

Indigenous Peoples on the Move: Intersectional Invisibility and the Quest for Pluriversal Human Rights for Indigenous Migrants from Venezuela in Brazil

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Indigenous Peoples on the Move: Intersectional Invisibility and the Quest for Pluriversal Human Rights for Indigenous Migrants from Venezuela in Brazil

Gabriela Mezzanotti & Alyssa Marie Kvalvaag

Abstract

Indigenous migrants are often treated without regard for their status as Indigenous Peoples, as if their migrant status would hierarchically supersede their Indigenous one. The flow of Indigenous migrants from Venezuela to neighboring countries has largely increased over the years. Currently, there are several Indigenous Peoples from Venezuela in Brazil. This evaluative interdisciplinary research addresses the relations between Indigenous and migration human rights protection with consideration for decolonial perspectives. It questions how living coloniality impacts Indigenous migrants' rights, leading to their intersectional invisibility, and how decolonial views on human rights may help overcoming these challenges. It claims that a decolonial perspective on human rights rooted in the pluriverse may situate human rights as emancipatory scripts when led by Indigenous cosmologies. Ultimately, this article aims to contribute to critical understandings on the intersectional oppression faced by Indigenous migrants and, by calling for a shift towards pluriversal approaches to their human rights, illustrate possible paths to the realization of Indigenous migrants' rights and the need to decolonize their lived realities. This may inform potential directions for decolonizing the human rights agenda as well as the law and practice of human rights in the case of Indigenous migrants in Latin America.

Key words: *Indigenous Peoples; international migration; invisibility; decoloniality; pluriversality; Indigenous rights*

Introduction

A prevalent view freezes Indigenous Peoples¹ in time and space as static and deeply rooted. As a result, international migration is often not considered part of the Indigenous experience.² Yet Indigenous Peoples are on the move: from the Maya of Guatemala and the Bantus of Somalia, to the Maori of New Zealand and the Warao, E'ñepá, Pemón, Kariña, Wayúu, Ye'Kwana, and Baniva of Venezuela.³ Motives for migration are varied and may include traditional migratory patterns, socioeconomic factors, and forced displacement due to dispossession of lands, extractive and development projects, climate change and natural disasters, discrimination, conflict, and violence.⁴ While the United Nations estimates there are more than 476 million

¹ We have chosen to use capitalize Peoples when referring to specific, distinct Indigenous communities as a sign of respect.

² Carlos Yescas Angeles Trujano, *Indigenous Routes: A Framework for Understanding Indigenous Migration* (IOM 2008) 7.

³ IOM, *Legal Aspects of assisting Venezuelan Indigenous Migrants in Brazil* (IOM 2019). Brasil. Ministério da Cidadania, *Matriz de monitoramento de deslocamento (DTM) nacional sobre a população indígena refugiada e migrante venezuelana* (IOM 2021).

⁴ Yescas Angeles Trujano (n 2); UN Doc A/HRC/EMRIP/2019/2/Rev.1 (18 September 2019); Angela R. Riley and Kristen A. Carpenter, 'Decolonizing Indigenous Migration' (2021) 109(63) *California Law Review*.

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Indigenous Peoples globally,⁵ the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) acknowledges limited work on the nexus between Indigenous Peoples and migration.⁶

During migration movements and settlement processes, Indigenous Peoples' human rights are largely neglected. An Indigenous person remains Indigenous despite being on the move, and many situations of displacement may be connected to one's Indigenous status. Indigeneity has implications in terms of potential human rights violations which force Indigenous Peoples to flee, as well as implications after displacement, especially considering the right to self-determination in contrast to assimilationist policies. Indigenous migrants⁷ are often treated without regard for their Indigenous status,⁸ as if a migrant status hierarchically supersedes an Indigenous one, leading to an intersectional invisibility. While national origin is normally a focus regarding refugee status, there seems to be a disregard for the fact that national borders imposed by colonial powers also divide nations and Indigenous territories. Human rights frameworks are state-centric and reinforce borders that divide Peoples and strengthen oppression, as the labelling of Indigenous Peoples as migrants or refugees may define their enjoyment of human rights,⁹ rather than uphold their Indigenous rights.

Indigenous Peoples tend to experience a deep connection to their ancestral land.¹⁰ Consideration for the human rights of Indigenous migrants cannot ignore violations of land rights that may have been the cause of forced displacement and may lead to their extinction as a People.¹¹ Here, we acknowledge the central significance of land in Indigenous rights while aiming to avoid reifying a conception of indigeneity as dependent on living on ancestral territories or in rural areas.¹² We agree with Yescas Angeles Trujano that 'the *possession* of an Indigenous territory should not be a requirement for a community to be recognized as Indigenous', nor for the fulfillment of their rights as such.¹³ In addition, a majority of the world's Indigenous population lives in urban environments, which should not negate their Indigenous identity, rights, intergenerational trauma, and unique challenges.¹⁴

⁵ 'Leaving no one behind: Indigenous peoples and the call for a new social contract' <<https://www.un.org/en/observances/Indigenous-day>> accessed 29 September 2021.

⁶ UN Doc A/HRC/EMRIP/2019/2/Rev.1 (n 4).

⁷ An inclusive definition of migrant is employed in this article, including asylum seekers and refugees, where 'migrants' and 'people on the move' may be used interchangeably. Jørgen Carling, *Refugee advocacy and the meaning of 'migrants'* (PRIO 2017).

⁸ Riley and Carpenter (n 4).

⁹ Roger Zetter, 'Labelling Refugees: Forming and Transforming a Bureaucratic Identity' (1991) 4(1) *Journal of Refugee Studies*.

¹⁰ Rickson Rios Figueira, 'Indigenous Refugees and Cultural Erosion: Possibilities and Limits of International Refugee and Indigenous Peoples law in the Protection of Indigenous Cultural Expressions Related to Traditional Land and Native Language' (2020) 17(3) *Brazilian Journal of International Law*.

¹¹ For example, Colombia's Constitutional Court issued Judgment T-025 in 2004 regarding forced displacement and the violation of Indigenous rights. A link between forced displacement and extinction of at least 34 Indigenous Peoples was highlighted. Inter-American Commission on Human Rights (IACHR), 'Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia' 2013 para 801 <<http://www.oas.org/en/iachr/reports/pdfs/colombia-truth-justice-reparation.pdf>> accessed 03 October 2021.

¹² Soma Chatterjee and Tania Das Gupta, 'On Migration and Indigenous Sovereignty in a Chronically Mobile World' (2020) 14(2) *Studies in Social Justice* 252.

¹³ Yescas Angeles Trujano (n 2) 14.

¹⁴ 'Call for inputs from the mandate of the Special Rapporteur on the Rights of Indigenous Peoples for his Report to be Presented at the 76th Session of the UN General Assembly' <<https://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/urban-areas.aspx>> accessed 29 September 2021.

Indigenous migrants are positioned at an intersection of different human rights frameworks: as migrants, as refugees, and as Indigenous Peoples. This article claims that a decolonial perspective on human rights rooted in the pluriverse may situate human rights as emancipatory scripts when led by Indigenous cosmologies, worldviews, ethical beliefs, and multiple identities.¹⁵ Coloniality has resulted in Indigenous suffering and a protracted situation of invisibility. We argue that Indigenous status often fails to be acknowledged in terms of recognizing and enforcing Indigenous migrants' rights, and that prioritizing their migrant status results in an intersectional invisibility. We understand intersectional invisibility to capture 'contextual dynamics of power',¹⁶ as the categorization of Indigenous migrants influences their ability to claim and enjoy rights. This intersectionality is understood as resulting in simultaneous¹⁷ or interlocking¹⁸ oppressions where coloniality determines invisibility.

Utilizing the case of Venezuelan Indigenous migrants in Brazil, the article questions how living coloniality impacts the realization of Indigenous migrants' rights in the country leading to their intersectional invisibility and how decolonial views on human rights may help to overcome these challenges. Seven primary Indigenous Peoples from Venezuela have been officially acknowledged by Brazilian governmental agencies in Brazil—Warao, E'ñepá, Pemón, Kariña, Wayúu, Ye'Kwana, and Baniva—each with unique histories that have resulted in their displacement.¹⁹ This article unpacks colonial legacies present in the implementation of current laws and policies and calls for the need to decolonize the lived realities of Indigenous Peoples on the move.

Further, it reflects on how pluriversality, as proposed by decolonial theories, may present transformative ways to approach the human rights of Indigenous migrants moving forward. The research presented here is evaluative, combining theoretical, normative, and empirical interdisciplinary approaches rooted in decolonial theories. Its reflections are based on an examination of relevant legislation, legal cases, Indigenous protocols, media statements, and reports from international organizations, NGOs, governmental bodies in Brazil, governmental anthropological reports, and human rights monitoring mechanisms. In line with decolonial theories, Latin American authors have been prioritized. As the Warao are the largest group of Indigenous migrants in Brazil, many of the examples relate to their invisibility, as well as to the possibilities for pluriversal approaches to human rights illustrated by the Warao Protocol of 2020. It is crucial to highlight the heterogeneous nature of Indigenous migrants, as deep differences can exist between and within Indigenous groups. However, what they share is discrimination, poverty, and exclusion.²⁰ Acknowledging the situation of Indigenous migrants

¹⁵ Arturo Escobar, 'Más allá del desarrollo: postdesarrollo y transiciones hacia el pluriverso' (2012) 21 *Revista de Antropología Social*; Boaventura de Sousa Santos, 'Public Sphere and Epistemologies of the South' (2012) 37(1) *Africa Development*.

¹⁶ Sumi Cho, Kimberlé Williams Crenshaw and Leslie McCall, 'Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis' (2013) 38(4) *Journal of Women in Culture and Society* 788. See also Torjer A. Olsen, 'This Word is (Not?) Very Exciting: Considering Intersectionality in Indigenous Studies' (2018) 26(3) *NORA - Nordic Journal of Feminist and Gender Research*.

¹⁷ Anna Carastathis, 'The Concept of Intersectionality in Feminist Theory' (2014) 9(5) *Philosophy Compass*.

¹⁸ Patricia Hill Collins (1990) as cited in Floya Anthias, 'Hierarchies of Social Location, Class and Intersectionality: Towards a translocational frame' (2012) 28(1) *International Sociology*.

¹⁹ IOM, *Durable Solutions for Indigenous Migrants and Refugees in the Context of the Venezuelan Flow in Brazil* (IOM 2020). R4V, Regional Refugee and Migrant Response Plan (RMRP) January - December 2022 (R4V 2021).

²⁰ Laura Acosta and Bruno Ribotta, *Visibilidad estadística y mecanismos participativos de los pueblos indígenas en América Latina: avances y desafíos* (CEPAL 2022).

may lead to ‘mutual acknowledgement of how structures of oppression are related and, therefore, how struggles are linked’.²¹ Ultimately, this article aims to contribute to critical understandings on the intersectional oppression faced by Indigenous migrants and, by calling for a shift towards pluriversal approaches to human rights, illustrate possible new paths to the realization of those rights.

The case of Indigenous migrants in Brazil is pertinent for current human rights frameworks relating to the intersectional invisibility of Indigenous Peoples, collective rights on the move, and gaps between human rights law and practice. Among countries in the Americas, Brazil has one of the lowest percentages of Indigenous Peoples comprising its population at 0.5%—approximately 900,000 individuals²²—and there are high majority/minority tensions related to dichotomic interests, such as development and protection of Indigenous land. In recent years the situation of Indigenous Peoples in Brazil has become increasingly dangerous: the UN Special Rapporteur on the Rights of Indigenous Peoples has documented arbitrary arrests, torture, violent attacks, and killings.²³ Its 2018 report described Brazil as ‘the most dangerous country in the world for Indigenous human rights defenders’.²⁴ Brazil also has one of the highest suicide rates among Indigenous Peoples, and hunger and poverty are common plights for their communities.²⁵ Each of these aspects creates challenges for Indigenous migrants, who are likely to face a cruel reality of discrimination and disregard for their rights in Brazil.

The article is divided in three parts: the first addresses living coloniality, contextualizing the situation of Indigenous Peoples in Abya Yala²⁶ and Indigenous migration from Venezuela to Brazil; the second introduces the intersectional invisibility of Indigenous migrants in Brazil, drawing attention to legal protection and de facto invisibility as a consequence of coloniality; and the third argues for pluriversality as a potential way to decolonize the human rights agenda, responding to invisibility and coloniality, with the Warao Protocol as an example. The text concludes by advocating for Indigenous-led human rights frameworks for Indigenous migrants moving forward, where Indigenous migrants may define their own meanings and aspirations in relation to human rights.

1. Living coloniality

1.1. Coloniality and Indigenous Peoples in Latin America

The history of Indigenous Peoples in Latin America is marked by various forms of structural injustice and violence. Their invisibility has been imposed strategically since the conquest of the Americas in the 16th century; the colonial imaginary still persists today and leads to the denial of their humanity, culture, and rights.

Indigenous Peoples’ situation in Latin America affirms the historic debt owed to this population. If the colonizers did not kill them at once, they either enslaved them or submitted

²¹ Devon W. Carbado, Kimberlé Williams Crenshaw, Vickie M. Mays and Barbara Tomlinson, ‘Intersectionality: Mapping the Movements of a Theory’ (2013) 10(2) *Du Bois Review* 306.

²² *Censo demográfico* (IBGE 2010).

²³ UN Doc A/HRC/39/17 (10 August 2018).

²⁴ *ibid*, para 60.

²⁵ NU CEPAL, *Los pueblos indígenas de América Latina – Abya Yala y la Agenda 2030 para el Desarrollo Sostenible: tensiones y desafíos desde una perspectiva territorial* (CEPAL 2020).

²⁶ Abya Yala refers to the American continent.

them to forced labor. Their lands were confiscated and their leaders killed for the purpose of imposing white Europeans as leaders instead, who could then claim power over a tribe and its resources.²⁷ Quijano explains that new historical social identities in America were produced based on relations of domination: ‘such identities were considered constitutive of the hierarchies, places, and corresponding social roles, and consequently of the model of colonial domination that was being imposed’.²⁸ As Walsh writes, coloniality is ‘a matrix of global power that has hierarchically classified populations, their knowledge, and cosmological life systems according to a Eurocentric standard’.²⁹ The foundations of Latin America are marked by tensions between inclusion and exclusion based on race and still root current challenges to human rights.³⁰ Living coloniality means that power relations produced through and by colonialism continue to inform society and institutions, reinforcing oppressive and assimilationist tendencies³¹ and, as argued here, leading to a lack of enforcement of Indigenous rights, forcing Indigenous Peoples to flee.

The struggles Indigenous Peoples face in seeking social justice are complex, multifaceted, and mostly rooted in colonial practices.³² Latin America’s elite has been built upon European-descended whiteness despite the predominance of persons of Indigenous, African, and multiracial descent in the region.³³ This elite has led Latin American democracies by ‘granting’ rights to non-whites while keeping the formal structures of power in their hands, resulting in an exclusionary vision of democracy.³⁴ White Latin Europeans’ relationship with local Indigenous Peoples, in the context of massive commodity production, has led to the devaluation of human lives and human expendability and that is one of the main roots of racism in the Americas to this day.³⁵ Latin America’s human rights implementation gaps are shaped by the region’s economic contrasts and its racial and social hierarchies that lead to discrimination and unequal distribution of wealth and political power.³⁶ Coloniality produces the extreme vulnerability of Indigenous Peoples in both Venezuela and Brazil. This is why we

²⁷ Bartolome de las Casas, *A Brief Account of the Destruction of the Indies* (Project Gutenberg Ebook 2007).

²⁸ Anibal Quijano, ‘Coloniality of Power, Eurocentrism, and Latin America’ (2000) 1(3) *Nepantla: Views from South* 534.

²⁹ Catherine Walsh, ‘Interculturalidad, Plurinacionalidad y Decolonialidad: Las Insurgencias Político-Epistémicas de Refundar El Estado’ (2008) 9 *Tabula Rasa – Revista de Humanidades*; Walter D. Mignolo and Catherine E. Walsh, *On Decoloniality: Concepts, Analytics, Praxis* (Duke University Press 2018).

³⁰ Quijano (n 28). Walter D. Mignolo, *The Idea of Latin America* (Blackwell Publishing 2005); Liliana Lyra Jubilit, Marcia Vera Espinoza and Gabriela Mezzanotti (eds), *Latin America and Refugee Protection: Regimes, Logics, and Challenges* (Berghahn Books 2021).

³¹ Quijano (n 28).

³² Rigoberta Menchú Tum, ‘La construcción de naciones nuevas: una urgencia impostergable’ in V. Alta, D. Iturralde and M.A. López-Bassols (eds), *Pueblos indígenas y Estado en América Latina* (Editorial Abya-Yala 1998) 39-46; Fernando Antonio de Carvalho Dantas, ‘Descolonialidade e direitos humanos dos povos indígenas’ (2014) 23(53/1) *Revista de Educação Pública*.

³³ Jubilit, Vera Espinoza and Mezzanotti (n 30) 4.

³⁴ Mignolo (n 30); Judith Morrison, ‘Race and Poverty in Latin America: Addressing the Development Needs of African Descendants’ *UN Chronicle*, 2007 <<https://www.un.org/en/chronicle/article/race-and-poverty-latin-america-addressing-development-needs-african-descendants>> accessed 29 September 2021; Peter Wade, *Race and Ethnicity in Latin America* (Pluto Press 2010); Michel Gobat, ‘The Invention of Latin America: A Transnational History of Anti-Imperialism, Democracy, and Race’ (2013) 118(5) *The American Historical Review*; Jubilit, Vera Espinoza and Mezzanotti (n 30) 4.

³⁵ Mignolo (n 30); Wade (n 34); Anibal Quijano, ‘Colonialidad del Poder y Clasi? Acion Social’ (2015) 6(2) *Journal of World-Systems Research*.

³⁶ Jubilit, Vera Espinoza and Mezzanotti (n 30).

argue that plural and decolonial approaches to human rights are essential to realizing human rights in the region.

Approximately 58 million Indigenous Peoples live in Latin America.³⁷ Nearly half live in urban areas that are less secure, less sanitary, and more disaster-prone than the non-Indigenous population.³⁸ The circumstances of Indigenous Peoples in Brazil have become harder as President Jair Bolsonaro's government, in power since 2019, has expressed a lack of willingness to implement their rights despite formal recognition. Bolsonaro's discriminatory and racist discourse, associating Indigenous people with primitive beings, is an attempt to dehumanize them and ultimately delegitimize their rightful claims.³⁹ His government has redesigned policies that undermine the implementation of Indigenous Peoples' rights and supported the exploration of Indigenous territories.⁴⁰ Several bills are currently in the National Congress that aim at the flexibilization of Indigenous rights.⁴¹

Coloniality shapes the lives of the Indigenous population in Latin America. For centuries, Indigenous Peoples have been forced to flee their ancestral lands to survive. In the case of Indigenous Peoples from Venezuela, their internal displacement to urban centers no longer guarantees their survival. Hunger has forced them to cross international borders and they now find their persistent exclusion intensified by the simultaneous oppressions they face. Their intersectional positionality as both migrants and Indigenous exacerbates the precariousness of their existence.⁴²

1.2. Indigenous migration from Venezuela to Brazil

Recent Venezuelan emigration has been driven by a humanitarian crisis marked by food and medicine scarcity, political repression, and violence.⁴³ The flow of Venezuelans toward other countries is the largest migratory movement reported in the region. Latin America is the home to 4.6 million of the 5.4 million people who have left Venezuela so far.⁴⁴ Migration flows from Venezuela to Brazil have occurred in distinct waves, differentiated by migrants' profiles; they

³⁷ Acosta and Ribotta (n 20).

³⁸ World Bank, 'Indigenous Latin America in the Twenty-First Century: The First Decade' 2015 <<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/145891467991974540/indigenous-latin-america-in-the-twenty-first-century-the-first-decade>> accessed 03 October 2021.

³⁹ "The Indian does not speak our language, he does not have money, he's a poor guy, he has to be integrated into society, not raised in millionaire zoos" (translation by authors) Midiamax, 22 April 2015 <<https://midiamax.uol.com.br/politica/2015/indio-e-pobre-coitado-e-vive-em-zoologicos-milionarios-diz-bolsonaro>> accessed 06 October 2021 ; "Our project for the Indian is to make him like us" (translation by authors) Notícias UOL, 01 December 2018 <<https://noticias.uol.com.br/ultimas-noticias/afp/2018/12/01/bolsonaro-critica-ibama-e-icmbio.htm>> accessed 06 October 2021.

⁴⁰ IWGIA, 'IWGIA Condemns Killing of Indigenous Leader in Brazil' 29 July 2019 <<https://iwgia.org/en/brazil/3359-iwgia-condemns-killing-of-indigenous-leader-in-brazil.html>> accessed 05 October 2021; Maria Laura Canineu and Andrea Carvalho, 'Bolsonaro's Plan to Legalize Crimes Against Indigenous Peoples' *Human Rights Watch*, 01 March 2020 <<https://www.hrw.org/news/2020/03/01/bolsonaros-plan-legalize-crimes-against-indigenous-peoples>> accessed 05 October 2021.

⁴¹ 'Congresso anti-indígena: 33 propostas, reunindo mais de 100 projetos, ameaçam direitos indígenas' *Conselho Indigenista Missionário*, 13 October 2017 <<https://cimi.org.br/2017/10/congresso-anti-indigena-33-propostas-reunindo-mais-de-100-projetos-ameacam-direitos-indigenas/>> accessed 05 October 2021.

⁴² Judith Butler, *Frames of War: When Is Life Grievable?* (Verso 2009).

⁴³ Igor José de Renó Machado and Iana dos Santos Vasconcelos, 'Military Reception and Venezuelan Migrants in Brazilian far North: New Policies of Securitisation and Hybrid Refugee Camps' (2021) *Journal of International Migration and Integration*.

⁴⁴ R4V, *RMRP 2021 for Refugees and Migrants from Venezuela: Regional Refugee and Migrant Response Plan January - December 2021* (R4V 2020).

are increasingly characterized by extreme vulnerability.⁴⁵ Brazil hosts a total of 262,500 Venezuelans.⁴⁶ At least 6,000 of these migrants are Indigenous and 65% are Warao.⁴⁷

Prejudice against Venezuelan migrants in Brazil is reinforced by what is usually known as fear of the country's 'Venezuelization', a fear instilled in Brazilian society by far-right politicians. Fear and aversion have been maximized by xenophobic remarks from authorities and the media, who blame Venezuelan migrants for overcrowding public services and 'disturbing' the cities. This discourse has materialized as both violence against Venezuelans and as a militarized reception of Venezuelans at Brazil's borders.⁴⁸

Indigenous migration from Venezuela to Brazil is often pendular,⁴⁹ which has implications for the state's obligations to respect, protect, and promote human rights. In general, Venezuelan Indigenous Peoples have an interest in maintaining free movement in accordance with their Pan-Amazonian roots. Movement related to indigeneity is often connected to kinship,⁵⁰ and these ties may include the maintenance of customs and production of cultural resources.⁵¹ Particularly in the case of the Pemón, as a cross-border People whose villages are divided by national borders, social relations and shared resources including language, religion, belief, and knowledge of plants shape their migratory experience.⁵² Although the Warao are not a cross-border People in the same way as the Pemón, international mobility to maintain familial, social, and cultural ties is crucial in relation to their human rights.⁵³ A variety of factors motivate their movements: environmental impact, armed conflict, and death in their traditional territories, and more recently urban violence and the humanitarian crisis in Venezuela.⁵⁴ After the deaths of nine Warao children from malnutrition and lack of potable water in 2007–8, the IACHR expressed concern that the lack of access to ancestral territories had resulted in the erosion and violation of other rights and ultimately may lead to extinction of peoples.⁵⁵

2. Indigenous migrants and their intersectional invisibility

Our view of Indigenous Peoples on the move is informed by the concept of intersectional invisibility, that is, 'the general failure to fully recognize people with intersecting identities as

⁴⁵ Rosana Baeninger and João Carlos Jarochinski Silva (eds), *Migrações Venezuelanas* (UNICAMP 2018).

⁴⁶ *ibid*; IOM (n 19).

⁴⁷ These ethnic groups originate in the Venezuelan states of Tamacuro, Monagas, and Bolívar. The Warao and Kariña traditionally inhabit the Orinoco region. The Pemón are present in the border between Brazil and Venezuela and have a history of family relations in both countries. The E'ñepá, as well as the Wayúu, are originally located in the region bordering Colombia and Venezuela. The Ye'Kwana predominantly live near the Orinoco River but are scattered throughout the Amazon. The Baniva originate in the region bordering Brazil, Venezuela, and Colombia. Ye'Kwana and Baniva were first mapped in official statistical reports in November 2021. Brasil (n 3); R4V (n 19).

⁴⁸ Machado and Vasconcelos (n 43).

⁴⁹ IOM (n 3); IOM (n 19).

⁵⁰ IOM (n 19).

⁵¹ Carlos Yescas, 'Hidden in Plain Sight: Indigenous Migrants, Their Movements, and Their Challenges' (31 March 2010) <<https://www.migrationpolicy.org/article/hidden-plain-sight-Indigenous-migrants-their-movements-and-their-challenges>> accessed 27 September 2021.

⁵² IOM (n 19) 58, 69-70.

⁵³ ILO Convention No. 169 (art 32).

⁵⁴ IOM (n 3) 58; IOM (n 19) 85.

⁵⁵ IACHR, 'Democracy and Human Rights in Venezuela' 2009 para 1077 <<http://www.cidh.org/pdf%20files/VENEZUELA%202009%20ENG.pdf>> accessed 04 October 2021; IACHR (n 11).

members of their constituent groups' and their subsequent invisibility.⁵⁶ The roots of intersectionality originate in Black feminist thought and critical race theory, and the term stems from legal scholar Kimberlé Williams Crenshaw's 1989 'analogy to traffic in an intersection' relating to discrimination, sex, and race.⁵⁷ The concept of intersectional invisibility builds upon this analogy.⁵⁸

Although intersectionality traditionally builds on the categories of race and gender, Sumi Cho argues that these 'merely provided a jumping off point' and the theory is not fixed to particular categories but can and does move,⁵⁹ a sentiment upheld by the notion of intersectional invisibility.⁶⁰ Arguing that identity as an Indigenous person and as a migrant both constitute subordinate-group identities,⁶¹ the identity of Indigenous migrant has implications for human rights distinct from the experiences of individuals with a single group identity. This article makes a two-pronged intervention.⁶² First, it uses intersectional invisibility to highlight how coloniality and existing power relations are entrenched in structures, naturalizing legal and de facto invisibility. Second, it draws on decolonial theories on the pluriverse to call for human rights with an emancipatory potential moving forward. The goal is to highlight 'often hidden dynamics in order to transform them'.⁶³

2.1 Indigenous migrants in Brazil: Legal protection and invisibility

Analyzing the protection of Indigenous migrants in the Brazilian legal system transcends the mere understanding of regulations and rights: it is the concrete and immediate protection (or lack thereof) of Indigenous migrants that warrants a deeper analysis. The extent of the gap between the normative, formal aspects of the law and the reality faced by Indigenous migrants is the criteria for our analysis of their legal invisibility. Starting with an analysis of the legislation and superior courts' precedents, we then move to the actual experiences of Indigenous migrants in Brazil, indicating whether their rights are effectively protected or just formally established but inefficiently enforced.

In the Brazilian legal system, the protection of the rights of Indigenous Peoples is founded on constitutional grounds. Article 231 of the Constitution protects the rights of 'Indians'⁶⁴ to their ancestral territories, while Article 210, 2nd paragraph, protects the rights of 'Indigenous communities' to their original languages and their own learning processes.⁶⁵ These legal texts reveal an obvious choice of the legislator to protect collective Indigenous rights.

Among the several specific rights reserved for Indigenous Peoples, some are essential for the purposes of this article, such as the right to self-determination and to consultation. The right to self-determination is established in international and regional human rights

⁵⁶ Valerie Purdie-Vaughns and Richard P. Eibach, 'Intersectional Invisibility: The Distinctive Advantages and Disadvantages of Multiple Subordinate-Group Identities' (2008) 59 *Sex Roles* 381.

⁵⁷ Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 1(8) *University of Chicago Legal Forum* 149.

⁵⁸ Purdie-Vaughns and Eibach (n 56).

⁵⁹ As cited in Carbado et al. (n 21) 306.

⁶⁰ Purdie-Vaughns and Eibach (n 56).

⁶¹ See Yescas Angeles Trujano (n 2); Figueira (n 10).

⁶² Carbado et al. (n 21) 304.

⁶³ *ibid*, 312.

⁶⁴ Although the term employed in the Brazilian Constitution is 'Indian', we will continue to use 'Indigenous' in keeping with decolonial thinking.

⁶⁵ Constitution of Brazil 1988.

instruments⁶⁶ and is considered an overarching and ‘foundational right upon which all other rights of Indigenous Peoples are dependent’.⁶⁷ Self-determination affirms Indigenous Peoples’ right to ‘control their own destinies’⁶⁸ and freely determine their political status and pursue economic, social, and cultural development. It also includes cultural self-determination.⁶⁹ The EMRIP relates the right to self-determination in the context of indigeneity, borders, migration, and displacement to many rights of the UNDRIP, including the right to participate in decision-making and to give free, prior, and informed consent (Articles 10, 11, 19, 28, 29, and 32).⁷⁰ A report by the Special Rapporteur on the Rights of Indigenous Peoples argues that a purposive interpretation of the duty to consult ‘applies whenever a State decision may affect Indigenous Peoples in ways not felt by others in society’.⁷¹

In addition to the protection of Indigenous Peoples, Indigenous migrants are protected by a set of rules dedicated to migration and refugee law. Federal Law no. 13.445, from 2017, is the legal foundation for migration law in the context of the Brazilian legal system.⁷² It reflects a human rights perspective, ultimately stating that migration is an inalienable right of all people (Article 3, XX). It encompasses the principles of no discrimination against migrants, no criminalization of migration, the promotion of regular migrant entrance into the country, equal access to services, programs, and social benefits.

Federal Law no. 13.445 is regulated by Decree 9.199/17, which guides institutions from executive power regarding the implementation of migration processes in the country, including a general permission for Brazil to grant residence visas. Under this legal frame and other executive norms, some Indigenous Peoples have been granted a two-year resident visa.⁷³ Migrants from Venezuela were granted the possibility of receiving a residence permit based on article 30, I, point ‘c’, of the Migration Law (13.445). Further, Federal Law no. 13.684 of 2018⁷⁴ defines the frame for urgent assistance initiatives for the reception of vulnerable people in the context of migration processes initiated under humanitarian crises. It was only in December 2019 that the Brazilian government decided to recognize the widespread violation of human rights taking place in Venezuela.

When it comes to refugee law, the Brazilian legal system relies on Federal Law no. 9.474 of 1997.⁷⁵ Refugees are entitled to documentation that evidences their condition and cannot be expelled (non-refoulement) to other countries while their refugee situation endures

⁶⁶ UNDRIP (arts 3 and 4); American Declaration on the Rights of Indigenous Peoples (art III). See also ICCPR (art 1); ICESCR (art 1).

⁶⁷ UN Doc A/HRC/12/34 (15 July 2009), para 41; UN Doc A/HRC/39/17 (n 23) para 16; UN Doc A/73/176 (17 July 2018), para 35; UN Doc A/HRC/EMRIP/2019/2/Rev.1 (n 4) para 10.

⁶⁸ UN Doc A/HRC/15/35 (23 August 2010) para 2; UN Doc A/HRC/EMRIP/2019/2/Rev.1 (n 4) para 10.

⁶⁹ UN Doc A/73/176 (n 67) para 35.

⁷⁰ For more on self-determination in the context of indigeneity, borders, migration, and displacement see UN Doc A/HRC/EMRIP/2019/2/Rev.1 (n 4), para 11.

⁷¹ UN Doc A/HRC/12/34 (n 67), paras 43 and 63.

⁷² Brazil’s ratification of ILO Convention No. 169 (1989) and other regional human rights instruments did not prevent the President’s veto of article 1 paragraph 2 of Federal Law no. 13.445 of 2017 which, if approved, would have recognized the right of Indigenous Peoples and traditional populations to free movement on traditionally occupied land. The presidential veto’s justification was based on the need to protect borders, Brazilian sovereignty, and Brazilian Indigenous assets.

⁷³ IOM (n 3).

⁷⁴ Brazil Law no. 13.684 of 2018.

⁷⁵ Brazil Law no. 9.474 of 1997.

except for reasons associated with public order or national security. Law no. 9.474 also created the National Committee for Refugees (CONARE), responsible for assessing asylum applications.

At the regional level in Latin America and the Caribbean, the non-binding Cartagena Declaration (1984) adopts a broader definition of refugees than the 1951 Convention, including protection to people who have fled their country because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights, or other circumstances which have seriously disturbed public order.⁷⁶ The application of this extended definition of refugee has been limited in the case of Venezuelan migrants, as countries in the region have preferred ad hoc and temporary solutions, justifying their choices by claiming exceptional circumstances.⁷⁷ Regional initiatives such as the Quito Process have not taken into account existing regional mechanisms and its conclusions are mainly political statements. It is worth noting that only in the past five years have the vulnerabilities connected to the international migration of Indigenous Peoples become more central in the international human rights agenda.⁷⁸

Indigenous migrants may choose to apply for temporary residence or seek asylum. As of June 2021, 49 percent of Indigenous people arriving in Brazil were asylum seekers, while 13 percent had been recognized as refugees, and only 38 percent had residency or other status that guaranteed their stay in the country.⁷⁹ Seeking asylum has become the most common path to status regularization for Indigenous migrants in the country, as the lack of identity documents for Indigenous Peoples complicates access to other processes of regularization.⁸⁰

As for the scope of the obligations of the Brazilian state to Indigenous Peoples, they are not limited to Brazilian Indigenous Peoples, but to all Indigenous Peoples that the state interacts with regardless of origin.⁸¹ The Brazilian state is obliged to, for example, adequately include Indigenous migrants in decision-making that affects their lives and rights. Indigenous Peoples have the right to participate and be consulted in decisions of the state via transparent and flexible dialogue marked by good faith. And the state is obliged to take this dialogue into account throughout the decision-making process.⁸² One exception can be made when it comes to the

⁷⁶ Cartagena Declaration, III (3).

⁷⁷ João Carlos Jarochinski Silva, Alexandra Castro Franco and Cynthia Sampaio, 'How the Venezuelan Exodus Challenges a Regional Protection Response: "Creative" Solutions to an Unprecedented Phenomenon in Colombia and Brazil' in Liliana Lyra Jubilit, Marcia Vera Espinoza and Gabriela Mezzanotti (eds), *Latin America and Refugee Protection: Regimes, Logics, and Challenges* (Berghahn Books 2021), 346-68.

⁷⁸ For example, IACtHR, Advisory Opinion OC-18/03; IACHR, Resolution 2/18 'Forced Migration of Venezuelans'; UNHCR, *Age, Gender and Diversity (AGD) Policy* (UNHCR 2018); UN Doc A/HRC/EMRIP/2019/2/Rev.1 (n 4); UN Doc A/RES/73/195 (11 January 2019); 'States must act now to protect Indigenous peoples during migration' *UN News*, 07 August 2018 <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23429&LangID=E>> accessed 30 September 2021; UN-HABITAT, 'Urban Indigenous Peoples and Migration: A Review of Policies, Programmes and Practices' 2010 <<https://unhabitat.org/sites/default/files/download-manager-files/Urban%20Indigenous%20Peoples%20and%20Migration%20A%20Review%20of%20Policies%2C%20Programmes%20and%20Practices.pdf>> accessed 30 September 2021.

⁷⁹ R4V (n 19).

⁸⁰ UN Doc A/HRC/EMRIP/2019/2/Rev.1 (n 4) para 46; IOM (n 3) 38; Marlise Rosa, *A mobilidade Warao no Brasil e os modos de gestão de uma população em trânsito: reflexões a partir das experiências de Manaus-AM e Belém-PA* (Universidade Federal do Rio de Janeiro 2020).

⁸¹ IOM (n 3).

⁸² *ibid*, 20.

catalogue of constitutional rights: the right to ancestral lands, that is so important for the protection of other Indigenous rights, may not be feasible, since their migrant status implies that they have already been displaced from their ancestral lands. This should not affect other Indigenous rights, but it means that Indigenous migrants are in a deeper state of vulnerability since the de facto full protection of their rights is not possible.

The mobility of Indigenous Peoples raises questions about how Indigenous and migration rights should coexist.⁸³ One response is that migrant status taking prevalence over Indigenous status is a natural consequence of migration. Another response, the one this article advocates, is that the very nature of being Indigenous should result in specific protections that take Indigenous experiences when migrating into account, regardless of their migratory pathway. As causes of Indigenous migration often stem from violations of their rights as Indigenous Peoples, Indigenous rights must continue to have priority in new contexts as their Indigenous status remains unchanged. Otherwise, human rights violations that may be causal factors for Indigenous migration would also strip access to their collective and cultural rights: the very essence of what international human rights instruments aim to protect.

Despite the constitutionally protected right of free access to the judicial system, coupled with the constitutional right to due process of law, precedents on the matter are scarce in the Brazilian Supreme Court and in the Federal Appeal Court with jurisdiction over regions where most Indigenous migrants are situated.⁸⁴ This scarcity hinders the development of an empirical study based solely on legal cases.

In the Supreme Court case *Roraima State v Federal Union*,⁸⁵ Roraima State filed for three injunctions: that the Federal Union would be ordered to enforce police border control and provide health services and sanitary initiatives in the border spaces; that the Federal Union would be compelled to provide monetary support to Roraima State due to increased expenses related to the influx of refugees from Venezuela; and that the Federal Union would be ordered to temporarily close the border with Venezuela due to a high influx of refugees, including Indigenous refugees. With Roraima State as plaintiff and the Federal Union as defendant, the case exposed conflict around how obligations towards refugees should be allocated. The case was not filed by Indigenous Peoples, but aimed at determining the limits and responsibilities of the Union in the matter. The state's request to close the borders with Venezuela was rejected.

The Federal Appeal Court (Federal Tribunal 1st Region) has tried a case relevant to the refugee status of Indigenous Peoples⁸⁶ in which the plaintiff claimed the rights of refugees (including Indigenous refugees) included the provision of an adequate food supply by the defendants. The city argued that the injunction would undermine its ability to provide for other social rights for its entire population, as its resources were scarce. The Court rejected the appeal and reaffirmed the rights of Indigenous migrants. The city appealed to the Supreme Court, but the case was dismissed.

⁸³ Asier Martínez de Bringas, 'El impacto de los procesos migratorios sobre los derroches de los pueblos indígenas. Retos y desafíos para una política migratoria indígena' (2018) 38(II) *Derechos y Libertades*.

⁸⁴ The Federal Appeal Court for the States of Acre, Amapa, Amazonas, Bahia, Goias, Maranhao, Mato Grosso, Minas Gerais, Para, Piaui, Rondonia, Roraima, Tocantins and the Federal District - Federal Tribunal 1st Region.

⁸⁵ *Supreme Court. Roraima State v Federal Union* [2020] Case no. 3121.

⁸⁶ *Federal Public Prosecutor's Office (FPPO) v Federal Union, State of Amazonas and City of Manaus* [2020] Case no. 1031645-60.2020.4.01.0000.

In some circumstances cases are settled before reaching the Supreme Court, sometimes due to a legal strategy to avoid the formation of legal precedents. This was the case for a class action filed by the Federal Public Prosecutor's Office (FPPO) against Belém Municipality and the Federal Union,⁸⁷ which is the most prominent court case specifically related to the Warao Indigenous People in Brazil. The plaintiff claimed protection for the Warao in the City of Belém (Pará State), including housing, humanitarian protection, documentation for migrants, social assistance, health services, and financial support. The case was settled shortly post-filing, with the City of Belém and Pará State committing to provide most of the protections in the settlement. Subsequently, representatives of the Warao community informed the FPPO that housing, hygienic structures, and food supply were below acceptable standards, despite funds being provided by the Federal Union to the City of Belém and Pará State. An execution of the agreement had to be filed in court by the plaintiff, in representation of the Warao community.

Examples of how legal invisibility materializes include the lack of representation of the Warao in courts despite their right to due process of law, the public authorities' negligence in failing to provide for protection even when it is part of a court settlement, and the need for the FPPO to execute settlement in court. The Warao diaspora from Venezuela in Brazil have had to make a historic departure from their ancestral lands to a country that is materially different in several aspects, including socially, culturally, and economically. The new circle of inter-ethnic relations to which they are exposed represents a new challenge, because their surroundings cease to be populated by Venezuelan nationals and because Brazilian Indigenous Peoples have not necessarily received the Warao as being comparable to themselves.

The constitutional provisions and federal legislation in force in Brazil suggest a well-designed formal protection for Indigenous migrants. A natural consequence of the establishment of such a complete set of rights would be the advent of a catalogue of court precedents. If rights are formally set and violations of them are observed, judicial enforcement is a legitimate expectation, especially when the same Federal Constitution protects universal and free access to courts and due process of law. Challenges to the legal protection of Indigenous migrants in Brazil involve a gap between the formal, apparently well-designed legal framework and its poor enforcement. Day-to-day life within society does not reflect that apparently well-designed legal establishment.

Whether the root cause of such neglect by public authorities is related to corruption or to a blurred vision of the full spectrum of rights of Indigenous migrants is unclear. But the absence of judicial protection for the Warao and other Indigenous migrants, coupled with the common view that they are 'just refugees' or 'just Indigenous Peoples' and not both, materializes their intersectional invisibility from a legal standpoint. They will either be protected as Indigenous or as refugees, if at all, and very rarely as both. This intersectionality deepens their vulnerability when a state apparatus exists on paper but is poorly enforced.

Parallel to shallow judicial development, in many situations Brazil's official public institutions have consciously opted to divert their legal obligations. In 2016, Brazil attempted to deport approximately 450 Indigenous migrants. Against this proposed mass deportation, the Federal Public Defender filed a collective habeas corpus.⁸⁸ The court granted an injunction to prevent mass deportation and, in March 2017, ruled in favor of the Indigenous Venezuelans,

⁸⁷ *FPPO v Belém Municipality, Federal Union* [2017] Class Action no. 1002229-89.2017.4.01.3900.

⁸⁸ Habeas corpus no. 0006447-87.2016.4.01.4200

ensuring their right to stay in Brazil until a ruling was reached in a regular administrative process.⁸⁹ Collective deportations and attempted deportations of Indigenous migrants materialize legal invisibility and have been described as relating to ‘deep-rooted prejudice and racism’.⁹⁰

Corroborating these arguments, in IOM’s 2019 report, findings included that as a rule, members of Indigenous groups ‘who undergo violence do not look for the local, state, or federal police nor for any other public authority, so they do not receive any information or guidance on their rights’.⁹¹ Barriers to accessing legal justice include lack of resources, cultural and linguistic obstacles, institutional racism, and the judiciary and law enforcement ignoring Indigenous rights and cultures.⁹²

2.2 *De facto invisibility*

Indigenous migrants’ de facto invisibility affects every stage of their migratory movements, from the process of seeking asylum, to reception, the resistance to recognize and implement their rights, discrimination, and violence. What may be perceived as positive to non-Indigenous migrants may create challenges for Indigenous migrants or violate their Indigenous rights.

Initially, the reception of Venezuelans in Brazil was handled by NGOs and international organizations. In 2018, the government created *Operação Acolhida* [Operation Shelter] with three main goals: border control, providing reception and shelter, and the ‘interiorization’ of migrants where Venezuelans are spread throughout the country.⁹³ Through *Operação Acolhida* the reception of migrants has become militarized, and shelters have inadequately considered Indigenous needs. The militarized reception of migratory movements in Brazil can be understood as a form of state violence, as ‘it reduces the possibility of Venezuelan mobility and produces a policy aimed at public space sanitization (in which the city needs to be ‘clean’ of Venezuelans, who become the object of policies of spatial exclusion [...]).’⁹⁴ This militarized reception involves hierarchical relationships between the military and Indigenous Peoples, neglecting Indigenous participation and decision-making. A joint initiative of NGOs operating in the area has denounced the militarized reception of migrants in Brazil to the UN Human Rights Council.⁹⁵

Despite the shelters provided by *Operação Acolhida*, approximately 6,000 migrants live on the streets or in overcrowded settlements.⁹⁶ These shelters are one site where the invisibility of migrants, and especially Indigenous migrants, becomes clear: cities have attempted to hide

⁸⁹ ‘Justiça Federal volta a proibir deportação sumária de migrantes vulneráveis’ *Conectas Direitos Humanos*, 30 July 2021 <<https://www.conectas.org/noticias/justica-federal-volta-a-proibir-deportacao-sumaria-de-migrantes-vulneraveis/>> accessed 01 October 2021.

⁹⁰ IOM (n 3) 30.

⁹¹ *ibid.*, 44.

⁹² UN Doc A/HRC/33/42/Add. 1 (08 August 2016) para 79.

⁹³ Carolina Moulin Aguiar and Bruno Magalhães, ‘Operation Shelter as Humanitarian Infrastructure: Material and Normative Renderings of Venezuelan Migration in Brazil’ (2020) 24(5) *Citizenship Studies* 643.

⁹⁴ Machado and Vasconcelos (n 43).

⁹⁵ ‘Militarização dos abrigos para imigrantes indígenas em Roraima preocupa entidades e organizações da sociedade civil’ Conselho Indigenista Missionário, 21 May 2018 <<https://cimi.org.br/2018/05/militarizacao-dos-abrigos-para-imigrantes-indigenas-em-roraima-preocupa-entidades-e-organizacoes-da-sociedade-civil/>> accessed 05 October 2021.

⁹⁶ R4V (n 19) 70.

Indigenous Peoples out of sight.⁹⁷ While migrants are not forced to remain inside the shelters, police forces have acted to restrain their presence on the streets.⁹⁸ Reports state that the shelters are overcrowded and located in violent places, with inadequate sanitary conditions, and insufficient space for traditional and cultural practices; in some cities there is no consistent food supply.⁹⁹ The shelters have been described as unhealthy, with high rates of illness and even deaths of Indigenous people.¹⁰⁰

While adjustments have been made to the emergency shelters over time in an attempt to better fit Indigenous needs, for example, by reorganizing the shelters to separate Indigenous and non-Indigenous migrants,¹⁰¹ they still exercise control over migrant and Indigenous bodies.¹⁰² For example, the shelters impose strict rules and breaking them results in expulsion.¹⁰³ This leads to migrants living on the streets, and affects entire families.¹⁰⁴ There have been signs of resistance; for example, many Warao families responded to a curfew put in place by one of the shelters by opting to sleep outside.¹⁰⁵

Another example of invisibility is the indiscriminate application of the ‘interiorization’ policy regarding Indigenous migrants, which is regarded as a successful tool for the integration of migrants in general in the country but can be problematic considering Indigenous kinship attachments and pendular mobility. It reveals the living coloniality of Indigenous migrants, as the state often frames mobility as problematic, but Indigenous Peoples may see mobility as a solution and a way of preserving their culture.¹⁰⁶ When Indigenous autonomy and mobility preferences are not considered in regularization processes, it reinforces state power over Indigenous bodies, ignoring their territorial presence prior to colonization.

De facto invisibility is also reflected in the resistance of street-level bureaucrats to recognize and implement rights. Over 6,000 Indigenous Venezuelans in Brazil face difficulties in accessing food, education, and healthcare.¹⁰⁷ Relevant social service providers may not know how to adapt to migrants who are Indigenous and, as such, have access to a different set of rights.¹⁰⁸ Indigenous identity is often undervalued, especially in the urban context, where collective rights are rarely recognized.¹⁰⁹ For example, there are no specific guidelines for how the social assistance programs, educational system, and other social services should work with

⁹⁷ Júlia Henriques Souza, ‘Janokos brasileiros: uma análise da da imigração dos Warao para o Brasil’ (2018) 17(52) Boletim Científico 91.

⁹⁸ IOM (n 3) 42.

⁹⁹ IOM (n 19) 48. R4V (n 44) 77.

¹⁰⁰ Regional Protection Sector of the Interagency Platform for Refugees and Migrant from Venezuela, *Contribution to the annual report of the Special Rapporteur on Indigenous Peoples to the General Assembly on the Situation of Indigenous Peoples living in Urban Areas* (2021).

¹⁰¹ IOM (n 3) 74. Machado and Vasconcelos (n 43).

¹⁰² Ela Wiecko V. de Castilho and Elaine Moreira, ‘Novas e velhas mobilidades na América Latina: o caso Warao na região norte do Brasil’ in Vivian Urquidí et al. (eds), *Estado e lutas sociais na América Latina: sociedade, economia e políticas. Sociedade em movimento*. Volume II: Parte I. Coleção Pensar a América Latina e o Caribe (Editora PROLAM-USP 2019) 790-802.

¹⁰³ IOM (n 19) 48.

¹⁰⁴ Castilho and Moreira (n 102).

¹⁰⁵ Moulin Aguiar and Magalhães (n 93) 643.

¹⁰⁶ Rosa (n 80).

¹⁰⁷ R4V (n 19) 70.

¹⁰⁸ IOM (n 19).

¹⁰⁹ Figueira (n 10) 451.

Indigenous migrants.¹¹⁰ To illustrate, the recent digitalization of the asylum procedure has created challenges to Indigenous autonomy as they depend on others to access the technology required, influencing contextual power dynamics. Adding to these difficulties, Indigenous agencies often lack political will to meet the demands of Indigenous groups from abroad.¹¹¹

In addition, the state healthcare apparatus has only shown limited recognition and implementation of Indigenous migrants' rights. Access to healthcare is a challenge for Indigenous migrants, especially differentiated care that considers language, use of traditional medicine,¹¹² and in some cases, as for the Warao, resistance to hospitals.¹¹³ Access to healthcare is crucial as many Indigenous migrants have arrived in Brazil with malnutrition, dehydration, diarrhea, chickenpox, conjunctivitis, tuberculosis, pneumonia, STDs/HIV, or COVID-19.¹¹⁴ Indeed, COVID-19 containment measures resulted in several Inter-Ministerial Ordinances restricting the entry of migrants to the country and authorizing the immediate deportation of people even if they have the right to international protection.

De facto invisibility is also found in the tensions between Indigenous migrants and the majority population, for example, the removal of children from their mothers on the streets and physical attacks.¹¹⁵ Violence has included residents burning and destroying camps and attacking people sleeping on the streets, leading to approximately 1200 Venezuelans being forced to leave Brazil, including Warao migrants.¹¹⁶

Each of these examples illustrate how being an Indigenous migrant involves simultaneous and interlocking oppressions, contextual power dynamics, and intersectional invisibility. Indigenous migrants face challenges to their human rights that may differ from the experiences of individuals who have a single group identity. Living coloniality is evident in the absence of Indigenous rights to self-determination and consultation in these examples; oppressive and assimilationist tendencies prevail and Indigenous status is often ignored in the recognition and implementation of rights, resulting in de facto invisibility.

3. The quest for pluriversal human rights for Indigenous Peoples on the move

3.1 Decoloniality and the quest for pluriversal human rights

Drawing upon Santos' and Escobar's theories, this article calls for the establishment of mechanisms of epistemic and cultural pluralism between different cultural worlds.¹¹⁷ Decolonial views on the pluriversality of human rights rest in the deconstruction of a homogeneous and universal view of the world.¹¹⁸ Decoloniality can be understood as 'ways of thinking, knowing, being, and doing' that may precede invasion and colonization, implying 'the recognition and undoing of the hierarchical structures of race, gender, heteropatriarchy, and

¹¹⁰ IOM (n 3) 47.

¹¹¹ Figueira (n 10) 456.

¹¹² R4V (n 19).

¹¹³ IOM (n 19) 101.

¹¹⁴ IOM (n 3) 49, 70. R4V (n 19).

¹¹⁵ Figueira (n 10) 451; IOM (n 3) 25; IOM (n 19) 44; UN Doc A/HRC/EMRIP/2019/2/Rev.1 (n 4) para 49.

¹¹⁶ Baeninger and Jarochinski Silva (n 45).

¹¹⁷ Escobar (n 15).

¹¹⁸ Boaventura de Sousa Santos, 'Una concepción multicultural de los derechos humanos' (1997) 101 *Revista Memória*; Boaventura de Sousa Santos, *Epistemologies of the South: Justice against Epistemicide* (Routledge 2016); Boaventura de Sousa Santos and Bruno Sena Martins (eds), *O Pluriverso dos Direitos Humanos: a diversidade das lutas pela dignidade* (Autentica Editora 2019).

class that continue to control life, knowledge, spirituality, and thought, structures that are clearly intertwined with and constitutive of global capitalism and Western modernity'.¹¹⁹ The term 'pluriverse' is related to the Indigenous Zapatista movement, who called for 'Un Mundo Donde Quepan Muchos Mundos' (A World Where Many Worlds Fit) in 1994. The movement emphasized cosmocentric relations between land, nature, and people.¹²⁰

Pluriversality is understood here as proposed by decolonial theories and as a response to North-centered understandings of the universal.¹²¹ It cannot be equated with cultural relativism or legal pluralism, but rather involves the 'entanglement of several cosmologies connected today in a power differential. That power differential is the logic of coloniality covered up by the rhetorical narrative of modernity'.¹²² To Escobar, the pluriverse means 'a space of thought and practice in which the domain of a single modernity has been suspended at the epistemic and ontological level; where this modernity has been [...] displaced from the center of the historical and epistemic imagination; and where the analysis of concrete decolonial and pluriversal projects may be honestly done through a de-essentialized perspective'.¹²³

Pluriversal approaches to human rights attempt to transform human rights scripts into emancipatory ones,¹²⁴ and can allow new forms of thinking, feeling, experiencing, and knowing that exceed North-centered epistemologies. We believe that pluriversal practices may overcome intersectional invisibilities defined by coloniality. Our aim here is to contest the top-down solutions currently used to address intersectional invisibilities lived by Indigenous migrants and consider 'an alternative thinking of alternatives',¹²⁵ where Indigenous cosmologies and pluriversal views lead the way to decolonial practices and emancipatory human rights frameworks.

Different human collectives are expected to produce different worldviews, which will naturally suggest different conceptions of life, social institutions, culture, rights, the state, and so on. A consequence of this is the idea that Indigenous Peoples will naturally consider different concepts and repercussions on the notions of policies, law, and justice than those deriving from a North-centered discourse. Domination, subordination, and subjection of the other frequently lead to the suppression of the rights of the oppressed to define and experience the world through their own meanings and aspirations.¹²⁶

A quest for justice, human dignity, and fairness requires dialogue to expand reciprocity and the development of emancipatory policies that promote recognition and redistribution.¹²⁷ The scope of this dialogue revolves around human rights discourses and their foundations; while rich in content, some dominant-North-centered concepts on human rights may be perceived as empty and vague. Yet the discursive struggle around human rights takes (or may

¹¹⁹ Mignolo and Walsh (n 29) 17.

¹²⁰ Walter D. Mignolo, 'Forward. On Pluriversality and Multipolarity' in Bernd Reiter (ed.), *Constructing the Pluriverse: The Geopolitics of Knowledge* (Duke University Press 2018) ix-xvi, x.

¹²¹ Mignolo and Walsh (n 29) 17.

¹²² Mignolo (n 120) x.

¹²³ Escobar (n 15).

¹²⁴ Santos and Martins (n 118).

¹²⁵ Boaventura de Sousa Santos, 'Más allá del pensamiento abismal: De las líneas globales a una ecología de saberes' in Boaventura de Sousa Santos and Maria Paula Meneses (eds), *Epistemologías del Sur. Perspectivas* (Akal 2014) 21-66, 70.

¹²⁶ Santos, 'Una concepción multicultural de los derechos humanos' (n 118); Santos (n 15).

¹²⁷ Santos (n 15); Santos, *Epistemologies of the South: Justice against Epistemicide* (n 118).

take) place over a latitudinal range, which may give rise to counter-hegemonic struggles against a predominant worldview that keeps the oppressed hostage to what Santos and Martins call a ‘metonymic reason of Western modernity’.¹²⁸

A resignification of human rights through counter-hegemonic dialogue, discourse, and struggle aimed at emancipatory possibilities will require new paradigms of dignity to be considered; rights’ emancipatory possibilities come from their reinvention.¹²⁹ Intercultural translation, as proposed by Santos, calls for a dialogue between human rights and different cultures, worldviews, and political agendas with the objective of relocating human rights to the perspective of the South, closer to struggles for existence.¹³⁰ A reconstitution of human rights, in such a process, will disconnect them from the common places historically imposed by the North and link them to new narratives of social emancipation.¹³¹ Instead of merely including more perspectives in the debate, Mignolo claims that re-existing beyond Western thought without rejecting or negating it implies unsettling the hegemonic categories that normalize subordination and inequality in the everyday colonial imaginary.¹³²

3.2 Toward the pluriversality of human rights

For human rights to have an emancipatory potential, the history of colonization, transterritoriality, and the logic of assimilationist integration policies need to be taken into consideration. The case of Indigenous Peoples on the move raises the issue of transterritoriality and multiple oppressions, which may directly contradict traditional views on state sovereignty and implementation of rights,¹³³ as migration prompts discussion of both territorial and social identity. It is important to recognize that Indigenous migrants in Brazil are Pan-Amazonian Peoples, a region encompassing several countries and one of the most biodiverse territories on Earth, with vast cultural and biological wealth.¹³⁴ In this context, emancipatory human rights require a move toward Indigenous-led frameworks; otherwise, human rights architectures risk reinforcing colonial structures, where the elite ‘grant’ rights to ‘Others’ while retaining the infrastructure of power. Decolonial views on human rights require that Indigenous self-determination, self-governance, and the duty to consult are taken seriously, even when the community may be on the move.

Relations between receiving societies and Indigenous Peoples on the move need to begin by taking into consideration interculturality. One practical example of pluriversal initiatives are the consultation protocols established by several Indigenous Peoples in Brazil,¹³⁵ including the Warao Protocol: the first protocol created by Venezuelan Indigenous migrants in Brazil.¹³⁶ It aims to protect Indigenous Peoples’ right to self-governance and participation in decision-making while on the move.¹³⁷ The Warao Protocol may be considered an opportunity

¹²⁸ Santos and Martins (n 118).

¹²⁹ Santos, ‘Una concepción multicultural de los derechos humanos’ (n 118); Santos (n 15).

¹³⁰ Santos and Martins (n 118).

¹³¹ *ibid.*

¹³² Mignolo and Walsh (n 29)

¹³³ IACHR, ‘Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan-Amazon Region’ 2019 <<https://www.oas.org/en/iachr/reports/pdfs/panamazonia2019-en.pdf>> accessed 04 October 2021.

¹³⁴ Rogério Haesbaert and Liz Mason-Dee, ‘Territory/ies from a Latin American Perspective’ (2020) 19(1) *Journal of Latin America Geography*.

¹³⁵ UN Doc A/73/176 (n 67) para 76.

¹³⁶ Protocolo de Consulta Prévia do Povo Warao em Belém/PA, 49 <https://paginas.uepa.br/eduepa/wp-content/uploads/2020/07/protocolo_warao.pdf> accessed 04 October 2021.

¹³⁷ UN Doc A/73/176 (n 67) para 84.

to make collective and cultural rights of Indigenous migrants more than empty, vague concepts, through connection to their views, needs, and concerns.

Many Indigenous Peoples have built cosmocentric cosmologies based on diversity and reciprocity, in which there is no privileged center or hegemonic singularity.¹³⁸ Pluriversality resonates with such cosmologies and the Latin American Indigenous notion of *Buen Vivir/Sumak Kawsay*, based on ontological assumptions in which all beings always exist in a relationship, and not as ‘objects’ or individuals.¹³⁹ This can be seen in the self-identification of the Warao in their protocol:

Our ancestors have always lived in harmony with nature, which is why our history is deeply connected to the river environment, where we traditionally live on stilts, in the lower Delta region of the Orinoco River. There, there are many palm trees of buriti (morichales), of which we get almost everything for our livelihood (canoes, starch, baskets, ropes, drinks, food, etc.). We are a peaceful people, skilled navigators, fishermen, hunters, collectors, craftsmen, and farmers.¹⁴⁰

Rather than imposing a worldview based on outside understandings of problems and solutions, pluriversal views on human rights should allow for Indigenous migrants to define and experience the world through their own meanings and aspirations. Many human rights agencies and street-level bureaucrats frame their work in terms of their areas of expertise and previous practices, so their work with a population characterized by interlocking oppressions can be problematic—particularly in the case of Indigenous migrants—because implementing collective rights to self-determination, self-government, and the duty to consult requires a drastic shift from regular migration practices.¹⁴¹ Policies that dictate what Indigenous migrants must do are doomed to fail. When based on preconceived concepts and projects or a ‘one-size-fits-all’ approach to human rights, even actions that aim to help can make situations worse. An example is the militarized reception of migrants, where the hierarchical relationship between the military and Indigenous Peoples results in a neglect of Indigenous collective rights, needs, and participation in decision-making, which are different from individual migration rights. Indigenous cosmologies need to be part of policy-making processes, as there is a greater chance for success when real decision-making is carried out through Indigenous governance systems.¹⁴²

Pluriversal approaches to human rights may bring centrality to Indigenous migrants’ self-determination. Maintaining Indigenous identity and culture despite no longer living on ancestral lands is supported by human rights bodies¹⁴³ and articulations in the Warao Protocol:

We want to be consulted because we understand that we all have rights, no matter where we are, or where we live and also because we don’t want to go through the same inhuman and difficult situations that we experienced to get

¹³⁸ Stefano Varese, ‘Los fundamentos éticos de las cosmologías indígenas’ (2019) 36 *Les Cahiers ALHIM*.

¹³⁹ Escobar (n 15) 49. Antonio Luis Hidalgo-Capitán and Ana Patricia Cubillo-Guevara, ‘Seis debates abiertos sobre el *sumak kawsay*’ (2014) 48 *Íconos: Revista de Ciencias Sociales*.

¹⁴⁰ Protocolo de Consulta Prévia do Povo Warao em Belém/PA (n 136) 49.

¹⁴¹ Figueira (n 10) 452.

¹⁴² UN Doc A/73/176 (n 67) para 50.

¹⁴³ UN-HABITAT (n 78); ‘Call for inputs’ (n 14).

here. We do not want to be exploited or marginalized ... we want respect for our people and our culture.¹⁴⁴

While the Warao Protocol demonstrates potential for self-determination and consultation, Indigenous migrants' political invisibility may create enforcement challenges. As articulated in the Warao Protocol:

We remind you: we do not accept that the government uses rights that we already have—and that it does not comply with—to blackmail us.¹⁴⁵

Indigenous migrants may help decolonize human rights via resistance, as they break with the silence imposed by coloniality by assuming a public, political, and cultural attitude of activism, engagement, and militancy around their conditions and causes.

Conclusion

Deep contrasts between law, discourse, and practices of key stakeholders characterize the realization (or lack thereof) of rights, and the development and implementation of policies aimed at protecting migrants and Indigenous rights in Brazil. The gap between the normative, formal aspects of the law and the de facto invisibility of Indigenous migrants becomes deeper as politics, influenced by nationalism and populism, leads to parts of the human race being reduced in status from rights-bearers through a predominant architecture of authoritarianism and social segregation based on race and nationality.¹⁴⁶ Indigenous identity and rights should not be dependent on living on traditional territory or the colonial borders of the state. Coloniality frames Indigenous intersectional invisibility, normalizing the subordination of Indigenous Peoples on the move. We need to ensure that Indigenous migrants' claims, views, and rights are not only visible, but recognized and ultimately implemented.

Addressing the interlocking oppressions of Indigenous migrants is a pertinent issue on the current human rights agenda.¹⁴⁷ As demonstrated here, decolonial thinking rooted in pluriversality may help overcome some of the challenges of Indigenous Peoples' intersectional invisibility by confronting the coloniality of the human rights violations they experience. As human rights are built on a state-centric framework, decolonial thinking is especially important for the human rights of Indigenous migrants; rather than reinforcing the power of the state on Indigenous issues, human rights in this context should move toward Indigenous-led frameworks.¹⁴⁸ Uncovering gaps and alternative viewpoints are especially important if human rights are to have an emancipatory potential. The realization of rights needs to be rooted in intercultural translations and give priority to the self-determination of Indigenous Peoples and the state's duty to consult, regardless of their location. Through the lens of decoloniality we should remain wary of 'the "violence" of superficial incorporation'.¹⁴⁹ Pluriversal views on human rights must sincerely involve the participation of Indigenous migrants in defining and

¹⁴⁴ Protocolo de Consulta Prévia do Povo Warao em Belém/PA (n 136) 49.

¹⁴⁵ *ibid*, 56.

¹⁴⁶ Gabriela Mezzanotti, 'What is Left for 'Us and Them'? A Critical Discourse Analysis of the Criminalization of Humanitarian Aid for People on the Move' in Fábio Lopes Alves, Eduardo Barros Portanova and Silvana Aparecida de Souza (eds), *Society, Culture and Frontiers: Interdisciplinary Approaches* (CRV Ed. 2020).

¹⁴⁷ See footnote 78.

¹⁴⁸ Riley and Carpenter (n 4) 73.

¹⁴⁹ Chatterjee and Gupta (n 12) 258.

experiencing the world through their own meanings and aspirations, acknowledging their collective rights as illustrated by the Warao Protocol.

Disclosure Statement

The authors report there are no competing interests to declare.