

The Logic of Coloniality and the Absence of Legal Liability for Transnational Companies for Human Rights Violations in the Production Chains: The Case of the Guarani and Kaiowá Indigenous People in Mato Grosso do Sul

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Introduction

The history of indigenous peoples in Brazil stands out for countless violations of their territorial rights, driven mostly by economic interests and the depreciation of these populations' way of being. Large transnational corporations (TNCs) endowed with considerable political and financial power drive these economic interests, managing to dismantle the legal and institutional apparatus that protects indigenous peoples. On the other hand, the depreciation of the indigenous ways of being and worldview lies in the Conquest of America's colonial process that laid down a colonial matrix of power centered on the European subject's supremacy (male, Christian, heterosexual).

Against this backdrop, the article's central question is the following: considering the Guarani and Kaiowá indigenous people in Mato Grosso do Sul, how is the colonial logic related to the TNCs' lack of accountability under international law for human rights violations in their production chains?

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The hypothesis is that the TNCs' political and economic power that prevents the International Law from adopting effective mechanisms to make them liable and controlling its production chains lies in the colonial privilege those companies hold since the beginning of European colonialism.

TNCs commit human rights violations, harming entire communities and ecosystems, compromising the lives of millions of people worldwide either directly and indirectly. Amid their production chains, those who produce or are affected by the raw material production, which will later become a product ready to be marketed by large companies, can suffer several human rights violations.

Therefore, this article explores avenues to understand why TNCs are rarely held responsible for human rights violations under the countries' domestic legal systems. For instance, the so-called limited liability principle prevents taking all the TNCs' branches and headquarters as a single corporation for accountability purposes. Moreover, the TNCs' assets smoothly flow to other countries/branches, making accountability or even enforcing favorable judgments for the victims unfeasible in the countries where the decision is issued.

The work is divided into three sections. In the first, we present how the violence struck Guarani and Kaiowa people, the history of their land's grabbing, and the performance of the agribusiness' TNCs in the region. In the second section, we will present the role of TNCs in the current geopolitical conjuncture, how the productive chains are an essential vector for the performance of these corporations, and the existing legal mechanisms in International Human Rights Law to sanction them for violations. The third section analyzes the relationship between the first TNCs and the colonialism to finally relate it with how the agribusiness interacts in the Guarani and Kaiowá's case in Mato Grosso do Sul.

AGRIBUSINESS, TNCs AND THE GUARANI-KAIOWÁ INDIGENOUS PEOPLE IN MATO GROSSO DO SUL: LAND CONFLICTS AND HUMAN RIGHTS VIOLATIONS

The Guarani and Kaiowá indigenous population are the largest in Brazil outside the Amazon region. According to data from the 2010 Demographic Census of the Brazilian Institute of Geography (IBGE), there are approximately 43,401 Guarani and Kaiowá individuals, the second-largest Indigenous population in Brazil. Much of the Guarani and Kaiowá population live in eight

small reserves, created by the then Indian Protection Service (SPI) between 1915 and 1928, whose territory is approximately twenty thousand hectares (MOTA; PEREIRA, 2012, p. 04).

The process of the Guarani and Kaiowá's land loss through colonization policies and the creation of reserves in the first half of the 20th century, coupled with the expansion of agriculture in the region in the 1970s, primarily through the mechanization of soy and cane's monocultures, trigger a chapter of violent conflicts and countless indigenous deaths in the south of the state of Mato Grosso do Sul. The Guarani and Kaiowás' struggle to reestablish their grabbed lands, affected by protracted and unconcluded demarcation processes, fueled the violence against these people. (BUSCOLI, 2018, p. 126)

According to the National Indian Foundation (FUNAI), the official situation of the indigenous lands that make up the Guarani and Kaiowá territory is the following: 06 lands are in the initial phase of preparing anthropological studies; 04 had a favorable anthropological report and are in the administrative phase; 06 obtained authorization from the Ministry of Justice to start their physical demarcation; 05 have already received approval from the Presidency of the Republic; only 12 lands had their demarcation process altogether concluded. In other words, the Federal Union completed the demarcation of less than half of the Guarani and Kaiowá areas. Taking into account the delay in the processes of indigenous lands' demarcation claimed by the Guarani and Kaiowá people, it is possible to say that

the tension around the demarcations of traditional territories highlighted the discourse and the practice of "in-security" with respect to those situations linked to life itself - or the relationship between life and death. This situation expresses the risks of violence, murders, genocides and suicides which are at stake and which are subject to the very survival of indigenous peoples (MONDARDO, 2014, p. 194).

A study carried out by the Unisinos Human Rights Center found that between 2000 and 2016 there were 24 attacks against the Guarani and Kaiowá indigenous people, of which resulted in nine deaths and two disappearances (NOTÍCIAS MPF, 2019). According to the survey carried out by Lara Dalpério Buscoli (2018, p. 127), between 2003 and 2014, 335 Guarani and Kaiowá Indians died in Mato Grosso do Sul, with 71% of these deaths occurring within

lands or villages and 13% in their surroundings. According to the Indigenous Missionary Council (CIMI), Mato Grosso do Sul's state concentrates, between 2003 and 2017, 41% of indigenous deaths across the country. Regarding the deaths within unconcluded demarcated areas claimed by the Guarani and Kaiowá, 10 of them occurred between 2003 and 2014, of which six were directly related to territorial conflicts in the region (BUSCOLI, 2018, p. 128).

Regarding the motivation of territorial conflicts such as those involving large rural producers and indigenous populations, the World Organization Against Torture (2008) demonstrates that

Land conflict is engendered by blatant inequalities in land distribution, denied access to land, poorly planned agrarian reform and lack of implementation of relevant national provisions. All the more, access to land is challenged by the new trends of global economy such as agribusiness and biofuels, development projects and foreign companies' investments, along with government modernization and liberalization policy.

The attacks that generate territorial conflicts and the deaths of Guarani and Kaiowá indigenous people are perpetrated, in the view of Tônico Benites (2015), by "ranchers, ruralist politicians, who are also graduated and highly specialized in paralyzing the process of indigenous lands demarcation." Benites (2015) points out that these individuals act through private security companies that farmers hire to carry out offensives against indigenous people or organized criminal groups. Criminal groups, even, according to a report by Renan Antunes de Oliveira (2015), "are the ones that most disturb, even though it is only the tip of the iceberg: they do the dirty work here and there, they put Funai employees on the run. They live protected in the farms of the principals, with the certainty of impunity". The perpetrators' power and the threat of the jagunços are so great that, in 2015, Federal Prosecutor Ricardo Ardenghi requested the Ministry of Justice to send support from the National Security Force to protect the Kurussu Ambá indigenous land community, which was under attack of these groups, but their request was declined. (OLIVEIRA, 2015).

Thus, as Gerber and Mendes (2017, p. 329) point out, what happens to the Guarani and Kaiowá indigenous people in Mato Grosso do Sul is "a situation of systematic discrimination: murders, femicides, suicides, malnutrition, lack of distribution of basic food baskets, structural racism, violent eviction, forced disappearance of leaders, teachers." Such elements derive, in the opinion of

Marcos Mondardo (2014, p. 185-186), from the fact that "there is an inequality of political and legal resources, of means of communication/information, of strategies and mechanisms of pressure/resistance, visibility/ legitimacy of the speeches, in addition to the forms of collective social organization."

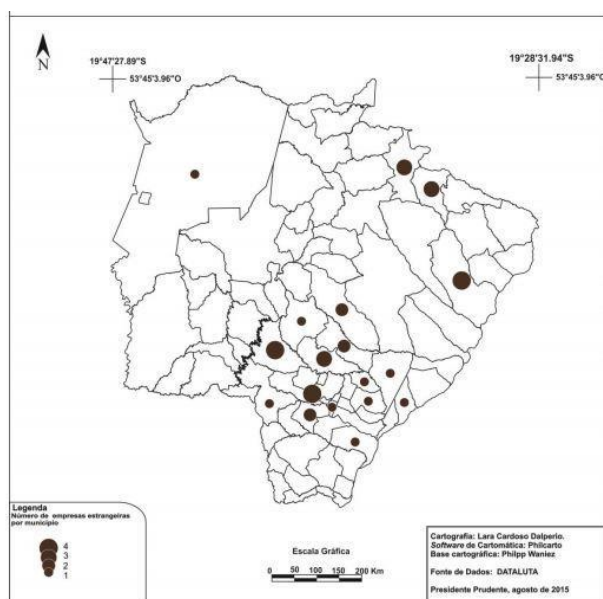
In parallel to the Guarani and Kaiowá indigenous territorial demands and violence in Mato Grosso do Sul, agribusiness has dizzyingly growing in recent years. According to the 2019 Systematic Survey of Agricultural Production of the Brazilian Institute of Geography and Statistics (IBGE), the Midwest region of Brazil is the one that most produces cereals, legumes, and oilseeds (such as sugarcane, corn, and soybeans), reaching the production of 103 million tons of these raw materials. The state of Mato Grosso do Sul responds for 8% of the total national production. Mato Grosso do Sul, moreover, is the fifth largest producer of soy in the country and the fourth-largest corn and sugarcane's producer. Concerning the planted area, the state is the third-largest soybean, sugar cane, and corn producer.

Mato Grosso do Sul is the fourth largest cattle breeder in the country, behind only Mato Grosso, Goiás, and Minas Gerais. IBGE (2019). The state is the fourth largest wool producer, the seventh-largest pig producer, and the eighth largest fish producer in the country.

All this potential in agricultural and livestock production became attractive for several TNCs. Such companies began to settle in the State along with the spread of agriculture, in the 1970s, with the support of government policies, which would later be fundamental for the development of some cultures, such as soybeans and sugar cane, since extensive livestock was the great productive vector of the State at the time (BUSCOLI, 2016, p. 81). At that period, the Brazilian government put forward a series of policies aimed at economic land use in Mato Grosso do Sul, such as tax exemptions, incentive plans, furthering the Guarani and Kaiowá's land losses. (HIGA, 2005, p. 90). Through these incentives and the local companies' lack of capability to concur with TNCs, these companies set up business in Mato Grosso do Sul. They used the strategy of "settling close to production (grains and meat), aiming to take advantage of locational advantages, as well as the low price of land, which means lower costs of acquisition and production." (PAVÃO, 2005, p. 214).

The acquisition of land by foreign companies in Mato Grosso do Sul made the State the fourth in the country with the largest land area owned by foreign companies, considering that 11% of Mato Grosso do Sul's territory belongs to these companies (BUSCOLI, 2016, p. 93). The following map details the geographical distribution of TNCs across Mato Grosso do Sul.

Map 1. TNCs in Mato Grosso do Sul



Source: BUSCOLI, 2016, p. 97.

As the map clarifies, most TNCs are in the south-central region of Mato Grosso do Sul, which Guarani and Kaiowá people initially occupy. Most of these companies are sugar and alcohol industry. Guarani and Kaiowá individuals, unable to provide for their survival in the reserves and with sparse income sources, usually work in the sugarcane plantations that supply these industries. (BUSCOLI, 2016, p. 120).

Trying to prevent the sugar and ethanol TNCs from buying cane from lands originally owned by the Guarani and Kaiowá, the Federal Prosecutor in Dourados (city of Mato Grosso do Sul) signed an agreement with Usina São Fernando (at the time belonging to the Bumlai Group), in 2009. Through this agreement, the company committed to "not acquiring or promoting the planting of sugarcane, even through leasing, in rural properties that intersect with areas identified, declared or approved as lands traditionally occupied by the Indians." (GLASS,

2011). In the same vein, the TNC Raízen (belonging to the Shell and Cosan groups) signed, in 2012, a term of commitment to definitively suspend the acquisition of cane produced in areas declared by the Ministry of Justice as indigenous land. Also, Raízen committed itself to monitor their sugarcane suppliers' conduct regarding the Guarani and Kaiowá populations' rights (GLASS, 2011). This commitment resulted from the mobilization of several Human Rights and international environmental organizations that accused Raízen of grabbing lands claimed by the Guarani and Kaiowá. (FERN, 2016). On the other hand, the TNC Bunge, which also deals with sugar and alcohol in Mato Grosso do Sul, declined to discuss the issue of buying raw material from lands claimed by the Guarani and Kaiowás. Bunge was accused and did not deny that they acquired sugarcane from farms embedded in the Jatayvary indigenous land, already declared by the Ministry of Justice as Guarani and Kaiowá land (GLASS, 2011).

As a result, the TNCs' performance in Mato Grosso do Sul aggravates the delay in the demarcation process and therefore concur to hinder the reproduction of these communities' lives in this area.

TRANSNATIONAL COMPANIES, GLOBAL PRODUCTION CHAINS AND ACCOUNTABILITY UNDER INTERNATIONAL HUMAN RIGHTS LAW

According to the British NGO Global Justice Now (2018), of the 100 largest economies in the world, 69 are from TNCs, and only 31 are states. The study also revealed that the combined revenues of the transnationals Walmart, Shell, and Apple are higher than the combined revenues of the 180 most impoverished countries in the world (GLOBAL JUSTICE NOW, 2018). Such data only shows how relevant and independent (in comparison to States) TNCs have become. Because of this, "multinational companies are no longer national champions in defense of their host country, dedicated to defending their interests and sometimes serving as more or less voluntary agents of their foreign policy" (NAÍM, 2017, cap. 2). On the other hand, TNCs are organizations that develop their policies and their means of action at the global level, which global production chains enable.

This cycle of power of the TNCs began in the 1970s, with the consolidation of a developmental model in the economy of the great capitalist

countries, especially in the USA, beginning the period called by Giovanni Arrighi (1997, p. 307) as the golden age of capitalism. In this period, Arrighi (1997, p. 307) points out that

the surplus capital was reinvested in trade and in the production of goods, on a scale sufficiently massive to create the conditions for renewed cooperation and division of labor, within and between the different government and business organizations of the capitalist world economy.

Economic globalization has led TNCs to adopt four new modalities and business strategies to operate in international trade, as pointed out by Professor Simón Mejía Toro (2016, p. 152). The first strategy/modality was export on a global scale, through which TNCs were able to disseminate their products throughout the planet, without requiring large commitments or expenses and allowing the maintenance of control over operations, guaranteeing the quality of goods and services (TORO, 2016, p. 152). The second is the use of licenses. The TNC can transfer the technology of a specific product (through so-called know-how contracts) in exchange for financial advantages in acquiring the finished product. It is considerably cheap compared to the costs that the corporation would have if it manufactured the material. (TORO, 2016, p. 152-153). The third is adopting the so-called joint ventures when corporations unite to carry out specific economic activity, splitting the production steps. It reduces the risks of the activity and offers TNCs, through the partnership, the market knowledge in which that particular activity will be developed (TORO, 2016, p. 153). The fourth and last strategy for the TNCs is establishing subsidiaries in other countries (usually peripheral) other than the corporation's home country. TNCs exercise direct control without assuming any responsibility for the subsidiary's activities, subject to the host country's legal control (TORO, 2016, p. 153).

German professor Doris Fuchs (2013, p. 79) characterizes TNCs as having three types of power: instrumental, structural, and discursive. TNCs exercise instrumental power through lobbying operations, financing electoral and parliamentary campaigns aligned with their interests, pressing economic blocs not to adopt measures that harm their activities, and, in the legal field, hiring influential law firms for the defense of their claims (FUCHS, 2013, p. 82). Structural power concerns the "ability of "business" or a specific business entity to affect outcomes in its favor without having to exercise instrumental power to

achieve it" (RUGGIE, 2017, p. 323). Examples of the TNCs' structural power are: the right to prosecute states for violations of trade agreements before international arbitral tribunals (something states cannot do); the movement of funds and opening branches in tax havens (which increases gains of the TNCs significantly); the State's lack of knowledge about the commercial flows of TNCs, due to the flexibility of the internal commercial policy to receive these corporations in its territory (FUCHS, 2013, p. 84-85). The discursive power of TNCs concerns the ability of these conglomerates to "influence outcomes through promoting ideas, setting social norms and expectations, and even shaping identities. Its exercise involves persuasion and emulation, not coercion" (RUGGIE, 2017, p. 326). The investment that TNCs make for the creation and development of research institutes (now called think tanks) that foster the ideas of the free market and the minimal State is a good example. (RUGGIE, 2017, p. 326).

Roland (2018, p.3-4) points out that "the decentralization and fragmentation of production and large companies' economic influence are the main characteristics of the production chains." However, this definition is not uncontroversial. The International Labor Organization (2016) conceptualizes the production chains as "the cross-border organization of the activities necessary to produce goods or services and bring them to consumers through inputs and several phases of development, production, and delivery." The Trade Union Confederation of Workers of the Americas (2017), in turn, defines global production chains as "the set of activities developed from the conception of a product to its end, including also the services performed after the sale." For researchers Michael Maloni and Michael Brown (2006, p. 36), production chains are "the series of companies, including suppliers, customers, and logistics providers that work together to deliver a value package of goods and services to the end customer."

In a proposal for a treaty in Human Rights and business, the idea of global production chains presented by the NGO Global Campaign ends up being more suitable for this article's objectives. According to the NGO (2017), the production chains

consists of companies outside the TNC that contribute to the operations of the TNC – from the provision of materials, services and funds to the delivery of products for the end customer. The supply chain also includes contractors,

subcontractors or suppliers with whom the parent company or the companies it controls carry on established business relations. The TNC may exercise influence over a supply chain company depending on the circumstances.

The global production chains term emerged in the 1990s through studies carried out by the American sociologist Gary Gereffi. According to Gereffi and Korzeniewicz (1994, p. 2), global production chains can be defined as "sets of inter-organizational networks clustered around one commodity or product, linking households, enterprises, and states in the world economy." A series of links that involve the acquisition/ organization of inputs (such as raw materials) made up the production chains. For instance, workforce, transportation, distribution, and consumption enable verification of how social relations shapes production, distribution, and consumption, which define the sequential steps of acquisition, manufacture, distribution, marketing, and consumption of materials. (GEREFFI, KORZENIEWICZ, 1994, p. 2).

These chains have spread throughout the world. Nevertheless, Roland (2018, p. 7) points out that "this dynamic has contributed to transforming these companies into giant economic groups, extremely fragmented and with influence in several regions - through the aforementioned value chains". According to Justine Nolan (2017, p. 240-241), examples of this are Nike, an American TNC that holds 655 factories worldwide, with approximately one million workers in forty-two countries. Another example is Walmart, an American transnational retailer that holds 11,500 stores from 72 different brands in 28 countries and employs 2.2 million people worldwide. As 2009 data presented by UNCTAD (2013), of 300 companies with revenues exceeding one billion dollars, 51% of the production of components, 46% of the material stock process, 43% of the services performed to customers, and 39 % of product creation and development took place outside the TNCs' home countries.

However, the global production chains' perverse side are the low wages, precarious working conditions, severe damage to the environment, and other human rights violations. According to Simón Mejía Toro (2016, p. 161), most of these violations occur in the field of access to health, education, job security, characterizing situations of slave and child labor in various peripheral regions of the planet. Human rights violations related to global production chains occur in



the most diverse industrial ranges, such as textiles, electronics, footwear, food, and mining (TORO, 2016, p. 161).

Professor Simón Mejía Toro (2016, p. 163) lists four reasons that cause human rights violations in global production chains: the lack of power among actors, the lack of political will on the part of states, the competitiveness of TNCs, and the difficulty in accountability. In the foreground, the actors' lack of power is related to the weakness of the lower sectors of the production chains compared to the TNCs' privilege and the States' power. (TORO, 2016, p. 163). The lack of States' political will concerns the limitations of avoiding human rights violations in global production chains. It is usual that the States sign agreements with the TNCs allowing the exploration of certain economic activities. (TORO, 2016, p. 163). Competitiveness among TNCs is central to the processes of human rights violations in the production chains. TNCs lobby to set up partnerships with States that waive taxes and fair working conditions for their citizens, aiming at attracting investments to their countries. (TORO, 2016, p. 163-164). Finally, the difficulty in holding TNCs accountable for human rights violations in their production chains stands out. TNCs can take advantage of jurisdictional limits and effectively evade responsibilities, as it is possible to use a subsidiary to protect the parent and other members of a corporate group (TORO, 2016, p. 164).

The impunity of TNCs for human rights violations resulting from their production chains is mainly due to the neoliberal construction of “a legal, political, economic and cultural architecture, on a global scale, from which the big corporations ended being the main beneficiaries.” (GONZALEZ; RAMIRO; ZUBIZARRETA, 2014, p. 7). Concerning the legal field, TNCs protect their interests through a global normativity, called *lex mercatoria*, from which corporations protect their rights, considering the lack of legal mechanisms capable of curbing social, environmental, labor and cultural issues (GONZALEZ; RAMIRO; ZUBIZARRETA, 2014, p. 7). Thus, González, Ramiro and Zubizarreta (2014, p. 7) maintain that

TNCs' rights are shielded thanks to a global legal system based on trade and investment rules whose characteristics are imperative, coercive and executive, considering that their obligations refer to national systems subject to neoliberal logic and an International Law of Rights Humans manifestly fragile.

In peripheral countries, the main obstacle to TNCs' accountability is the so-called separate legal personality doctrine, through which "a company has the legal capacity to exercise certain rights and assume certain obligations separate to the rights and duties of its owners." (RUGGIE, 2011). Because of this, a parent company is not responsible for the human rights violations committed by its subsidiary since they have a distinct legal personality (AMNESTY INTERNATIONAL, 2017). In this sense, "if, on the one hand, there is legal independence for companies, which establish themselves as organizations assigned their own patrimonial individuality, on the other hand, there is economic unity for the whole group" (HOMA, 2017).

The exercise of the political and legal power of TNCs creates, in the view of Juan Hernández Zubizarreta (2017, p. 18), a feudalization of the global legal order. Insofar as the commercial and investment agreements signed by large corporations have more strength than state laws (especially from peripheral countries), there is a normative asymmetry that places political power globally in companies' hands. The elements that, according to Zubizarreta (2017, p. 24-25), characterize the new feudal legal order are: a) privatization, deregulation, the failure of public policies and the development of repressive policies for the control of social mobilizations, which are fundamental principles of the capitalist system, situated at the top of the normative pyramid of that order; b) the commercial and investment treaties and agreements made by the TNCs, which combine the deregulation of their obligations with the re-regulation of their rights, aiming to eliminate any barriers that hinder the development of the free market; c) women's reproductive processes and rights are directly affected by trade and investment agreements as gender differences are deepened in global production chains, and that austerity policies (driven by the lobby of TNCs) often reach programs to protect women's rights; d) human and social rights enter into a process of privatization and commercialization, their essential nuclei are precarious and in the face of the most vulnerable population, necropolitics are adopted, with the objective of eliminating social subjects useless to capital; e) legislative law loses its centrality and is disrupted by coexisting with another law - unofficial and dictated by legislators who are not chosen by the people - within the scope of neoliberal globalization.

Thus, according to the Amnesty International (2017), the three main barriers to the accountability of TNCs for human rights violations are the following: a) when it comes to legal actions against serious human rights violations, the parent companies still they can hide behind the corporate veil to deflect their responsibility; b) the legal thesis of the *forum non conveniens* is still commonly invoked and applied in common law jurisdictions, such as Canada and the USA, prolonging lawsuits and often resulting in their dismissal; and c) few companies today disclose significant information about their actual and potential risks and impacts on human rights.

All these barriers to the TNCs' accountability for human rights violations amount to an architecture of impunity. It is the combination of the absence of mechanisms capable of stopping Global Corporate Law - made up by trade and investment treaties and agreements -, altogether the political power of corporations and the legal mechanisms available (creation of subsidiaries with a legal personality distinct from the parent company, asset separation) to prevent states from sanctioning such entities for the violations committed (RAMIRO; ZUBIZARRETA, 2016, p. 18). In this vein, Roland (2018a, p. 398) argues that "the analysis of the architecture of impunity allows the identification of gaps in the international legal system that serve as a shield for TNCs, preventing their accountability."

The adoption of measures capable of reversing this situation depends on the States and the TNCs, which, paradoxically, reveals the power of these institutions. However, this power does not arise with neoliberal globalization: it is the result of various processes of vulnerability and subordination of individuals and peoples in favor of the capitalist system.

THE LOGIC OF COLONIALITY AND ITS ROLE IN THE ABSENCE OF CORPORATE RESPONSIBILITY FOR HUMAN RIGHTS VIOLATIONS OCCURRED IN PRODUCTION CHAINS

The history of the emergence of the first large corporations coincides with conquest and colonization in America. In the 16th century, the so-called modern world-system arose not as a political entity, like the States, but as an economic entity (WALLERSTEIN, 1996, p. 25). However, the connections resulting from this world-system were not only economical, since they were reinforced "to some

extent by cultural ties and eventually by political arrangements and even confederate structures" (WALLERSTEIN, 1996, p. 25). The American sociologist Immanuel Wallerstein (1996, p. 26) adds that it was in Modernity that "the technology that makes it possible to increase the flow of surpluses from the lower strata to the upper strata, from the periphery to the center, from the majority to the minority" emerged. (WALLERSTEIN, 1996, p. 25).

Still, Wallerstein (1996, p. 338) points out that capitalism flourished since there was no government system supporting it, but several, as well as the fact that economic losses were in the hands of government entities, while the gains went into the hands of private actors, among them, the large corporations. The modern world-system articulates three types of structures: a) an economic structure, organized around the steady accumulation of capital in a world market; b) a political structure, based on legally sovereign but interdependent Nation-States; and c) a cultural structure, a geo-culture, that legitimizes and gives coherence to the world-system (GERMANÁ, 2005, p. 22).

The first significant demonstration of Modernity's corporate power was the establishment of East India Company (VOC, in Dutch, Vereenigde Oost-Indische Compagnie) in 1602 (CHANDA, 2007, p. 54). The then Kingdom of the United Provinces (later the Netherlands) created VOC to face the Spanish hegemony in the colonial race, either in the commercial domain and in the conquest and colonization (FERREIRA, 1955, p. 81). Wunsch (2019, p. 37) points out that "from the powers conferred on the Companies, they had the same prerogatives as the State at the international level, with powers to make decisions and represent it, including being able to sign treaties."

The celebration of the Treaties of Westphalia in 1648 meant an essential step for the modern world-system's consolidation. According to the Italian economist Giovanni Arrighi (1996, p. 43), the signing of the Treaties, besides legitimizing to the States their "respective absolute rights of government over territories mutually exclusive, established the principle that civilians were not committed to disputes between sovereigns." As a result, the States justified the signing of the Treaties of Westphalia by the need to keep maritime trade shielded, even in situations of conflict, which ended up generating legal armor about the great corporations of the time, especially VOC. (Arrighi, 1996, p. 43-44). For José-



Manuel Barreto (2016, p. 160-161), the Westphalia Treaties ended up forming a kind of inaugural legal framework for the architecture of impunity, considering, firstly, that the document ignored the complexity of the world political and economic scenario, focusing exclusively on Europe and State picture. Because of this, Barreto (2016, p. 160) adds that the Treaties "make invisible the crucial role empires and companies have accomplished in the construction and evolution of the international legal order since early modernity, granting them freedom and impunity for their destructive designs."

In the whole process of effective colonization, slave trade, and strengthening of the State's economical role, the British East India Company, which had existed since 1600, played a fundamental role in the consolidation of British economic hegemony, which succeeded the Dutch. As in the case of VOC, the British Company had, upon authorization provided by the Crown through the Royal Letters, "the rights to mint currency in its foreign subsidiaries, exercise justice in its settlements and, what was crucial, wage war" (ROBINS, 2012, cap. 2). The power awarded by the Crown to the Company was also instrumental in enabling impunity for the crimes that the corporation frequently committed. In this sense, the historian Nick Robins (2012, cap. 2) affirms that

what infuriated the Company's contemporaries most through the seventeenth, eighteenth and nineteenth centuries was its impunity, its ability to shrug off the consequences of its actions. For an insidious corollary to the Company's speculative drive for societal dominion was its willingness to engage in immense crimes, safe in the knowledge that domestic and international remedies were not in place. A large part of the problem lay in the legal void at the time, with courts in both Europe and Asia wholly ill-equipped to bring corporations and their executives to account.

The historical analysis of this whole period of frank colonialism, especially between the 16th and 18th centuries, with the height of the great navigations and global trade, shows that, since that time, corporations had had significant political and economic power, which prevented the construction of accountability mechanisms. However, the emergence, growth, and consolidation of large TNCs, both in past and current times, is connected to the depreciation and vulnerability of individuals and social groups resulting from America's conquest and colonization.

According to Quijano and Wallerstein (1992, p. 583), America provided space for the first experiences of varied methods of work control: "America was the first space/time of a worldwide power pattern and, therefore, as the first identity of modernity." (Quijano, 2005, p. 117). Latin America, according to Enrique Dussel (1993, p. 16), lived (and still lives) a "constitutive modernization process," which would later apply to Africa and Asia. According to Aníbal Quijano (2005a, p. 10), the role Latin America played in modernity defined its historical-structural dependence and gave rise to the constitution of Western Europe as a world center.

The colonizers had never considered the colonized peoples' interests and demands since the European knowledge, customs, culture, and wishes were taken for granted. European culture's supposed superiority yielded benefits to the colonized, and the European colonizer used it to justify their civilizational mission. (WALLERSTEIN, 2011, p. 30). As a result, Europeans imposed their will and knowledge on the colonial world through the so-called developmental fallacy, which, according to Enrique Dussel (1993, p. 22), consists of "thinking that the pattern of modern European development should be followed unilaterally by any other culture. Development must be understood here as an ontological category, and not simply sociological or economic one".

Europeans drove the processes of vulnerability and subordination of colonized individuals and groups, aiming at legitimizing colonial violence and domination, which has not come to an end with the independence of former colonies. Aníbal Quijano coined the term "coloniality" to name this continuance of colonial logic in contemporary times. According to the Peruvian sociologist, coloniality means the imposition of a racial/ethnic classification of the world population as the reference for a (colonial) pattern of power that pervades all the life's domain. (QUIJANO, 2014, p. 68). For Nelson Maldonado-Torres (2019, p. 89), the category of coloniality is fundamental "to refer to the normalization of colonial ontological relations, as well as the cultural, social and epistemological practices, institutions and structures from which they originate."

The logic of coloniality has three main axes: power, knowledge, and being. They are constituted, according to Maldonado-Torres (2019a, p. 42),

through the naturalization of war and the various modalities of human difference that have become part of the modern/colonial experience while, at the same time, helping to differentiate modernity from other civilizing projects and to explain the ways in which coloniality organizes multiple layers of dehumanization within the modernity/coloniality.

Therefore, with its imposing logic and its lines of action, coloniality led to the subordination of individuals and entire social groups, the concealment and deterioration of identities, which impacted the traditional discourse of human rights (FERNANDES, 2014, p. 73). As a power pattern that pervades social relations worldwide, coloniality has to do with how the category of race impacts the denial of full humanity for racialized groups. Moreover, the Enlightenment consolidated rationality as the main criterium to assert someone's humanity while denying most human individuals' rational condition. (BRAGATO, 2014, p. 221).

As a result, "the natural rights of man were born due to the intrinsic superiority of the rational subject, which is the center of the anthropocentric model" (BRAGATO, 2014, p. 208). Two of the most known human rights documents - the Virginia Declaration of Rights (1776) and the French Declaration of the Rights of Man and the Citizen (1789) - granted inherent rights to human beings, such as life, freedom, and property based on the idea of rationality and the liberal-bourgeois social ideal. (BRAGATO, 2014, p. 208-209).

The central role of rationality in structuring human rights (or rights of man) rose the human individual into the center of public life, shifting (Christian) religiosity to private life. However, the colonized subjects were kept out of the space for disputing rights, placed in the peripheries, in the colonies, in suburban areas, where the colonizer had to go to fulfill his civilizing mission. So, until the colonizer takes the colonized from his/her backwardness, there is no reason to grant the latter the status of human beings. (MALDONADO-TORRES, 2019, p. 99). In this way, coloniality played (and plays) a central role in the traditional discourse of the foundation of human rights, which marked out all the primary legal documents on the matter.

Against this backdrop, let us remake the question initially proposed in this article: how does the logic of coloniality operate to prevent the Guarani and Kaiowá indigenous people from enforcing their territorial rights?

The first relevant connection between coloniality and the obstacles endured by the Guarani and Kaiowá in Mato Grosso do Sul is the dehumanization

of these populations (and of all the indigenous peoples of Brazil) as a strategy to legitimize agribusiness expansion. There is a temporal displacement of the indigenous peoples, "because those who were not Europeans, in a classic Eurocentric view, were located in the past and the colonizers always believed that they should accelerate a supposed evolutionary process" (CAVALCANTE, 2013, p. 303). Moreover, the social classification of populations through race category and the subsequent downgrading affects Indigenous Peoples than anyone else, depriving them of the right to manage and conduct their affairs. (CAVALCANTE, 2013, p. 303).

Assimilationist policies, conveyed by racist speeches and State policies of removing Indians into reservations, characterize the strategy of dehumanizing Brazil's indigenous peoples through the logic of coloniality. This strategy proved to be successful in the Guarani and Kaiowá case,

as several indigenous society work on farms and plants, since the land does not offer conditions for subsistence. However, to produce as owners of territorial usufruct, they must stop being wild, primitive and embrace reason, follow human evolution in its linear fatalism, which is a discriminatory, racist perception, in the final analysis (BIGOLIN NETO, 2017, p. 141).

Despite the end of State assimilationist policies when the 1988 Brazilian Constitution was enacted, influential politicians in Brazil keep defending the supposed modernization of indigenous life. They claim, for instance, that they should engage in business, such as mining, in order to finally arrive at the 21st century. (ODELLO, 2012, cap. 3).

The State non-protection of Guarani and Kaiowá coexists with the legal overprotection of TNCs and their interests to the detriment of indigenous lands' demands.

This privilege resulted from the coloniality of power can also be explained by the massive presence of politicians lobbying the agribusiness interests both in the Executive and in the Legislative branches. In the National Congress, the Agricultural Parliamentary Front (FPA) holds 241 federal deputies (of the 513 that make up the House) and 39 senators (of the total of 81), totalizing 285 parliamentarians (of whom nine are from Mato Grosso do Sul). Besides, the Brazilian President, Jair Bolsonaro, when a federal deputy, was also a member of the FPA, which demonstrates his alignment with the organization's proposals.

FPA hardly works to slow the advancement of territorial demands or dismantle the constitutional rights mainly due to the lobby agribusiness TNCs put forward. This lobby has materialized, in recent years, through the financing of parliamentary election campaigns aligned with the interests of this sector. Campaign financing by TNCs can be considered a form of lobbying since "similar companies operating in the same economic sector share expectations about the impact that different applications would have on their activities if they were successful" (CAMARGO; HOROCHOVSKI; MANCUSO, 2016, p. 38-64).

Just as the attribution of derogatory stereotypes to indigenous peoples, especially when their struggles for land collide against economic interests, grounds the lack of protection of Guarani and Kaiowa, the belief that TNCs' bring development and produce wealth in host countries explain the overprotection of these companies. In other words, both the obstacles faced by the Guarani and Kaiowás for the restitution of their lands and the facilities of the TNCs to economically explore these same lands follow a deeply colonial logic. This logic begins with the conquest of America. Today, the salvationist rhetoric of colonialism that justifies the irresponsible action of the TNCs in the peripheral host countries to the detriment of the rights of the most vulnerable populations guarantees the permanence of coloniality. Besides, local elites continue to play the same historical role to ensure the privileges of exploiting large corporations and benefit as intermediaries between the TNCs and the marginalized populations of their own country. In the backward/primitive versus development/civilization dichotomic rhetoric, the Guarani and Kaiowás always lose. Precisely because of this logic, there are no effective mechanisms for holding TNCs accountable, which, after all, have benefited from the exploitation of their lands since colonial times. The Brazilian State, in the Guarani and Kaiowá context, adopts a position of omission, despite the legal obligation to recognize and demarcate the lands. The State is under direct pressure from the local elites who, in the name of the dichotomous-developmental discourse, guarantee their right to the indigenous people's lands by supporting the various governments that have succeeded since Mato Grosso do Sul became an agricultural power.

In this perspective, the Guarani and Kaiowá will continue to face much more powerful opponents, who mobilize this power in the most different areas to

dehumanize, disqualify and delegitimize indigenous demands, making it increasingly difficult to access the territorial rights guaranteed by the Brazilian Constitution of 1988.

FINAL REMARKS

As the case of the Guarani and Kaiowá indigenous society in Mato Grosso do Sul elucidated, the logic of coloniality acts in a remarkable way to prevent TNCs from being held responsible for human rights violations that occur in their production chains. TNCs benefit from the processes of vulnerability and denial of rights to individuals and groups that do not fit into the colonial power matrix, increasing their economic and political capacity based on supposed development and progress projects in peripheral regions. With these projects' economic success, TNCs have accumulated enough political power to subject States and international financial organizations to their will. It reflects the absence of international legal mechanisms capable of punishing corporations for human rights violations that they directly or indirectly commit through their production chains, strengthening the so-called impunity architecture.

Thus, the question remains: how can the architecture of impunity and the logic of coloniality be confronted in order to enable the Guarani and Kaiowá to access effective means of holding TNCs accountable? Firstly, the Guarani and Kaiowá must continue not to fall behind the colonial pressures, taking the destiny of their own lives into their hands. Secondly, it is essential to dispute the drafting of laws (in particular, of International Law), tensioning, by legal and non-legal means (such as advocacy mechanisms, for example), these structures to readjust their mechanisms of liability.

These changes so significant to deconstruct the asymmetries of power between the TNCs and the Guarani and Kaiowá will not arise from the current system. They will not arise from an international law that does not consider TNCs liable for the human rights violations; nor through developed countries that, since the colonial period, have been complicit in the unconstrained performance of TNCs, which has made and makes victims worldwide. Nor will they count on a Eurocentric human rights discourse that cannot represent the plural realities and underestimate most people.



On the other hand, it is possible to affirm that the dismantling of the architecture of impunity and the logic of coloniality in human rights and TNCs begin when the populations affected by these corporations' activities assume that resistance is necessary to bring about changes. Furthermore, how to talk about resistance without mentioning the Guarani and Kaiowá, who have been doing nothing but resisting? Indigenous peoples must be a mirror to the Brazilian population concerning a new way of feeling and thinking: a way that does not accept with arms crossed everything that comes from above, but resists, pressures, mobilizes the power so that the law can be an instrument for the transformation of society.

References

#ABRILINDÍGENA: parecer caracteriza ataques a indígenas ocorridos na região sul de MS como crimes contra a humanidade. *In*: NOTÍCIAS MPF. Brasília, DF, 30 apr. 2019. Available at: <http://www.mpf.mp.br/ms/sala-de-imprensa/noticias-ms/abrilindigena-parecer-caracteriza-ataques-a-indigenas-ocorridos-na-regiao-sul-de-ms-como-crimes-contra-a-humanidade>. Access in: 17 dec. 2019.

ARRIGHI, Giovanni. *O longo século XX*. São Paulo: Ed. UNESP, 1997.

BARRETO, José-Manuel. Cerberus: “Rethinking Grotius and the Westphalian System”. *In*: FONSECA, Manuel Jiménez; KOSKENNIEMI, Martti; RECH, Walter (eds.). *International Law and Empire: Historical Explorations*. Oxford: Oxford University Press, 2016. p. 149-176.

BENITES, Tonico. Os ataques a indígenas no MS na visão de uma liderança. *Carta Capital*, São Paulo, 16 set. 2015. Available at: <https://www.cartacapital.com.br/sociedade/os-ataques-a-indigenas-no-ms-na-visao-de-uma-lideranca-6848>. Access in: 05 jun. 2019.

BIGOLIN NETO, Pedro. *Entre colonialidade[s] e atrocidade[s]: os conflitos territoriais envolvendo os Guarani e Kaiowá e o agronegócio no Estado do Mato Grosso do Sul*. 2017. Dissertation (Master's Degree in Law) – Graduate Program in Law, Universidade do Vale do Rio dos Sinos (UNISINOS), São Leopoldo, 2017. Available at: <http://www.repositorio.jesuita.org.br/handle/UNISINOS/6758>. Access in: 17 jun 2019.

BRAGATO, Fernanda Frizzo. “Para além do discurso eurocêntrico dos direitos humanos: contribuições da descolonialidade”. *Revista Novos Estudos Jurídicos*, Florianópolis, vol. 19, nº 1, p. 201-230, jan./apr. 2014. Available at: <https://siaiap32.univali.br/seer/index.php/nej/article/view/5548>. Access in: 15 dec. 2019.

BRAZILIAN INSTITUTE OF GEOGRAPHY AND STATISTICS (IBGE). *Brasil em síntese: pecuária*. Brasília, DF, 2019. Available at: <https://cidades.ibge.gov.br/brasil/ms/pesquisa/18/16459?tipo=ranking&indicador=16533>. Access in: 08 jun. 2019.

BRAZILIAN INSTITUTE OF GEOGRAPHY AND STATISTICS (IBGE). *Levantamento sistemático da produção agrícola: dados de abril de 2019*. Brasília, DF, 2019. Available at: <https://www.ibge.gov.br/estatisticas/economicas/agricultura-e-pecuaria/9201-levantamento-sistemico-da-producao-agricola.html?=&t=resultados>. Access in: 08 jun. 2019.

BRAZILIAN INSTITUTE OF GEOGRAPHY AND STATISTICS (IBGE). *O Brasil Indígena*. Brasília, DF, 2009. Available at: <http://www.funai.gov.br/arquivos/conteudo/ascom/2013/img/12-Dez/pdf-brasil-ind.pdf>. Access in: 05 jun. 2019.

BROWN, Michael; MALONI, Michael. "Corporate Social Responsibility in the Supply Chain: an Application in the Food Industry". *Journal of Business Ethics*, Basel, v. 68, n. 1, p. 35-52, sep. 2006.

BUSCOLI, Lara Dalpério. "Os números dos assassinatos indígenas Guarani-Kaiowá". *Revista Geografia em Atos*, Presidente Prudente, n. 1 v. 7, p. 114-131, dec. 2018.

BUSCOLI, Lara Dalpério. *Impactos e resistências no processo de estrangeirização das terras em Rio Brillhante (MS): o caso dos projetos de assentamentos federais São Judas, Margarida Alves, Silvio Rodrigues e do território indígena Laranjeira Ñanderu*. 2016. Dissertation (Master's Degree in Geography) – Graduate Program in Geography, Universidade Estadual Paulista (UNESP), Presidente Prudente, 2016. Available at: <https://repositorio.unesp.br/handle/11449/149810>. Access in: 24 jan. 2020.

CAMARGO, Neilor Fermino; MANCUSO, Wagner Pralon; HOROCHOVSKI, Rodrigo Rossi. "Empresários e financiamento de campanhas na eleição presidencial brasileira de 2014". *Teoria & Pesquisa: revista de ciência política*, São Carlos, v. 25, n. 3, p. 38-64, 2016. Available at: <http://www.teoriaepesquisa.ufscar.br/index.php/tp/article/view/537/339>. Access in: 24 jan. 2020.

CAVALCANTE, Thiago Leandro Vieira. *Colonialismo, território e territorialidade: a luta pela terra dos Guarani e Kaiowá no Mato Grosso do Sul*. 2013. Thesis (Doctor's degree in History) – School of Sciences, Universidade Estadual Paulista, Assis, 2013. Available at: https://repositorio.unesp.br/bitstream/handle/11449/106620/cavalcante_tlv_dr_assis.pdf?sequence. Access in: 22 jan. 2020.

CHANDA, Nayan. *Bound Together: how traders, preachers, adventurers and Warriors shaped globalization*. New Haven; London: Yale University Press, 2007.

DUSSEL, Enrique. *1492: o encobrimento do outro*. Petrópolis: Ed. Vozes, 1993.

DUSSEL, Enrique. "Europa, modernidade e eurocentrismo". In: LANDER, Edgardo (eds.). *A colonialidade do saber: eurocentrismo e ciências sociais. Perspectivas Latino-americanas*. Buenos Aires: CLACSO, 2005. p. 25-34.

FERN. *Financing land grabs and deforestation: the role of EU banks and investors*. Brussels, jul. 2016. Available at <https://www.fern.org/fileadmin/uploads/fern/Documents/Financing%20land%20grabs%20final.pdf>. Access in: 29 oct. 2019.

FERNANDES, Karina Macedo. *Deslocados internos e direito à moradia no contexto dos megaeventos esportivos no Brasil: direitos humanos relativizados pela colonialidade do poder*. 2014. Dissertation (Master's degree in Law) – Graduate Program in Law, Universidade do Vale do Rio dos Sinos (UNISINOS), São Leopoldo, 2014.

FERREIRA, Waldemar. "A companhia geral para o estado do Brasil e sua natureza jurídica". *Revista da Faculdade de Direito da Universidade de São Paulo*, São Paulo, v. 50, p. 78-103, 1955.

FUCHS, Doris. "Theorizing the Power of Global Companies". In: MIKLER, John (org.) *The Handbook of Global Companies*. Chichester: Wiley-Blackwell, 2013.

GERBER, Konstantin; MENDES, Rafaela Paula Ribeiro. "Morosidade na demarcação, violência decorrente e o direito à terra dos Guarani Kaiowá". *Aracê: direitos humanos em revista*, São Paulo, v. 4, n. 5, p. 323-345, feb. 2017. Available at: <https://arace.emnuvens.com.br/arace/article/view/147>. Access in: 24 jan. 2020.

GEREFFI, Gary. KORZENIEWICZ, Miguel. *Commodity Chains and Global Capitalism*. Wesport: Praeger Editions, 1994.

GERMANÁ, César. "La migración internacional en el actual periodo de globalización del sistema-mundo moderno/colonial". *Alternativas: Cuadernos de Trabajo Social*, Alicante, n. 13, p. 19-31, 2005. Available at: <http://rua.ua.es/dspace/handle/10045/5398>. Access in: 24 nov. 2019.

GLASS, Verena. *Em terras alheias: a produção de soja e cana em áreas Guarani no Mato Grosso do Sul*. São Paulo: Repórter Brasil, 2011. Available at: <https://reporterbrasil.org.br/documentos/emterrasalheias.pdf>. Access in: 29 out. 2019.

GLOBAL CAMPAIGN TO RECLAIM PEOPLES SOVEREIGNTY, DISMANTLE CORPORATE POWER AND STOP IMPUNITY. *Treaty on Transnational Corporations and their supply chains with regard to Human Rights*. 2017. Available at: https://www.stopcorporateimpunity.org/wp-content/uploads/2017/10/Treaty_draft-EN1.pdf. Access in: 06 nov. 2019.

GLOBAL JUSTICE NOW. *69 of the richest 100 entities on the planet are corporations, not governments, figures show*. [S.l.], October 17, 2018. Available at: <https://www.globaljustice.org.uk/news/2018/oct/17/69-richest-100-entities-planet-are-corporations-not-governments-figures-show>. Access in: 31 oct. 2019.

GONZÁLEZ, Erika; RAMIRO, Pedro; ZUBIZARRETA, Juan Hernández. "Tratado internacional de los pueblos para el control de las empresas transnacionales: una apuesta desde los movimientos sociales y la solidaridad internacional". *Cuadernos Hegoa*, Bilbao, n. 64, p. 7-42, 2014.

HIGA, Tereza Cristina Souza. "A redordenação do território". In: MORENO, Gislaene; HIGA, Tereza Cristina Souza (eds.). *Geografia de Mato Grosso: território, sociedade, ambiente*. Cuiabá: Entrelinhas, 2005. p. 88-101.

INDIGENOUS MISSIONARY COUNCIL (CIMI). *Relatório: Violência contra os povos indígenas no Brasil - dados de 2017*. Brasília, DF: CIMI, 2018. Available at: https://cimi.org.br/wp-content/uploads/2018/09/Relatorio-violencia-contra-povos-indigenas_2017-Cimi.pdf. Access in: 17 dec. 2019.

INTERNATIONAL LABOUR ORGANIZATION (ILO). *El trabajo decente em las cadenas mundiales de suministro*. 2016. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_468096.pdf. Access in: 05 nov. 2019.

MALDONADO-TORRES, Nelson. "Análítica da colonialidade e da decolonialidade: algumas dimensões básicas". In: BERNARDINO-COSTA, Joaze; GROSGOUEL, Ramón; MALDONADO-TORRES, Nelson (eds.). *Decolonialidade e pensamento afrodiaspórico*. Belo Horizonte: Ed. Autêntica, 2019. p. 27-54.

MALDONADO-TORRES, Nelson. "Da colonialidade dos direitos humanos". In: MARTINS, Bruno Sena; SANTOS, Boaventura de Sousa (org.). *O pluriverso dos direitos humanos: a diversidade das lutas pela dignidade*. Belo Horizonte: Ed. Autêntica, 2019. p. 87-109.

MONDARDO, Marcos Leandro. "A geometria de poder do conflito territorial entre fazendeiros e Guaranis-Kaiowás na fronteira do Brasil com o Paraguai". *Acta Geográfica*, Boa Vista, Ed. Especial, p. 185-202, 2014. Available at: <https://revista.ufrr.br/actageo/article/view/2439>. Access in: 24 jan. 2020.

MOTA, Juliana Grasiéli Bueno; PEREIRA, Levi Marques. "O movimento étnico-socioterritorial Guarani e Kaiowa em Mato Grosso do Sul: atuação do estado, impasses e dilemas para demarcação de terras indígenas". *Boletim DATALUTA*, p. 01-18, oct. 2012. Available at: http://www2.fct.unesp.br/nera/artigodomes/10artigodomes_2012.pdf. Access in: 24 jan. 2020.

NAÍM, Moisés. *O fim do poder*. São Paulo: Leya, 2017. E-book (não paginado).

NATIONAL INDIAN FOUNDATION (FUNAI). *Terras indígenas no Brasil*. Available at: <http://www.funai.gov.br/index.php/indios-no-brasil/terras-indigenas>. Access in: 05 jun. 2019.

NOLAN, Justine. "Human Rights and Global Corporate Supply Chains: is effective supply chain accountability possible?" In: BILCHITZ, David; DEVA, Surya (eds.).

Building a treaty on Business and Human Rights: context and contours. Cambridge: Cambridge University Press, 2017. p. 238-265.

ODELLO, Marco. *El derecho a la identidad cultural de los pueblos indígenas de América: Canadá y México.* Madrid: Universidad Nacional de Educación a Distancia, 2012. *E-book.*

OLIVEIRA, Renan Antunes de. "Os jagunços cercam os guaranis". In: PÚBLICA: Agência de Jornalismo Investigativo. Available at: <http://apublica.org/2015/11/cercados-pelos-jaguncos/>. Access in: 05 jun. 2019.

PARLIAMENTARY AGRICULTURAL FRONT (FPA). *Todos os integrantes.* Available at: <https://fpagropecuaria.org.br/integrantes/todos-os-integrantes/>. Access in: 24 jan. 2020.

PAVÃO, Eugênio da Silva. *Formação, estrutura e dinâmica da economia do Mato Grosso do Sul no contexto das transformações da economia brasileira.* 2005. Dissertation (Master's degree in Industrial Economy) – Graduate Program in Economy, Universidade Federal de Santa Catarina (UFSC), Florianópolis, 2005. Available at: <https://core.ac.uk/download/pdf/30382814.pdf>. Access in: 24 jan. 2020.

QUIJANO, Aníbal. "Colonialidade do poder e classificação social". In: MENESES, Maria Paula; SANTOS, Boaventura de Sousa (eds.). *Epistemologias do Sul.* São Paulo: Cortez Editora, 2014. p. 68-107.

QUIJANO, Aníbal. "Colonialidade do poder, eurocentrismo e América Latina". In: LANDER, Edgardo (eds.). *A colonialidade do saber: eurocentrismo e ciências sociais. Perspectivas Latino-americanas.* Buenos Aires: CLACSO, 2005. p. 117-142.

QUIJANO, Aníbal. "Dom Quixote e os moinhos de vento na América Latina". *Estudos Avançados*, São Paulo, v. 19, n. 55, p. 9-31, dec. 2005. Available at: http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0103-40142005000300002. Access in: 01 dec. 2019.

QUIJANO, Aníbal; WALLERSTEIN, Immanuel. "La americanidad como concepto, o América en el moderno sistema mundial". *Revista Internacional de Ciencias Sociales.* Barcelona, vol. XLIV, n° 4, p. 583-593, dec. 1992.

RAMIRO, Pedro; ZUBIZARRETA, Juan Hernández. *Against the lex mercatoria: proposals and alternatives for controlling transnational corporations.* Bilbao: OMAL; Paz con Dignidad, 2016.

ROBINS, Nick. *A corporação que mudou o mundo: como a Companhia das Índias Orientais moldou a multinacional moderna.* Rio de Janeiro: Editora Difel, 2012. *E-book.*

ROLAND, Manoela Carneiro *et al.* "Análise do Draft One: avanço ou retrocesso?" *Cadernos de Pesquisa Homa*, vol. 2, n. 8, p. 1-34, 2019. Available at:

<http://homacdhe.com/wp-content/uploads/2020/01/Cadernos-de-Pesquisa-An%C3%A1lise-do-Draft-One-Retificado.pdf>. Access in: 17 nov. 2019.

ROLAND, Manoela Carneiro *et al.* “Desafios e perspectivas para a construção de um instrumento jurídico vinculante em direitos humanos e empresas”. *Revista Direito GV*, São Paulo, v. 14, n. 2, p. 393-417, ago. 2018. Available at: http://www.scielo.br/scielo.php?script=sci_abstract&pid=S1808-24322018000200393&lng=pt&nrm=iso. Access in: 24 jan. 2020.

RUGGIE, John Gerard. “Multinationals as global institution: power, authority and relative autonomy”. *Regulation and Governance*, Milton, v. 12, n. 3, p. 317-333, jun. 2017. Available at: <https://onlinelibrary.wiley.com/doi/full/10.1111/rego.12154>. Access in: 25 oct. 2019.

TORO, Simón Mejía. “La relación entre la construcción de cadenas de valor global y la protección de derechos humanos por parte de las compañías multinacionales”. *Journal of International Law*, Colombia, v. 7, n. 2, p. 144-181, jul./dec. 2016.

TRADE UNION CONFEDERATION OF WORKERS OF THE AMERICAS. *Cadenas Globales de Producción y acción sindical - Cartilla Formativa*. 2017. Available at: <http://csa-csi.org/Include/ElectosFileStreaming.asp?FileId=4477>. Access in: 05 nov. 2019.

UNCTAD. *Global Value Chains: investment for trade and development*. 2013. Available at: https://unctad.org/en/PublicationsLibrary/wir2013_en.pdf. Access in: 10 nov. 2019.

WALLERSTEIN, Immanuel. *O sistema mundial moderno: A agricultura capitalista e as origens da economia-mundo europeia no século XVI*. Porto: Edições Afrontamento, 1996.

WALLERSTEIN, Immanuel. *O universalismo europeu: a retórica do poder*. São Paulo: Boitempo Editorial, 2011.

WORLD ORGANIZATION AGAINST TORTURE. *List of Issues arising from the Second Periodic Report of Brazil to the Committee on Economic, Social and Cultural Rights, May 2008*. Genebra, May 2008. Available at: <https://www.refworld.org/type,COUNTRYREP,,BRA,491ac3222,0.html>. Access in: 05 jun. 2019.

WUNSCH, Marina Sanches. *Empresas transnacionais e direitos humanos: desafios jurídicos e sociais a partir do direito internacional*. 2019. Thesis (Doctor's degree in International Strategic Studies) – Graduate Program in International Strategic Studies, Universidade Federal do Rio Grande do Sul (UFRGS), Porto Alegre, 2019.

The Logic of Coloniality and the Absence of Legal Liability for Transnational Companies for Human Rights Violations in the Production Chains: The Case of the Guarani and Kaiowá Indigenous People in Mato Grosso do Sul

Abstract

Drawing from the case of Guarani and Kaiowá indigenous people in Mato Grosso do Sul, this paper aims to analyze how the logic of coloniality relates to the transnational corporations' lack of accountability for human rights violations occurred in their production chains. It is an explanatory research through through the historical and comparative methodologies, that adopts, as research techniques, bibliographical and documentary analysis. The research results demonstrate that the logic of coloniality plays a central role in the lack of accountability of transnational corporations for human rights violations that occurred in the production chains. These results were verified to the extent that transnational companies, since their beginning, in the colonial period, have benefited from processes of dehumanization and subordination of individuals and groups (such as indigenous peoples) to expand and consolidate their political and economic power, persisting until now.

Keywords: Coloniality. Indigenous peoples. Transnational corporations. Human rights.

A Lógica da Colonialidade e a Falta de Responsabilização Jurídica para as Empresas Transnacionais por Violações de Direitos Humanos nas Cadeias de Produção: o Caso do Povo Indígena Guarani e Kaiowá no Mato Grosso do Sul

Resumo

O presente trabalho tem como objetivo principal verificar, com base no caso do povo indígena Guarani e Kaiowá no Mato Grosso do Sul, de que maneira a colonialidade atua para impedir a responsabilização das empresas transnacionais por violações de direitos humanos ocorridas nas suas cadeias de produção. Trata-se de pesquisa de modalidade científica, de espécie explicativa, utilizando como método de abordagem a metodologia indutiva, como métodos de procedimento as metodologias histórica e comparativa, e como técnicas de pesquisa, análises bibliográfica e documental. Os resultados da pesquisa apontam que a lógica da colonialidade ocupa papel central na ausência de responsabilização das empresas transnacionais por violações de direitos humanos ocorridas nas cadeias de produção. Estes resultados foram verificados na medida em que as empresas transnacionais, desde o seu começo, no período colonial, se beneficiam de processos de desumanização e subordinação de indivíduos e grupos (como os povos indígenas) para expandir e consolidar seu poder político e econômico, persistindo até hoje.

Palavras-chave: Colonialidade. Povos indígenas. Empresas transnacionais. Direitos humanos.

La Lógica de la Colonialidad y la Falta de Responsabilidad Legal de las Empresas Transnacionales por Violaciones de los Derechos Humanos en las Cadenas de Producción: El Caso de los Pueblos Indígenas Guaraní y Kaiowá en Mato Grosso do Sul

Resumen

El objetivo principal de este artículo es verificar, con base en el caso de los pueblos indígenas Guaraní y Kaiowá en Mato Grosso do Sul, como funciona la colonialidad para evitar que las empresas transnacionales sean responsables por las violaciones de los derechos humanos que suceden en sus cadenas de producción. Esta es una investigación científica, de tipo explicativo, que utiliza la metodología inductiva como método de enfoque, metodologías históricas y comparativas como métodos de procedimiento, y las técnicas de investigación de análisis bibliográfico y documental. Los resultados de la investigación señalan que la lógica de la colonialidad desempeña un papel central en ausencia de responsabilidad de las empresas transnacionales por las violaciones de los derechos humanos que ocurren en las cadenas de producción. Estos resultados se verificaron en la medida en que las empresas transnacionales, desde el período colonial, se benefician de procesos de deshumanización y subordinación de individuos y grupos (como los pueblos indígenas) para expandir y consolidar su poder político y económico, persistiendo así hasta hoy..

Palabras clave: Colonialidad. Pueblos Indígenas. Empresas Transnacionales. Derechos Humanos.