

Protecting the Rights of Indigenous People in Brazil: the Role of the Public Defender's Office and the Case of the Waimiri-Atroari Community

presented by

Prof. Dr. Cleber Francisco Alves,
from

Rio de Janeiro Public Defender's
Office

Federal Fluminense University

Catholic University of Petropolis



Introduction

- Consensus in democratic states on the need for legal aid services and the importance of state-funded legal services
- Equality in access to rights and citizenship is a particular issue in countries with wide ethnic-cultural diversity
- This paper aims to debate access to a most basic fundamental right – civil registration – for members of aboriginal communities
- Proposal to share Brazilian experience in promoting this right for members of the Waimiri Atroari community



Outline

The Role of the Public Defender's Office in Brazil

Fundamental Rights of Indigenous People at International and National levels

The right to civil registration and its importance for Indigenous communities

The Case of the Waimiri Atroari Community and the “CAPI-INDIGENA”: a Project of Roraimas’s Public Defender's Office





The Role of the Public Defender's Office in Brazil

- Establishment and mission of the Public Defender's Office
- Scope of legal aid services provided by the Public Defender's Office
- Definition of vulnerable people and their inclusion in legal aid services
- Importance of providing legal aid services to Indigenous communities

Fundamental Rights of Indigenous People: right to civil registration

- International and National recognition of Indigenous rights: change from an “assimilationist” perspective to a multicultural and diverse perspective
- Challenges to ensure respect to fundamental rights and access to justice for Indigenous people



The importance of civil registration for Indigenous communities

- Civil registration as a gateway to recognition and guarantee of fundamental rights
- International and national legal provisions for civil registration and documentation
- Challenges in civil registration for Indigenous peoples
- Mitigating the challenges through concrete experiences and projects



Philippines - IPMNCHN Project, implemented by Department of Health (DOH) and National Commission on Indigenous Peoples (NCIP)



Canada - Salia Joseph of the Squamish Nation holds her daughter Alila. Birth registry officials in B.C. didn't permit the last character the newborn's aboriginal name. Her name means 'wild raspberry.' (Mike McArthur/CBC)



Congo – Justin Assomoyil, director of promotion of indigenous people's right at the Ministry of Justice, hands over a late birth certificate to a Young Indigenous boy, on 13 September 2021 – UNHCR/Hélène Caux

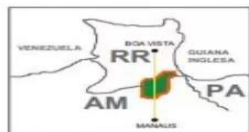
The Case of the Waimiri Atroari Community





- Brief history of the Waimiri Atroari Indigenous people
- Challenges faced by the community in the past
- Recovery and improvement of living conditions
- Semi-isolation regime and preservation of culture

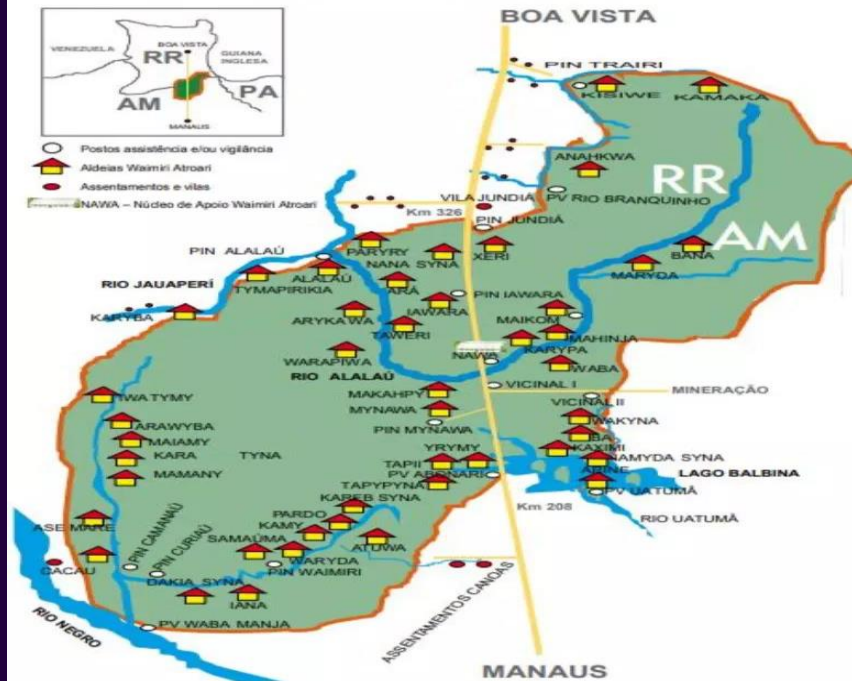


Decreto nº 94.606 de 14/07/1987 | Área 2.585.971ha

Decreto nº 94.606 de 14/07/1987 | Área 2.585.971ha



-  Postos assistência e/ou vigilância
 Aldeias Waimiri Atroari
 Assentamentos e vilas
 NAWA – Núcleo de Apoio Waimiri





The CAPI-INDÍGENA Project of Roraima's Public Defender's Office

- Itinerant Justice and recent developments in legal aid services
- Implementation of a project to guarantee fundamental rights
- Training of Indigenous team members
- Services provided by the team within the community
- Challenges and future considerations

The "kinjas" team working at CAPI- INDIGENA





Visit to Waimiri Atroari Village,
in April 2023 – Prof. Cleber
Alves and Prof. Kim Economides



Public Defender Elceni Diogo da Silva, creator and responsible for implementing the CAPI-INDIGENA project, receiving an award in recognition of the importance of the project. The award was given to the "kinjas" at the Waimiri Atroari Program support center.



Institutional Video, prepared by ASCOM DPE-RR,
presenting the CAPI-INDIGENA Project
<https://youtu.be/JEfKf2Af71I>



Conclusion

- Importance of the project in protecting the rights of Indigenous peoples
- Potential for implementation in other countries with similar situations
- Continued efforts to ensure access to justice and rights for all Indigenous communities in Brazil



Thank you for your attention!

Contact email:

profcalvesdp@gmail.com

The role of the Public Defender's Office in protecting the fundamental rights of Indigenous people in Brazil

Cleber Francisco Alves¹

Tell the world that we exist!

(Request made by a member of the Waimiri Atroari community to the author of this paper, when visiting a village, in April 2023.)

1. Introduction

There is an increasingly consolidated consensus in contemporary democratic states under the principle of the “Rule of Law” that access to fundamental rights - and to “due process of law” in order to assert such rights - recognized as an expression of citizenship, and that even access to the full exercise and effective citizenship itself, in its various dimensions, should not be a right of a “negative” nature: this is a kind of situation in which it is not enough for the state to simply refrain from violating such a right. In other words, the prevailing idea is that the formal provision of such rights would not be enough without there being state obligations and responsibilities to act proactively and positively to ensure the effectiveness of the right to equal access to justice.

That means that it is not enough to simply abstain from creating obstacles to access to rights and justice: states must proactively create institutions and mechanisms to overcome such obstacles and ensure the provision of the public/state-funded legal aid service to grant effective equality among the citizens. As is known, such services can be organized under different possible models which develop according to specific historical and cultural

¹ Cleber Francisco Alves is a Public Defender (since 1994) with the Rio de Janeiro's State Public Defenders and works representing poor litigants specifically in civil cases before the Court of Appeal of the state of Rio de Janeiro, in Brazil. He is also currently a Professor at Universidade Federal Fluminense, and a researcher at its PhD and Master's Program in “Sociology and Law”. He has been a member of the International Legal Aid Group since 2005.

peculiarities of each country. In any case, for the purposes of evaluating the effectiveness of these models/schemes, it is important to highlight that it is not enough to ensure mechanisms to overcome only the obstacles of an economic nature that prevent citizens' equal access to rights and justice. Other kinds of vulnerabilities besides poverty (in the ordinary sense of lack of financial resources) need to be considered as obstacles to be overcome to reach that goal. Such vulnerabilities may concern issues of gender, health status, advanced age, illiteracy (today, including technology illiteracy), cultural diversity, physical distance, psychological barriers and - very often - ethnic-racial aspects.

This issue of equality in access to rights and citizenship proves to be even more challenging in the case of countries with wide ethnic-cultural diversity, where part of their population is made up of members of aboriginal peoples or – in the most frequent expression – Indigenous peoples. These peoples present peculiarities in their cultural identity, and in their stage of development (mainly what is considered technical and scientific development), differentiated in relation to the pattern of the hegemonic social group that normally integrates contemporary global society, i.e. the group which is responsible by the configuration of the legal-political order predominant in most contemporary national states. Thus, it is unequivocal the situation of vulnerability that justifies the inclusion of these native peoples as recipients of state-funded legal aid services, which aims to ensure effective legal equality in access to rights.

In that regard, the present paper aims to debate exactly this issue of access to rights and justice for members of aboriginal communities, especially in places where such people are minorities, who are therefore in a vulnerable situation and must be the object of special attention and priority of state-funded legal aid services.

Our proposal is to share some Brazilian experience regarding this issue, presenting a case in which the Public Defender's Office of the state of Roraima, in Brazil, has been carrying out a project aimed at guaranteeing the fundamental rights of members of the Waimiri Atroari² community, an Indigenous people who inhabit the Amazon Jungle - in a semi-isolation regime - that is, it is an Indigenous people who have deliberately chosen to exercise their right to

² For more information access: https://pib.socioambiental.org/en/Povo:Waimiri_Atroari

refrain from integrating into the culture of the surrounding Brazilian society. Despite being very simple and of limited range/impact in quantitative terms, we consider that this project holds a strong significance not only in the context of that specific aboriginal community where it is been implemented, but also for the broad Indigenous people in a similar situation to the Waimiri Atroari community, around the world.

To this end, we will start by talking briefly about the Brazilian state-funded legal aid service model, provided by the Public Defender's Office, and its role in ensuring access to justice and to rights in a broader sense, which is not restricted to economic vulnerabilities, and which intends to meet/address the "integrality" of legal needs, not only in the field of criminal defense, but in any legal area where it is necessary to ensure equal access to rights and justice. Afterwards, we will discuss the fundamental rights of Indigenous peoples at the international level and at the Brazilian national level. Next, we will make a brief digression to address the issue of the specific importance of the right to civil registration and obtaining the respective identification documentation as a condition for recognition as a person under the legal system, and for the enjoyment of all other fundamental rights.

We will discuss the specific barriers and difficulties faced by Indigenous communities in the effective exercise and observance of this right to civil registration. Ultimately, to move on to the specific final part of the work, we will present a brief history of the situation of Indigenous peoples in Brazil, with a particular focus on the Waimiri Atroari community, and we will conclude by presenting a very significant - although extremely simple - concrete intervention consisting of a project that aims to guarantee this most elementary right to exercise citizenship - the right to registration and birth certificate and other civil documents - relating to members of the "Waimiri-Atroari" community, in the heart of the Amazon jungle.

Although, at first glance, it may be considered that a project specifically focused on guaranteeing access to basic documentation does not present greater relevance, we believe that it is a true indispensable gateway to the recognition and guarantee of the rights of these Indigenous populations to citizenship status which is a *sine qua non* for the protection of their fundamental rights as human persons.

2. The role of the Public Defender's Office in Brazil and its mission in defending the rights of vulnerable people, including members of Indigenous communities

Under Brazil's current Constitution, approved on October 5, 1988, the Government must provide legal aid to anyone unable to pay for an attorney. Brazil's Constitution also establishes the "professional staff model" as the main form for legal aid services to be delivered by the state. Thus both the Federal Government³ and the states Governments must organize and maintain a specific institution, the Public Defender's Office - PDO ("Defensoria Pública", in Portuguese Language), which has a *status* and structure similar to that of another state organization, also established in the same Federal Constitution, i.e. the Public Ministry Office (the Prosecutor's Office). According to article 134 of the Constitution, the PDO is "*a permanent institution, essential to the jurisdictional function of the state, and is responsible primarily, as an expression and an instrument of the democratic regime, for the judicial guidance, the promotion of human rights, and the full and free of charge defense, at all levels, both judicially and extra judicially, of individual and collective rights of the needy*".

In compliance with this constitutional provision, the PDO is charged with the legal advice and the defense of collective and individual rights in both civil and criminal affairs. Its mission includes the responsibility of defending the interests of those who are most vulnerable, both inside or outside the courtroom. The PDO also has the constitutional ability to promote the human rights' defense *lato sensu* and its array of actions that are not solely restrained to the economically vulnerable. Whenever a blatant violation of human rights takesplace, the PDO – backed by the Brazilian Constitution and international treaties – may act regardless of the economic status of whoever benefits.

In this sense, in Brazil, the concept of "needy"⁴ (as established in art. 134 transcribed above), for purposes of recognizing the right to free legal aid provided by the Public Defender's Office, has been also associated with the idea of "vulnerability"⁵. The term

³ Brazil is a federation consisting of 26 states and the Federal District.

⁴ The expression "needy" perhaps is not the best translation into English of the expression "necessitado" in Portuguese. It means: "those in need", or those unable to avail themselves of the services of a private legal professional to provide advice and representation in Court.

⁵ For a more in-depth understanding of the breadth of the notion of vulnerability, in the Latin American context, we recommend the document "The One Hundred Rules of Brasilia", which were approved at the 14th Ibero-American Judicial Summit, which took place in Brasilia in March 2008. Available at: <https://www.icj.org/wp-content/uploads/2018/11/Brasilia-rules-vulnerable-groups.pdf>

“needy” should be interpreted more broadly, not restricted exclusively to economically disadvantaged persons, who do not have the resources to litigate in court without prejudice to personal and family support, but to all those who are socially vulnerable. The notion of vulnerable people includes those persons who, because of any possible and concrete circumstances, find it difficult to exercise fully before the system of justice the rights recognized by the legal system. The difficulty in accessing the justice system may derive from multiple types of vulnerability, such as age, disability, the fact of belonging to minority communities, victimization, migration and internal displacement, poverty, gender and deprivation of liberty. Therefore, it remains unequivocal that - among the recipients of legal aid services provided by the Public Defender's Office - are the members of communities of native peoples, that is, Indigenous Brazilians both with regard to their individual and collective rights.

In its constitutional role of promoting rights and guaranteeing access to justice for members of aboriginal communities, the Brazilian Public Defender's Office must be attentive to take into account the numerous issues and difficulties that must be considered. If, on the one hand, it is necessary to find adequate mechanisms to ensure respect for their fundamental rights equivalent to those guaranteed to other citizens in the surrounding society, it is also necessary to recognize a sphere of autonomy and self-determination, respecting their traditional legal system, of a customary nature, which provides them with what seems to be appropriate to their specific needs, interests and priorities, all this in accordance with guidelines issued by the international human rights system, notably that determined by the United Nations Declaration on the Rights of Indigenous Peoples, the American Declaration on the Rights of Indigenous Peoples and the Convention 169 of the ILO - International Labor Organization.

In this sense, it is also necessary, above all, that the way of providing the service is thought of from a “client-centered perspective”, that is, from their interests and priorities perspective, and not from the ethnocentric vision of the members of the legal professionals. Therefore, it is necessary to take into account the cultural, existential and identity aspects specific to each community. It is necessary to bear in mind the historical context of possible traumas and conflicts that occurred in the past that could compromise the degree of trust and credibility necessary to avoid misunderstandings regarding the sincere intention of empowerment and respect for otherness and diversity.

These are some of the challenges that arise with regard to the specific legal aid service to be provided by the Public Defender's Office to members of Indigenous communities.

3. Fundamental rights of Indigenous people at international and national levels.

The recent world history is still strongly marked by the colonialist movement, by which some countries, mainly European, subjugated vast territories and their people, on other continents, mainly in America and Africa and later in Asia and Oceania, subjecting them to their economic interests, and imposing their systems of political-legal organization on such people. In this colonialist movement, many native peoples were almost completely decimated, and those who resisted had their cultures, their habits, their beliefs strongly impacted and depreciated, as they were considered primitive and not worthy of preservation, compared to the parameters that the European colonizers considered more “advanced”.

This supremacist cultural mentality of the colonizing peoples was also associated with ethnic-racial discrimination, the regrettable effects of which are still present to this day. In this purpose of domination and submission of those who were considered different and inferior, it was sought - often even through the use of forced and violent means - the “assimilation” of Indigenous peoples to European cultural standards, disregarding their existential references, their language, their oral traditions and their beliefs, in short, their own way of living.

This mentality prevailed until very recently, reaching the second half of the 20th century. This is what can be seen from Convention 107, of the International Labor Organization - ILO - approved on June 5, 1957. Although it had the good intention of ensuring protection for members of these Indigenous peoples who represented the majority of the workforce in (European) colonial domains, it still reflected the assimilationist mentality, in the sense of seeing, then, as desirable a future horizon in which native peoples would lose their identities and their own cultural characteristics to become part of a “single national people” understood in homogeneous terms: a single culture and a single language, that is, a single and uniform national community (which, in practical terms, meant assimilated to the hegemonic European standard). In this context, the condition of Indigenous people was perceived as a “transitional state” and on the way to extinction. Due to this mentality (today considered anachronistic and unsustainable) it was then considered necessary to adopt a protective attitude on the part of the governments, understanding the members of Indigenous communities “not yet” “integrated” as individuals and communities susceptible to “state tutelage”, not recognizing their status as effective and full citizenship.

With the decolonial movement that took place in the 1960s and 1970s of the last century, associated with the change in anthropological conception, a new understanding arises that the

Indigenous condition is not a transitory state in the process of evolution or transformation into another, but rather an identity and a (diverse) form of social organization with the legitimacy to continue to exist as such and to maintain its traditional territories, its languages, its customs, its traditions, its knowledge and its practices within national states. This new understanding resulted in the approval of a new ILO Convention in June 1989, that is, Convention 169, which replaced Convention 107.

Almost twenty years later, that is, on September 13, 2007, the United Nations General Assembly approved the Declaration on the Rights of Indigenous Peoples, in which the overcoming of the assimilationist and integrationist model was enshrined. In Article 8 of the UN Declaration it was established that “Indigenous peoples and individuals have the right **not to be subjected to forced assimilation** or destruction of their culture.” Almost a decade later, the same provision was enshrined in the American Declaration of the Rights of Indigenous Peoples, whose Art. 10.1. says: Indigenous peoples have the right to maintain, express, and freely develop their cultural identity in all respects, free from any external attempt at assimilation.

In the case of Brazil, a country of Portuguese colonization, whose independence was achieved at the beginning of the 19th century, this assimilationist mentality had already been formally overcome a year earlier, in 1988, with the promulgation of the new Federal Constitution, which put an end to the period of the authoritarian regime of the military dictatorship that had begun in 1964, reestablishing a democratic regime.

The current Brazilian Constitution approved in 1988, in its Article 231, establishes the following: “*Indigenous people shall have their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy.*” Regarding legal capacity and the exercise of autonomy related to the direct postulation of individual and collective rights before the courts, there is expressly a provision in art. 232, which says: “*the Indians, their communities and organizations have standing under the law to file suits to defend their rights and interests, the Federal General Attorney Office intervening in all the procedural acts.*” This conception and provisions- for the time in which it was approved - seem to be *avant-garde* with regard to the rights of Indigenous peoples, although - after 35 years - its effective implementation is very far from which would be ideal and therefore represents a challenge to be faced and overcome.

Although the text transcribed above from Art. 232 establishes that members of Indigenous communities, individually or collectively, can directly claim their rights, including before the Judiciary, it is necessary to bear in mind that in the Brazilian judicial procedural

system, postulation in court and the respective defense - not only in criminal cases, but also in any civil, property, family matters, etc - ordinarily can only occur through a regularly qualified lawyer: there are very few exceptions in which a citizen is allowed to *pro se* litigation in our country.

Thus, considering that - from the perspective of cultural, linguistic, and even economic-financial aspects - members of Indigenous communities find themselves in an unequivocal situation of vulnerability, they are normally not realistically in a position to hire a private lawyer to provide them with legal advice and with legal representation when necessary. In these cases, what happens is that they very often end up relying on lawyers made available to them by various existing NGOs - often sponsored by national and international humanitarian organizations - aimed at protecting Indigenous rights and interests, from a charitable perspective.

However, considering what establishes the Brazilian Constitution of 1988, in Art. 134, already mentioned above, in view of the notorious situation of weakness in which Indigenous people find themselves, with regard to the claim and protection of their rights when necessary to resort to the traditional state legal system, it is the duty of the Public Defender's Office to provide them with legal aid services, free of charge. It is important to reiterate that we are not just talking about promoting the defense of Indigenous people in possible criminal cases in which they may be involved, as defendants. The constitutional mandate of guaranteeing access to rights and justice to be provided by the Public Defender's Office covers any cases, as plaintiff or defendant, in all legal areas (civil cases in general, which comprise family issues, social security, social benefits, etc.) and even through collective rights protection mechanisms (class actions, etc).

Due to the precariousness and scarcity of public defenders available throughout Brazil, especially in the most remote areas (which are exactly those where the majority of Indigenous communities that remain in their traditional territories are found), the ability to effectively meet the needs of this specific public is still far below what is necessary. In practical terms, it must be said that there are not enough hands to handle the volume of work that would need to be done. Therefore there is a huge gap in fulfilling the obligation to provide free legal assistance and effective protection of their rights. Especially because this is a kind of service that needs to be provided proactively (in the form of outreach legal services), outside offices, through mobile structures (buses, trucks, boats and even planes) - in partnership with other

judicial services - of the so-called Itinerant Justice⁶. However, in recent years, interesting and significant projects by the Brazilian Public Defender's Office have been carried out, specifically aimed at the Indigenous population.

Furthermore, as already highlighted, the dynamics of the service must be provided from the perspective of the interests and priorities of the user/recipient of the services and not from the perspective of legal professionals who normally think and feel more comfortable reproducing the same kind of service delivery that they are used to providing to non-indigenous people who are usually the users of traditional legal services in the state legal system. Otherwise, it would indirectly imply “forced assimilation or integration”, which would directly contradict the parameters established in the national and international legal system as seen above.

In short, it must be said that guaranteeing effective access to justice services to the needed extent to provide the full enjoyment of fundamental rights, delivering a service specifically tailored to achieve universality for Brazilian Indigenous peoples is an enormous challenge that needs to be faced by the Brazilian Public Defender's Office, and which is still a long way from being achieved.

4. The importance of the right to basic civil documentation to allow Indigenous people to be recognized as citizens and to obtain protection of their fundamental rights

Among the fundamental rights that, as a priority, must be guaranteed to members of Indigenous communities, is an indispensable premise and requirement to enable the claim and enjoyment of practically all others: this is the right to civil registration. This right is based on article 6 of the Universal Declaration of Human Rights and specifically, recognized in article 24, paragraph 2 of the International Covenant on Civil and Political Rights and also in the article 7 of the Convention on the Rights of the Child. Accordingly, Target 16.9 has been included to the Sustainable Development Goal (SDG) 16 on Access to Justice, in order to specifically require that states provide a legal identity to everyone by 2030, including birth registrations.

⁶ For more information about the Brazilian experience with Itinerant Justice services, we recommend the following article: ECONOMIDES, Kim. ITINERANT JUSTICE AND PROACTIVE LEGAL SERVICES: Origins, Achievements and Future Directions. In: *Direito em Movimento* Law Review. v. 18, no. 3, 2020. Available at: <https://ojs.emerj.com.br/index.php/direitoemmovimento/article/view/332>.

The fulfillment of the right of every human being to be registered at birth is closely linked to the realization of many other rights: primarily the acknowledgment of the rights inherent to nationality⁷, and also of socioeconomic rights, such as the right to health and the right to education, for example. It is through birth registration, and the issuance of the corresponding certificate, that the right of everyone to recognition everywhere as a person before the law is concretely realized. It establishes the existence of a person under law, and lays the foundation for safeguarding civil, political, economic, social and cultural rights. As such, it is a fundamental means of protecting the human rights of the individual.

The civil registration of all members of Indigenous communities, in addition to being indispensable from an individual perspective, also has a relevant dimension from a collective perspective as it allows the counting of quantitative data of this population group in official statistical systems, for the purposes of developing and improving public policies that are relevant to the peculiar and specific realities of this specific human group.

In the case of aboriginal individuals, there is also an important cultural component, which consists in the objective identification of their belonging to the respective people and ethnic-cultural group⁸. For a long time, due to the assimilationist mentality typical of the colonial regime to which they were subjected, acts of civil registration had a connotation of rupture with the original cultural identity, and very often was seen as a signal of integration of the Indigenous person into the non-indigenous national community. Therefore, legislation and regulations pertaining to civil registration used to impose limitations on the choice of names and other identifying elements specific to the respective culture, requiring the use of the

⁷ The right to citizenship is a recognised fundamental human right, a key element of human dignity and a pivotal part of the responsibilities of all states in terms of human rights. While holding documentation attesting nationality is not “imperative” to enjoying a nationality, it is also true that the ability to produce or procure evidence of nationality can be critical, in practice, to ensuring that a particular individual is — and continues to be — considered as a national by the state concerned. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), in which Article 6 explicitly protects this same right for Indigenous peoples.

⁸ See: GIFFONI, Johny Fernandes. *O Direito ao Nome e o direito fundamental à identidade indígena*. In: Revista de Direito da Defensoria Pública do Rio de Janeiro. Ano 27, n. 28, 2018. Available at: <https://www.researchgate.net/publication/354845582>.

official vernacular/official language of the respective state, banning the use of tribal names, considered exotic and incompatible with Eurocentric hegemonic culture.

In Brazil, there was an express legal provision (Law 6015 of 1973) forbidding the registration of names considered exotic or capable of exposing the bearer of the name to “ridicule” (obviously, from the perspective of non-indigenous people). This was a factor that, very often, took away the interest of members of Indigenous communities in registering their civil records and that of their children. This circumstance partly justifies the serious problem of civil under-registration in the Indigenous context: The 2010 Brazilian Census showed that among non-indigenous children, around 98% of them were registered in the year of birth or in the three months of the following year. Among aboriginal people, this indicator plummeted to 67.8%, according to data from the Brazilian Institute of Statistics. Undoubtedly, in addition to this cultural/identity obstacle, there are also many other factors, such as specific geographical, financial and operational hurdles in the context of the way of life and of the places of residence of most Indigenous communities, especially groups that occupy remote areas and choose to remain more isolated from the surrounding society.

In this sense, the following specific difficulties normally faced by a large part of Brazilian Indigenous people can be listed as other aggravating factors: the distances Indigenous peoples have to travel to reach civil registration offices (to register a birth or establish a national identity card); the costs (direct and indirect) associated with obtaining these documents; and the complexity of the procedures to follow (especially for those whose birth was not registered and thus have to start legal proceedings to get a birth certificate), low literacy rates and limited knowledge of the Portuguese language and, finally, a lack of conscience of the role and function of citizenship documents.

To change this scenario, an important first step consisted in reinterpreting the normative precepts applicable to civil registries, specifically in the case of Indigenous people. For the purposes of overcoming the express legal provisions that created the first of the above-mentioned barrier (cultural prejudice and risk of identity rupture mainly related to the issue of choosing the civil name to be attributed to the Indigenous person) a basis was sought in norms of international law and in the Brazilian Constitution of 1988 itself, whose provisions - as already seen above - completely changed the stance of the Brazilian State regarding the legal regime applicable to aboriginal people.

The 2007 United Nations Declaration on the Rights of Indigenous Peoples states, in article 13, that “*Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons*”. In the same sense, in compliance with what determines the United Nations Convention on the Rights of the Child and its specific application to Indigenous children, the Committee on the Rights of the Child established a series of guidelines, among which number 44 stands out, determining that : “*taking into account articles 8 and 30 of the Convention, States parties should ensure that Indigenous children may receive Indigenous names of their parents' choice in accordance with their cultural traditions and the right to preserve his or her identity. States parties should put in place national legislation that provides Indigenous parents with the possibility of selecting the name of their preference for their children*”.

These precepts of the international human rights protection system are in line with the provision of Art. 231 of the Brazilian Constitution, already mentioned above, which determines that Indigenous people shall have their social organization, customs, languages, creeds and traditions recognized, which naturally encompasses the right to be socially and publicly recognized by a name that must be attributed to each person according to their own criteria and identity aspects. To fully assert this right and overcome this obstacle that contributed to the refusal of many Indigenous people to register their civil birth and that of their children, the National Council of Justice of Brazil, in 2012, approved a Deliberation aimed at regulating the operationalization of specific civil registration services in the country⁹. Through this Deliberation, procedures were simplified, coordination was established and partnerships were fostered between government bodies and agencies with different responsibilities within the scope of these services, namely: Judiciary, Public Defender's Offices, Public Prosecutor's Office, Civil Registry Offices, etc. The understanding is established that the legal standard that prohibits the attribution of exotic names should not be applied in the case of Indigenous birth records, ensuring respect for their own identity and

⁹ See: LIMA, Erick Cavalcanti Linhares de. *Cidadania Indígena: erradicação do sub-registro em comunidades tradicionais de Roraima.*” In: *Direito em Movimento Law Review*. V. 18, n. 1, 2020. Available at: <https://ojs.emerj.com.br/index.php/direitoemmovimento/article/view/176/223>

linguistic criteria. Norms were also adopted aimed at simplifying late Indigenous birth registrations and procedures for changing names and respective civil registration data, as a result of specific events or facts linked to their own culture and religious traditions.

Thanks to this new normative configuration, it has been possible to make significant progress in the effort to eradicate civil under-registration within Indigenous communities. This change has allowed concrete initiatives to be carried out in order to ensure that Indigenous children, including those living in remote areas, are duly registered.

According to the guidelines of the United Nations Committee on the Rights of the Child, the fight for the universalization of the right to civil registration, specifically for Indigenous people, must be carried out through special measures tailored to the peculiarities and difficulties specific to these communities, especially in the case of those located in more remote areas. This is what Directive 42 expressly determines, which establishes the following: *“(...) States parties should take special measures in order to ensure that Indigenous children, including those living in remote areas, are duly registered. Such special measures, to be agreed following consultation with the communities concerned, may include mobile units, periodic birth registration campaigns or the designation of birth registration offices within Indigenous communities to ensure accessibility”*.

As already indicated, the purpose of this paper is to present an exemplary case of the Brazilian Public Defender's Office, in the State of Roraima, aiming to fully comply with these guidelines related to the fundamental right of civil registration, in favor of the Waimiri-Atroari Indigenous Community. We will now move on to presenting this concrete experience, starting with a brief explanation to provide the reader with some basic information about this specific Indigenous people, in order to allow a better understanding of the importance of the work carried out, in this case, by the Public Defender's Office.

5. The Waimiri Atroari Indigenous people: a brief history

When Portuguese colonizers began occupying the Brazilian coast, shortly after the discovery of the land in 1500, they found a coastline rich in natural resources, inhabited by hundreds of thousands of Indigenous people in a setting that was viewed by them as a true idyllic paradise. The coastal areas were inhabited by tribes from two mega Indigenous groups known as the

Tupi people (grouped together because they have a more or less common language, called *Tupi-Guarani*) and the *Tapuia* people.

In the more inland regions of the continent, in the area that today corresponds to the northwest of Brazil, including the banks of the Amazon River, there lived tribes that are considered part of the *Caribs* (or *Karibs*) Indigenous groups and also of the *Nuaraque* group further towards the Upper Amazon. Over the last five centuries, owing to the occupation and exploitation by white European colonizers, the effectively Indigenous population was continuously reduced, whether due to death from diseases brought by the colonizers to which they had no immunity, or due to atrocities and massacres perpetrated against them to facilitate the seizure of their land and exploitation of natural wealth/resources.

In the middle of the 20th century, the majority of the Indigenous population that opted to keep isolated or, at least, semi-isolated and to maintain its traditional way of life and its cultural identity – even with some level of contact with the surrounding society – lived mainly in the Amazon jungle regions. Among these people were the "Waimiri-Atroari". According to a report by the Amazonas Truth Committee¹⁰, in 1905 German researchers Georg Hübner and Theodor Koch Grünberg traveled along the lower Jauaperi River and estimated the Waimiri Atroari at 6,000 people. Due to a series of conflicts resulting from invasions and attacks carried out by white explorers over the following decades, which culminated in severe clashes that occurred in the sixties and seventies of the 20th century, the Waimiri Atroari population decreased significantly. The most emblematic and violent confrontations occurred in the 1970s, during the construction of the BR-174 highway, which was built to connect Manaus (the capital city of the State of Amazonas) to Boa Vista (the capital city of the State of Roraima), and resulted in the near extinction of the Waimiri Atroari. Of 3,000 Indigenous people in the early 1970s, only 332 survived in the 1980s¹¹: these Indigenous people were almost completely decimated. It is estimated that at least 8,350 Indians were murdered between 1946 and 1988.

¹⁰ COMITÊ DA VERDADE, MEMÓRIA E JUSTIÇA DO AMAZONAS. *A Ditadura Militar e o Genocídio do Povo Waimiri-Atroari: por que kamña matou kiña*. Campinas: Editora Curt Nimuendajú, 2014.

¹¹ In 1983, researcher Stephen Grant Baines, from the University of Brasília, traveling through all the villages, counted only 332 surviving people, of which 216 were children or young people under 20 years of age. (State Commission for the Right to Truth, Memory and Justice of Amazonas, 2012).

The lands traditionally occupied by these people (rich in natural resources, especially minerals), were the target of interest in the context of the Brazilian federal government's developmental policies for the Amazon, at a time of total lack of concern regarding environmental balance. In the mid 1970s, the existence of cassiterite ore was found in the indigenous area. A large mining company expressed interest in exploring this ore and, with spurious support from FUNAI¹² - the very federal government organization that was supposed to protect the aboriginal people - a process was articulated that led to the extinction of the "Waimiri Atroari Indigenous Reserve" (which had been created only recently, on 13/07/1971). The status of the Reserve was changed into a category with much less legal protection, that is, a simple "Temporarily Interdicted Area for the Purposes of Attracting and Pacifying the Waimiri Atroari Indians" and it was excluded from its extension the entire area where the cassiterite deposits were found. Later, in the 1980s, another large project reached the lands of the Waimiri Atroari community: a part of their reserve was flooded for the construction of the Balbina hydroelectric plant, by ELETRONORTE - a government company in charge of producing electricity in the North region of the country.

In short, the fact is that the intensification of contact between non-indigenous society and the Waimiri Atroari caused them dramatic consequences, in terms of depopulation. Armed clashes exterminated entire villages. Epidemic outbreaks of exogenous diseases weakened their entire population, to the point that people of working age could no longer hunt, fish or cultivate fields, a fact that ended up resulting in a serious state of starvation and social disintegration in several of their villages. Due to all these traumas and aggressions suffered, naturally, the remnants of the Waimiri Atroari people cultivated a feeling of strong antagonism and distrust towards the non-indigenous population and towards Brazilian organizations and government entities.

An important milestone in the cycle of overcoming this trauma and in the attempt to repair part of the harm caused by the surrounding society and public authorities, and to ensure a

¹² National Indigenous People Foundation or FUNAI is a Brazilian governmental protection agency for Amerindian interests and their culture

“rebirth” for the Waimiri Atroari people, took place in 1987. A project to mitigate the environmental impacts caused by the Balbina Hydroelectric Plant was conceived in a formal Agreement signed by Waimiri Atroari representatives, ELETRONORTE and FUNAI. It was the “Waimiri Atroari Program”, conceived and proposed by the sertanist José Porfírio Fontenele de Carvalho. This project provided for actions in the areas of health, education, environment, support for food production, surveillance system and protection of the territorial limits of the Indigenous reserve, and also cultural preservation and community memory. Based on this agreement, the Indigenous reserve area was finally demarcated and approved by Federal Government in 1989, with an area of 2.5 million hectares, occupying part of the States of Roraima and Amazonas¹³.



(The area highlighted on the map corresponds to the Waimiri Atroari Indigenous Reserve)

Since then, the community has been experiencing a significant recovery process, with improvements in its conditions and quality of life, which has resulted in a high birth rate (the

¹³ VALE, M. C. R. D. Povos Indígenas no Brasil: Waimiri Atroari. Instituto Socioambiental, 2021. Available at: [https://pib.socioambiental.org/pt/Povo: Waimiri Atroari](https://pib.socioambiental.org/pt/Povo:Waimiri%20Atroari).

vegetative growth rate varies by an average of 5.68% per year). Although they choose to maintain a lifestyle very close to that adopted by their ancestors, rejecting greater approximation and acculturation to the way of life of non-indigenous society, they do have access to differentiated school education¹⁴, where they themselves think and lead the schooling process, in addition to not foregoing - in the most serious cases, when they consider that the natural and traditional health care resources at their disposal are not sufficient - receiving medical, pharmaceutical and dental care¹⁵ provided by a medical team hired directly by the community, with resources from the Waimiri Atroari Program. Health care in the villages includes preventive measures such as vaccination and incorporation of hygiene and health preservation practices. When necessary, they effectively turn to hospitals and other public health services.

Thanks to all these efforts, the current population reached more than 2,500 people (the “*kinjas*”¹⁶), with an average age of around 18 years, according to data provided by the Demographic Information System of the Waimiri Atroari Program, in 2022. The population is distributed across 74 villages spread out, some on the banks of the region's main rivers and other further inland, in the hinterland. It was really a rebirth of this people!

6. The Public Defender's Office (and the Itinerant Justice of Roraima) and its role in protecting the fundamental rights of the Waimiri Atroari people: the implementation of CAPI - Indigenous

¹⁴ In 1986 there was no specific school unit for the Waimiri Atroari. Currently there are schools in all villages, and all the teachers in these schools are indigenous people who have been properly trained. They are literate in their mother tongue and also learn Portuguese.

¹⁵ There is an external health team, made up of a doctor, two nurses and a dentist, in addition to 15 health technicians (paramedics) and a pharmacist, who – together with dozens of indigenous people trained as health agents – carry out preventive health monitoring and provide basic emergency care in the villages. In more serious cases, sick indigenous people are taken to hospitals in the cities for treatment.

¹⁶ “*Kinja*” is the word in the native language used exclusively to designate members of their ethnic group, which means “true/real people” and whose pronunciation, in phonetic symbols, would be: [k][i][n][a]. To name non-indigenous people they use the word “*kaminja*”: [k][a][m][i][n][a].

As already explained, certainly because of the traumas recently experienced in contact with the non-indigenous population, the Waimiri Atroari people chose to adopt a regime of semi-isolation, maintaining as little contact as possible with the surrounding society. To preserve their way of life and their culture, they do not accept the circulation of money inside their villages, and do not accept receiving social benefits or other kinds of government financial aid, like pensions, retirement, etc. They do not allow processed foods or alcoholic beverages in their day-to-day life. Ordinarily, they do not allow the use of technological resources for simple comfort or leisure purposes according to the criteria of non-indigenous people. Electricity - produced from solar energy - is only allowed in villages to operate equipment that they consider necessary, for example, for their health, such as a refrigerator to store medicines, electric inhalers in case of respiratory problems. Television and computers with internet are allowed only in schools for teachers to use as a teaching resource and in research for their classes.

Due to the traumatic experience in which the people were almost completely decimated, the Waimiri Atroari wanted to remain distant from non-indigenous people, especially State agents and members of public-government bodies. They do not accept to register as voters and do not have interest in participating in state political life. They do not allow religious missionaries or any strange people to enter their villages. They also avoid leaving their lands to interact with the surrounding society: they only move to urban centers in cases of extreme need. Because of that, they usually said that they had no interest in formally linking themselves to any formal national society, and were not clear about the usefulness of formalizing their birth registration at a registry office. However, with an extremely young population and being reborn after almost complete extermination, in their fight for life, seeking to ensure good health conditions to survive as a people, the “*kinjas*” were facing difficulties in accessing public services provided outside their villages, especially hospitals, because they did not have official civil identification documents, starting with birth registration.

Faced with this situation, they became aware that, although according to their way of life, they had practically no interest or use in accessing the formal State system of access to justice, it would be important, at least, to formalize birth register in the civil registry office, not only of the newly born, but also the late birth registration of the entire population, the majority of whom - because they did not have birth certificates - in practice were almost completely invisible to the Brazilian State.

This situation began to be resolved through partnerships signed between sectors of the Judiciary of the States of Roraima and Amazonas, together with the Roraima Public Defender's Office, the Waimiri Atroari Program and several other partners. The union of these various institutions allowed itinerant justice services to be carried out in their villages, aimed at guaranteeing the fundamental rights of citizenship. In 2018, a large joint effort took place by Roraima's itinerant justice system, with the partnership of the Public Defender's Office and other state agents, whose primary objective was to implement the right to civil registration for these Indigenous people. Thanks to this joint effort, the births of 1980 people were registered: 1,118 people, in the terrestrial stage (which occurred from February, 26th and March, 3rd, 2018) and 862 in the river stage of the expedition (which took place from 02nd to 04th July, 2018). All these late birth records were made in the Waimiri Atroari Land, previously defining the dates in agreement with them to observe their calendars, so as not to interfere with the harvests, hunts, religious ceremonies and also their festivals. It should be noted that in the aforementioned itinerant action, civil registration was carried out for a man called Warypeki Comprido Waimiri, 95 years old, the oldest (born in 1923), and a child named Wakié José Porfírio who, at 45 days old, was the 2000th indigenous person of the ethnicity at that moment, and concretely represented the rebirth of this people to life and citizenship.

In 2019, new itinerant services were provided along the same lines as the previous year. However, there was a perceived difficulty in people's mobility, in addition to the high rate of population growth among the Waimiri Atroari, raising awareness of the need to offer citizenship services, without compromising the culture, pace of life and traditions of these Indigenous peoples. To solve this problem, one of the members of the Public Defender's Office of Roraima conceived, created and installed in 2021 a service called the "Waimiri- Atroari Indigenous Service and Petition Center" (CAPI - Central de Atendimento e Peticionamento Indígena, in Portuguese Language), in the Waimiri Atroari Reserve. It was the first fixed Public Defender's service station, in Brazil, that operates within an Indigenous reserve. The idea that inspired this initiative was to contribute to the empowerment and appreciation of the Indigenous community itself, which stands out for organizing and protecting its roots and cultural self-referentiality.

Public Defender Elceni Diogo da Silva, who was responsible for implementing the project, trained a team of six Indigenous people from the Waimiri Atroari community so that they

themselves can provide assistance to people when they appear at CAPI. They even learned to operate the specific electronic system that is used within the scope of the Public Defender's Office, for filing new suits/cases. All the work that would normally be carried out by paralegals from the Public Defender's Office staff in a typical service station, here – at CAPI, is carried out, *in loco*, by members of the Indigenous community. They themselves conduct the interviews to collect the necessary data and information/documents. They fill out the forms on the computer and the appropriate electronic documents, which are forwarded "online" to the Public Defender's Office in Boa Vista, capital of the State of Roraima. There, the public defender Ms. Elceni Silva reviews and adjusts whatever is necessary - in accordance with legal requirements - affixing her signature electronically for due forwarding to the Judge in order to authorize the formalization of birth records (or issuance of other civil documents), exempt from paying any expenses. At the end, when birth certificates and/or other documents are issued, the Public Defender's Office sends them to the management of the Waimiri Atroari Program, where such documents are kept in their archives to be used by the respective indigenous person to whom it belongs, when necessary. They do not send them to the villages, as they know that such documents would be of no use there: they will only be useful if the indigenous person needs any service or assistance from any State body.

The implemented project was designed to allow "*kinjas*" to have access to their civil birth records, without needing to leave the community, having contact only with agents from the community itself, aiming to guarantee them citizenship without interfering in their traditions and culture. The indigenous team that works at CAPI autonomously defines the days and times of its operation, observing the rhythms of the routine, work demands and the community's cultural calendar.

Thus, through the implementation of this CAPI INDIGENA project, a direct dialogue channel was created between the Public Defender's Office and the Waimiri Atroari people, to resolve their specific (legal) needs and prevent problems that could arise when necessary to avail themselves of their rights to State public services, notably health. Ultimately, it is a citizenship action in an Indigenous reserve, which helps to overcome the difficulties and barriers that these Brazilians have in accessing any public services. It should be noted that, thanks to this project, the "*kinjas*" no longer need to leave their territory to come to the city to request birth registration and issuance of civil documents, nor do they need to wait for the episodic presence of the Itinerant Justice caravan to obtain such documents. They now have a permanent service,

an outpost of the Public Defender's Office located within their community, where the “*kinjas*” themselves provide services at their own pace.

It is important to emphasize that all actions and proceedings developed resulted from adjustments with the Indigenous community itself. Nothing was imposed. Everything was discussed and built together. Thus, initially a partnership was established between the Public Defender's Office of the State of Roraima and the Waimiri Atroari Program, after listening to the leaders of the Waimiri-Atroari people and defining the kind of citizenship services they wanted to receive, what the work should be like and the rules of behavior within the villages in the event of a need for visits. Everything was done in compliance with the guidelines and recommendations emanating from international instruments and declarations that detail the rights of Indigenous people.

The kind of legal cases that can be filed within the scope of CAPI are: Requests for Civil Registration of Birth (Indigenous); Rectification and Alteration of Civil Registration (birth); Request for a second copy of Civil Registration (birth or death)¹⁷. The practice described in this paper allows the presence of the Public Defender's Office in geographically and culturally distant locations. Furthermore, it also breaks centuries of isolation, enables the strengthening of Indigenous citizenship, the exercise of rights that were historically denied to this part of the population and, finally, brings dignity to “forgotten” people, due to geographic isolation or other factors which would not be the case to discuss here.

In a country with the geographic extension of Brazil with a population of more than one and a half million Indigenous people¹⁸ in which more than six hundred thousand reside in Indigenous reserves, most of them located in remote regions, suffering prejudice, illegal exploitation of their lands and mistaken “assimilation” policies, the implementation of practices, by the Public Defender's Office, that allow the recognition of Indigenous people as

¹⁷ The Waimiri-Atroari people did not want possible civil registration service relating to marriage or civil union. Also, due to cultural and religious aspects, they do not accept formalizing the registration of deaths. This situation, however, could represent a problem, and is being studied by the Judiciary: for statistical purposes and public policy control, death records are important.

¹⁸ INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA (IBGE). Censo Brasileiro de 2022. Available at: <https://censo2022.ibge.gov.br/>

citizens, opens doors to the exercise of rights and overcoming setbacks. Also the project described here can also serve as inspiration to be implemented in other countries with a situation similar to that experienced by Brazil, in terms of guaranteeing the rights of its Indigenous peoples.

7. Access link to the institutional video describing the CAPI-INDIGENA project

To better understand the operating dynamics of CAPI-INDIGENA implemented in Terra Waimiri-Atroari, follow the access link to an institutional video available on the YouTube Channel:

<https://www.youtube.com/watch?v=JEfKf2Af71I>