acadêmicos*, Lajeado, v. 13, n. 3, p. 281-297, 2021.
- ASTRAIN, R. S. Ética intercultural e pensamento latino-americano. In: SIDEKUM, A. (org.). *Alteridade e multiculturalismo*. Ijuí: Unijuí, 2003. p. 319-350.
- BRANDÃO, C. R. *Identidade e etnia: a construção da pessoa e a resistência cultural*. São Paulo: Brasiliense, 1986.
- BRAZIL. [Constituição (1988)]. *Constituição da República Federativa do Brasil*. Brasília, DF: Senado Federal, 1988. Available from: http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm. Access on: Aug. 2, 2022.
- BRAZIL. [Constituição (1988)]. Emenda Constitucional n. 103, de 12 de novembro de 2019. Altera o sistema de previdência social e estabelece regras de transição e disposições transitórias. *Diário Oficial da União*: seção 1, Brasília, DF, p. 1, 13 nov. 2019. Available from: <https://www2.camara.leg.br/legin/fed/emecon/2019/emendaconstitucional-103-12-novembro-2019-789412-publicacaooriginal-159409-pl.html>. Access on: Aug. 2, 2022.
- BRAZIL. Decreto n. 3.048, de 06 de maio de 1999. Aprova o regulamento da previdência social, e dá outras providências. *Diário Oficial de União*: seção 1, Brasília, DF, p. 50, 7 maio 1999. Available from: http://www.planalto.gov.br/ccivil_03/decreto/d3048.htm. Access on: Aug. 2, 2022.
- BRAZIL. Decreto n. 5.051, de 19 de abril de 2004. Promulga a Convenção no 169 da Organização Internacional do Trabalho (OIT) sobre Povos Indígenas e Tribais. *Diário Oficial de União*: seção 1, Brasília, DF, p. 1, 20 abr. 2004. Available from: http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/decreto/d5051.htm. Access on: Oct. 21, 2022.
- BRAZIL. Lei n. 8.212, de 24 de julho de 1991. Dispõe sobre a organização da Seguridade Social, institui Plano de Custeio, e dá outras providências. *Diário Oficial da União*: seção 1, Brasília, DF, p. 14801, 25 jul. 1991a. Available from: http://www.planalto.gov.br/ccivil_03/leis/l8212cons.htm. Access on: Aug. 2, 2022.
- BRAZIL. Lei n. 8.213, de 24 de julho de 1991. Dispõe sobre os Planos de Benefícios da Previdência Social e dá outras providências. *Diário Oficial da União*: seção 1, Brasília, DF, p. 14809, 25 jul. 1991b. Available from: http://www.planalto.gov.br/ccivil_03/leis/l8213cons.htm. Access on: Aug. 2, 2022.
- CASTRO, C. A. P.; LAZZARI, J. B. *Manual de Direito Previdenciário*. 25. ed. Rio de Janeiro: Forense, 2022.
- COLAÇO, T. L.; DAMÁZIO, E. S. P. *Antropologia Jurídica: uma perspectiva decolonial para a América Latina*. 2. ed. Curitiba: Juruá, 2018.
- DIÁRIO DE CAMPO de 20.08.2021. Saída de Campo a Terra Indígena *Jamã Tj Tãnh*. *Acervo do Projeto de Pesquisa Identidades étnicas e desdobramentos socioambientais em espaços de bacias hidrográficas e Projeto de Extensão História e Cultura Kaingang da Universidade do Vale do Taquari – Univates*. Lajeado: Univates. 20 ago. 2021a. 3 p.

DIÁRIO DE CAMPO de 13.09.2021. Saída de Campo a Terra Indígena *Jamã Tj Tãnh*. *Acervo do Projeto de Pesquisa Identidades étnicas e desdobramentos socioambientais em espaços de bacias hidrográficas e do Projeto de Extensão História e Cultura Kaingang da Universidade do Vale do Taquari – Univates*. Lajeado: Univates. 13 set. 2021b. 4 p.

DIÁRIO DE CAMPO de 25.10.2021. Saída de Campo a Terra Indígena *Jamã Tj Tãnh*. *Acervo do Projeto de Pesquisa Identidades étnicas e desdobramentos socioambientais em espaços de bacias hidrográficas e do Projeto de Extensão História e Cultura Kaingang da Universidade do Vale do Taquari – Univates*. Lajeado: Univates. 25 out. 2021c. 5 p.

DIÁRIO DE CAMPO de 18.06.2022. Saída de Campo a Terra Indígena *Jamã Tj Tãnh*. *Acervo do Projeto de Pesquisa Identidades étnicas e desdobramentos socioambientais em espaços de bacias hidrográficas e do Projeto de Extensão História e Cultura Kaingang da Universidade do Vale do Taquari – Univates*. Lajeado: Univates. 18 jun. 2022a. 1 p.

DIÁRIO DE CAMPO de 29.07.2022. Saída de Campo a Terra Indígena *Jamã Tj Tãnh*. *Acervo do Projeto de Pesquisa Identidades étnicas e desdobramentos socioambientais em espaços de bacias hidrográficas e do Projeto de Extensão História e Cultura Kaingang da Universidade do Vale do Taquari – Univates*. Lajeado: Univates. 29 jul. 2022b. 2 p.

DIÁRIO DE CAMPO de 01.09.2022. Saída de Campo a Terra Indígena *Jamã Tj Tãnh*. *Acervo do Projeto de Pesquisa Identidades étnicas e desdobramentos socioambientais em espaços de bacias hidrográficas e do Projeto de Extensão História e Cultura Kaingang da Universidade do Vale do Taquari – Univates*. Lajeado: Univates. 01 set. 2022c. 2 p.

ENTREVISTA 18.06.2022. Coletivo indígena *Jamã Tj Tãnh*. Entrevistadora: Débora Pires Medeiros da Silva. Estrela (RS): 2022. Gravação por voz. *Acervo do Projeto de Extensão História e Cultura Kaingang e Projeto de Pesquisa Identidades étnicas e desdobramentos socioambientais em espaços de bacias hidrográficas*. Lajeado: Univates, 2022.

FREITAS, E. M. N. *A seguridade social dos indígenas brasileiros à luz dos direitos humanos e fundamentais*. 2016. 146 f. Dissertação (Mestrado em Direito) – Programa de Pós-Graduação em Direito, Faculdade de Direito, Universidade Federal do Ceará, Fortaleza, 2016.

GAIVIZZO, S. B. *O direito dos povos indígenas à educação superior na América Latina: concepções, controvérsias e propostas*. 2014. f. 131. Tese (Doutorado em Serviço Social) – Pontifícia Universidade Católica do Rio Grande do Sul. Porto Alegre, 2014.

GOIÁS. Tribunal de Justiça. Comarca de Jaraguá Vara das Fazendas Públicas. *Sentença*. Processo n. 5243740-67.2019.8.09.0091. Pedro Henrique Guarda Dias Juiz De Direito. 2019. Julgamento em: 25 julho 2021. Publicado em: 27 julho 2021.

HALL, S. *Da diáspora: identidades e mediações culturais*. Belo Horizonte: UFMG, 2003.

HOLANDA, F. C. C. *Interculturalidade e políticas públicas: desafios da educação escolar na Terra Indígena Raposa Serra do Sol*. 2015. f. 167. Tese (Doutorado em Ciência Política) – Universidade Federal do Rio Grande do Sul. Porto Alegre, 2015.

HORVATH JÚNIOR, M. *Direito Previdenciário*. Barueri: Manole, 2011.

IBGE – INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA. Censo demográfico 2010. *Características gerais dos indígenas: resultados do universo*. Rio de Janeiro: IBGE, 2010. Available from: https://biblioteca.ibge.gov.br/visualizacao/periodicos/95/cd_2010_indigenas_universo.pdf. Access on: Oct. 20, 2021.

INSS – INSTITUTO NACIONAL DO SEGURO SOCIAL. Instrução Normativa n. 77, de 21 de janeiro de 2015. Estabelece rotinas para agilizar e uniformizar reconhecimento de direitos dos segurados e beneficiários da Previdência Social, com observância dos princípios estabelecidos no art. 37 da Constituição Federal de 1988. *Diário Oficial da União*: seção 1, Brasília, DF, n. 15, p. 32, 22 jan.

2015. Available from: https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/32120879/dol-2015-01-22-instrucao-normativa-n-77-de-21-de-janeiro-de-2015-32120750. Access on: Nov. 24, 2022.

INSS – INSTITUTO NACIONAL DO SEGURO SOCIAL. Instrução Normativa n. 128, de 29 de março de 2022. Disciplina as regras, procedimentos e rotinas necessárias à efetiva aplicação das normas de direito previdenciário. *Diário Oficial da União*: seção 1, Brasília, DF, n. 60, p. 132, 29 mar. 2022. Available from: <https://www.in.gov.br/web/dou/-/instrucao-normativa-pres/inss-n-128-de-28-de-marco-de-2022-389275446>. Access on: Oct. 21, 2022.

LARAIA, R. B. *Cultura: um conceito antropológico*. 14. ed. Rio de Janeiro: Jorge Zahar, 2001.

LAROQUE, L. F. S.; SILVA, J. B. S. Ambiente e cultura Kaingang: saúde e educação na pauta das lutas e conquistas dos Kaingang de uma Terra Indígena. *Educação em Revista*. Belo Horizonte. v. 29, n. 02, p. 253- 275, jun. 2013.

MAIA, K. S.; ZAMORA; M. H. N. O Brasil e a lógica racial: do branqueamento à produção de subjetividade do racismo. *Psicologia Clínica*, Rio de Janeiro, v. 30, n. 2, p. 265-286, 2018.

MALDONADO-TORRES, N. Sobre la colonialidad del ser: contribuciones al desarrollo. In: CASTRO-GÓMEZ, S.; GROSFOGUEL, R. *El giro decolonial: reflexiones para una diversidad epistémica más allá del capitalismo global*. Bogotá: Siglo del Hombre, 2007. p. 127-168.

MARX, K. Teses sobre Feuerbach. [1845]. In: BARATA-MOURA, J. et al. *Obras escolhidas*. Tomo I. Tradução: Alvaro Pina. Lisboa: Avante, 1982. Available from: <https://www.marxists.org/portugues/marx/1845/tesfeuer.htm>. Access on: Aug. 2, 2022.

MIGNOLO, W. D. Colonialidade o lado mais escuro da modernidade. *Revista Brasileira de Ciências Sociais*, São Paulo, v. 32, n. 94, e329402, 2017. Available from: <https://www.scielo.br/j/rbcsoc/alnKwQNPrx5Zr3yrMjh7iCZVvk/?format=pdf&lang=pt>. Access on: Dec. 13, 2023.

MUNHÓS, L. V. A.; AGUILERA URQUIZA, A. H. Direitos culturais fundamentais dos povos indígenas: do multiculturalismo à interculturalidade. *Revista Direitos Culturais*, Santo Ângelo, v. 16, n. 40, p. 69-84, 2021.

ONU – ORGANIZAÇÃO DAS NAÇÕES UNIDAS. *Declaração das Nações Unidas sobre os Direitos dos Povos Indígenas*. Rio de Janeiro: Nações Unidas, 2008.

POUTIGNAT, P.; STREIFF-FENART, J. *Teorias da etnocidade: seguido de grupos étnicos e suas fronteiras de Frederik Barth*. 2. ed. São Paulo: Unesp, 2011.

POZZER, A.; CECCHETTI, E.; DÍAZ, J. M. H. Interculturalidade e imigração: impactos e desafios à educação. *ETD – Educ. Temat. Digit*, Campinas, v. 23, n. 3, p. 576-580, jul. 2021. Available from: http://educa.fcc.org.br/scielo.php?script=sci_arttext&pid=S1676-25922021000300576&lng=pt&nrm=iso. Access on: Nov. 11, 2022.

PRESTES, F. S. *O bem viver Kaingang: as conexões entre os princípios da teoria do buen vivir e os saberes tradicionais que orientam o seu modo de ser*. 2018. f. 279. Tese (Doutorado) – Universidade do Vale do Taquari, Lajeado, 2018.

QUIJANO, A. Colonialidad del poder y clasificación social. In: CASTRO-GÓMEZ, S.; GROSFOGUEL, R. *El giro decolonial: reflexiones para una diversidad epistémica más allá del capitalismo global*. Bogotá: Siglo del Hombre, 2007, p. 93-126.

QUIJANO, A. Colonialidad y modernidad/razionalidad. *Perú Indígena*, Lima, v. 13, n. 29, p. 11-20, 1992.

RESTREPO, E.; ROJAS, A. *Inflexión decolonial: fuentes, conceptos y cuestionamiento*. Popayán: Editorial Universidad del Cauca, 2010.

RIBEIRO, B. C. R. *Direito e decolonialidade: insurgência e contra-hegemonia em Abya Yala*. Andradina: Meraki, 2021.

SAHLINS, M. O “Pessimismo Sentimental” e a experiência etnográfica: porque cultura não é um “objeto” em via de extinção (Parte I). *Mana*, Rio de Janeiro, v. 3, n. 1, p. 41-73, 1997. Available from: <https://www.scielo.br/j/mana/a/4xFgqqMPbXLHGc8xkfXBCVH/abstract/?lang=pt>. Access on: Nov. 10, 2021.

SCHWINGEL, K.; LAROQUE, L. F. S.; PILGER, M. I. *Jamã Tỹ Tãnh. Ig Vẽnh vễj Kaingang*: Morada do Coqueiro – jeito de viver Kaingang. São Leopoldo: Oikos, 2014.

SILVA, G. F. Culturas(s), currículo, diversidade: por uma proposição intercultural. *Revista Contrapontos*, Itajaí, v. 6, n.1, p. 137-148, 2006.

SILVA, J. B. S. “*Eles viram que o índio tem poder, né!*”: o protagonismo kaingang da Terra Indígena Jamã Tỹ Tãnh/Estrela diante do avanço desenvolvimentista de uma frente pioneira. 2016. 256 f. Dissertação (Mestrado em Ambiente e Desenvolvimento) – Universidade do Vale do Taquari, Lajeado, 2016.

SILVA, J. B. S. *Trajetória indígena e Trajetórias de vida: a agência do feminino na relação com os territórios, corpos e pessoas Kaingang*. 2020. f. 313. Tese (Doutorado em Ambiente e Desenvolvimento) – Universidade do Vale do Taquari, Lajeado, 2020.

VIVEIROS DE CASTRO, E. Sobre la noción de etnocidio, con especial atención al caso brasileño. *Estudios de História Moderna y Contemporânea de México*, v. 60, p. 111-144, 2020.

WALSH, C. Interculturalidad y (de)colonialidad: perspectivas críticas y políticas. *Visão Global*, Joaçaba, v. 15, n. 1-2, 2012.

WALSH, C. *Interculturalidad, estado, sociedad: luchas (de)coloniales de nuestra época*. Quito: Universidad Andina Simón Bolívar / Abya-Yala, 2009.

ABOUT THE AUTHORS

Luís Fernando da Silva Laroque

PhD and Master in History from Universidade do Vale do Rio dos Sinos (UNISINOS), São Leopoldo/RS, Brazil. Graduated in History from UNISINOS. Graduated in Social Studies from UNISINOS. Professor at Universidade do Vale do Taquari (UNIVATES), Lajeado/RS, Brazil. Coordinator of the research project on Ethnic identities and socio-environmental developments in river basin spaces, as well as the Kaingang History and Culture extension project at UNIVATES.

Débora Pires Medeiros da Silva

Master in Environment and Development from Universidade do Vale do Taquari (UNIVATES), Lajeado/RS, Brazil. Specialist in Social Security Law from Faculdade Verbo Educacional (VERBO-EDUCA), Porto Alegre/RS, Brazil. Graduated in Law from UNIVATES. Volunteer in the research project on Ethnic identities and socio-environmental developments in river basin spaces, as well as the Kaingang History and Culture extension project at UNIVATES.

Authors' participation

All authors participated in all steps in the preparation of this article.

How to cite this article (ABNT):

LAROQUE, L. F. S.; SILVA, D. P. M. Interculturality in social security law related to the Indigenous people of the *Jamã Tỹ Tãnh* community. *Veredas do Direito*, Belo Horizonte, v. 21, e212470, 2024. Available from: <http://www.domhelder.edu.br/revista/index.php/veredas/article/view/2470>. Access on: Month. day, year.