

Indigenous Legislation and Perspectives for Tourism in Indigenous Lands in Brazil¹

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Abstract

Tourism involving indigenous communities has been developed in various parts of the world. In Brazil, several initiatives, however, were not regulated due to issues such as State jurisdiction, lack of consensus among scholars, government entities and communities on the importance of regulation, among others. However, the national legislation did not explicitly forbid tourism in indigenous territories, and in various documents, the State pointed the importance of indigenous autonomy and leadership, including in sustainable projects of ecotourism and ethnotourism; as well as highlighted the need for regulating these segments. In June 2015, tourism in Indigenous Lands was regulated, taking the debate on tourism involving indigenous communities to a new level. Therefore, this article, based on legal instruments and on the literature on the subject, addresses the Brazilian indigenous legislation and the new prospects for touristic activities, economic development and autonomy of these peoples. The research demonstrated that the regulation of the activity does not fully contribute to the autonomy of the communities, since it demands an authorization from the Brazilian National Indigenous Foundation, which may even deny it. In addition, despite being guided by the principle of precaution, the bureaucracy of the process allows for the continuity of illegal tourism.

Keywords: Legislation; Indigenous Lands; Tourism; Brazil.

Resumo

Legislação indigenista e perspectivas para o turismo em terras indígenas no Brasil

O turismo envolvendo comunidades indígenas vem sendo desenvolvido em diversas partes do mundo. No Brasil, há inúmeras iniciativas que, no entanto, não eram regulamentadas por conta de questões como a tutela do Estado, falta de consenso entre

1. We thank CNPq for funding, through a scholarship, part of this research. We also thank the Tourism and Society Research Group, to which this research is linked.
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estudiosos, governo, entidades e comunidades sobre a importância da regulamentação, entre outras. No entanto, a legislação nacional não proibia explicitamente o turismo em territórios indígenas e, em diversos documentos, o Estado apontava a importância da autonomia e protagonismo indígena, inclusive em projetos sustentáveis de ecoturismo e etnoturismo; e, também ressaltava a necessidade da regulamentação desses segmentos. Em junho de 2015, o turismo em Terras Indígenas foi regulamentado, trazendo o debate sobre o turismo envolvendo comunidades indígenas a um novo patamar. Assim, este artigo, embasado em instrumentos legais e na literatura sobre o tema, aborda a legislação indigenista brasileira e as novas perspectivas para a atividade turística, o desenvolvimento econômico e autonomia desses povos. A pesquisa demonstrou que a regulamentação da atividade não contribui integralmente para a autonomia das comunidades, uma vez que se faz necessária a autorização da Fundação Nacional do Índio, que pode, inclusive, negá-la. Além disso, apesar de estar voltada ao princípio da precaução, a burocracia do processo dá margem à continuidade do turismo ilegal.

Palavras-chave: Legislação; Terras indígenas; Turismo; Brasil.

Resumen

Legislación indigenista y perspectivas para el turismo en Tierras Indígenas en Brasil

El turismo desarrollado en comunidades indígenas se ha practicado en diversas partes del mundo. En Brasil, hay numerosas iniciativas que, sin embargo, no están reguladas debido a cuestiones como la tutela del Estado, la falta de consenso entre los académicos, agencias gubernamentales y las comunidades sobre la importancia de la regulación del turismo, entre otros. No obstante, la legislación no prohibía explícitamente el turismo en las zonas indígenas. En varios documentos, el Estado señaló la importancia de la autonomía y el liderazgo indígena, incluyendo proyectos en ecoturismo sostenible y etnoturismo, enfatizando también la necesidad de una regulación de estos segmentos. En junio de 2015, el turismo en Tierras Indígenas (TIs) fue regulado, haciendo con que el debate sobre el asunto llegase a un nuevo nivel. En este artículo, se discute la legislación indígena brasileña y nuevas perspectivas para el turismo, el desarrollo económico y la autonomía de estos pueblos. La investigación ha demostrado que la regulación de la actividad no contribuye plenamente a la autonomía de las comunidades, ya que es necesaria la autorización de la Fundação Nacional do Índio (FUNAI), que podrá no autorizar la iniciativa. Además, aunque esté centrada en el principio de precaución, la burocracia del proceso da lugar a la continuación del turismo ilegal.

Palabras clave: Legislación; Tierras Indígenas; Turismo; Brasil.

INTRODUCTION

In Brazil, a number of initiatives have been proposed for decades for tourism involving indigenous communities – which, however, were not regulated. Several questions inhibited the regulation of tourism in Indigenous Lands (IL). Among them is the fact that indigenous peoples are under the State’s jurisdiction, through the Brazilian National Indigenous Foundation (Funai), and any activity needs to be authorized by this foundation in order to be developed. In addition, the IL belong to the Federal Government, and entrance to those territories is (or should be, according to the current legislation) inspected. In addition, Funai does not allow the entry of people to the communities for any purpose without their

previous permission or of indigenous leaders. Likewise, the lack of consensus among researchers, government entities, and communities on the importance of regulation and how it should be done is among the factors that hindered its implementation regarding this tourist activity.

However, the national legislation did not explicitly prohibit the practice. Several legal instruments began to address the need for touristic and economic development in these communities, as well as the strengthening of indigenous autonomy regarding their way of life and subsistence. The Brazilian legislation states that: it is the responsibility of the Federal Government, states, and municipalities, as well as the bodies of their indirect administrations, to provide means for the development of indigenous communities, ensuring the free choice of their ways of life and subsistence, and contribute to the elimination of socioeconomic inequalities. It is important that indigenous peoples take this control and assume leadership, including in sustainable projects of ecotourism and ethnotourism; and, also, the need for regulating these segments (BRASIL, 1973; 2004; 2012a; 2012b).

Although the need to give autonomy to indigenous peoples was confirmed by the legal apparatus, tourism was not regulated until June 2015, when the Normative Instruction 3/2015 of Funai came into force to regulate and establish standards for the visitation of IL for tourist purposes.

In this sense, this research, based on legal instruments, dissertations, and theses, aimed to address the subject and to promote a reflection on the current reality of tourism involving indigenous communities in Brazil. Below, we present a brief approach to the indigenous peoples, IL, national legislation, and the obstacle to tourism, in addition to the new reality and possibilities that arisen from the regulation established by Normative Instruction 3/2015. Finally, we present the final considerations.

A BRIEF APPROACH ON INDIGENOUS PEOPLES, INDIGENOUS LANDS, AND TERRITORIES

When addressing the here named “tourism in indigenous territories,” we considered necessary, first, to deal with some issues concerning these peoples. Based on *Estudo do problema de discriminação contra as populações indígenas* [Study of the problem of discrimination against indigenous populations] (COBO, 1981); on the Convention 169 of the International Labor Organization (ILO) concerning indigenous and tribal peoples of 1989 (ILO, 1989); and on the document of the Working Group on Indigenous Populations of the United Nations (UN, 1996), it is possible to consider, globally, that indigenous populations are tribal peoples descended from populations that inhabited a country or a geographic region at the time of the conquests, colonization, or establishment of the current State borders. In addition, according to those same studies, indigenous peoples represent groups that: are non-dominant in society, which have had experiences of submission, marginalization, dispossession, exclusion, or discrimination, whether or not these conditions persist; and are aware of their identity, being recognized by other groups or by State authorities, distinguishing itself from the national society on account of their social, cultural, economic and political conditions, being governed wholly or partially by their own customs, traditions, or by special

legislation, and determination to preserve, develop, and transmit their ancestral territories and their ethnic identity for future generations, counting with voluntary perpetuation of cultural distinctiveness.

The Brazilian anthropologist Darcy Ribeiro (1957) understood indigenous people as the portion of the population that is not adapted to society in general. In principle, we do not agree with this statement, as it is believed that non-indigenous societies should also adapt to indigenous cultures. However, we consider suitable the characterization that this author makes of the indigenous person as someone who recognized him/herself as a member of a pre-Columbian community, motivated by customs, habits, and loyalty to a pre-Columbian tradition (RIBEIRO, 1957). Thus, despite the generic use, the term is geographically attached to the Americas, which was attributed by Christopher Columbus since he believed to have arrived in India (CALEFFI, 2003; LUCIANO, 2006). This study adopted the term “indigenous” following this vision.

Diegues (2001) explains there is confusion regarding the term “indigenous.” According to this author, the term “indigenous,” used in several official documents (such as of the World Bank and the UN), does not necessarily refer to indigenous in the ethnic and tribal sense, as it also refers to native peoples. However, this term was based primarily on the living conditions of the indigenous Amazonian peoples, i.e., from South America.

Another discussion pertaining to this study concerns the term “tourism in indigenous lands,” used by different authors. In the case of Brazil, most of the indigenous peoples live in ILs, areas delimited by the State. ILs are classified, based on the Indigenous By-laws (BRASIL, 1973), the Federal Constitution (BRASIL, 1988), and Decree No. 1,775 (BRASIL, 1996), as: Indigenous Lands Traditionally Occupied (original right of indigenous peoples), Indigenous reserves (land donated by third parties, acquired or expropriated by the Federal Government, for permanent ownership of indigenous peoples), Public Lands (property of indigenous communities from any form of acquisition), and Interdicted (areas interdicted by Funai, for protection of isolated indigenous peoples and groups).

That said, we consider more appropriate to use the term “tourism in indigenous territories,” since not all indigenous communities are included in ILs. However, for legal means of tourism, it is customary to use the concept of Indigenous Land, since it is a delimitation of the State, leaving aside other territories occupied by indigenous peoples such as non-homologated villages and urban communities.

Tourism initiatives involving indigenous communities are being developed in various countries such as Japan, Canada, Australia, New Zealand, Russia, Nepal, Tanzania, Chile, Mexico, Argentina, Peru, Panama, and Venezuela (JESUS, 2012; LAC, 2005; OLIVEIRA, 2006; PÉREZ GALÁN; ASENSIO, 2012; RYAN, 2002; RYAN; HUYNON, 2002). In Brazil, we identified mentions of several indigenous peoples that are also developing this activity, as is the case of the Kayapó (states of Pará and Mato Grosso); the Trumai and Waurá (state of Mato Grosso); the Marajoara (state of Pará); the Pataxó (state of Bahia); the Guarani M’bya (states of São Paulo, Rio de Janeiro, and Paraná); the Tapeba and Jenipapo-Kanindé (state of Ceará); the Kaingang (states of Paraná, Santa Catarina, and Rio Grande do Sul); the Krika-

ti, Gavião, Canela Apaniekra, and Canela Ramkokamekra (state of Maranhão); the Apinayé, Krahô, and Karajá (state of Tocantins); the Terena (state of Mato Grosso do Sul); the Potyguara (state of Paraíba); the Sateré-Mawé (state of Amazonas); among several others (BAGGIO, 2007; CORBARI; BAHL; SOUZA, 2015; CORBARI; GOMES, BAHL, 2013; GRÜNEWALD, 1999; GUIMARÃES, 2006; JESUS, 2012; LAC, 2005; LACERDA, 2004; LUSTOSA, 2012; NEVES, 2012; NUNES, 2006; OLIVEIRA, 2006; SANTOS, 2010). However, it was verified that each community was developing the touristic activities from its peculiarities.

The possibility of negative impacts caused by tourism in the indigenous communities being a limiting factor for the development of a tourism in indigenous communities' policy is, thus, questioned. Such impacts involve, for example, the transformation of the natives in *tooures*²; insertion of values that do not match the values of a given community, as is the case of drug use on the part of the tourists, as occurred in the communities Pataxó de Barra Velha, in Porto Seguro and Coroa Vermelha, in Santa Cruz de Cabralia (state of Bahia); depersonalization of handmade craft works of the Pataxó (GRÜNEWALD, 1999) and in the village Puiwa Poho, in Feliz Natal (state of Mato Grosso) (NUNES, 2006); tourist guides who did not consult with the community; payment (when it occurred) in alcohol, tobacco or food, in the Alto Rio Negro region (state of Amazonas) (FARIA, 2008); spectacularization and change in meaning of the craft techniques such as fishing, preparing *beiju*, *aguapé* salt production, in the village Puiwa Poho; and the commodification of rituals in the village Puiwa Poho (NUNES, 2006) and in the village Sahu-Apé, in Iranduba Sahu (state of Amazonas) (SANTOS, 2010).

Although these aspects are cause for concern among several researchers, communities, and organizations, it cannot be denied that the development of tourism can also bring benefits to communities, such as income generation, especially for young people (GRÜNEWALD, 1999; NEVES, 2012); the appreciation of handmade art craft for marketing, as occurred with the Kaingang from the Iraí IL (LAC, 2005); the strengthening of ethnic identity and traditions (LAC, 2005; SANTOS, 2010); awareness of the non-indigenous, mainly regarding territorial problems (LAC, 2005); territorial claim, as occurred with the Jenipapo-Kanindé, in Aquiraz, state of Ceará, when deploying community tourism (LUSTOSA, 2012); improvement of individual quality of life and decrease of the likelihood of exodus (BRANDÃO, 2012); among several other positive aspects.

As with any economic activity, tourism is characterized as a “double edged blade,” in the sense of being a potential generator of positive and negative impacts, depending on each specific case and administration. However, we noticed that there was a consensus among researchers, government, entities, and communities in Brazil, on the possibilities and benefits of deployment and regulation of tourism in indigenous territories and on other issues involving it, especially legal aspects, as will be further addressed.

2. The name “toouree” is given by Van den Berghe and Keyes (1984) to natives as performers, who changed their behavior to become attractive to tourists, pretending their art, clothes, music, dance, religion etc., to meet the tourists' demands for “authenticity”.

THE NATIONAL LEGISLATION AND THE OBSTACLE TO TOURISM

In Brazil, issues relating to the development of tourism in indigenous communities are marked – and limited – by national legislation, which may be considered ambiguous, not to say uncertain. The legislation does not prohibit the existence of the activity – however, it also does not allow it. The Indigenous By-law (BRASIL, 1973) does not mention touristic activities, except by pointing out that using an indigenous individual or community as object of touristic marketing is a crime. However, this law indicates that:

Art. 2. it is the responsibility of the Federal Government, states, and municipalities, as well as the bodies of their indirect administrations, in the limits of their competences, to protect the indigenous communities and preserve their rights:

[...] III – Respect, providing to indigenous peoples means for their **development**, the peculiarities inherent to their condition;

IV – Assure to indigenous peoples the possibility of **free choice of their ways of life and subsistence**. (BRASIL, 1973, emphasis added)

With this, it is understood that it is of responsibility of the Federal Government, states, and municipalities to respect the choice of indigenous communities and contribute to their development in any context, including the economic, in which would be established touristic activities.

The Federal Constitution of 1988, article 231, in its turn, gives to indigenous peoples ownership and exclusive usufruct of their land:

§ 1 – Lands traditionally occupied by indigenous peoples are those they inhabited on a permanent basis, those used for their production activities, those essential to the preservation of environmental resources necessary to their well-being, and those necessary to their physical and cultural reproduction, according to their usages, customs, and traditions. (BRASIL, 1988)

It is understood, with this statement, that tourism could be considered one of these activities, as argues Faria (2008). Furthermore, article 232 of the same law indicates that indigenous peoples, communities and organizations, are legitimate parties to defend their rights and interests, and the Department of Public Prosecution must intervene throughout process.

Decree No. 5,051 of April 19, 2004, which incorporates ILO Convention 169 on indigenous and tribal peoples, recognize the aspirations of these peoples to take control of their ways of life and economic development, maintaining and strengthening their identities, languages, and spirituality (BRASIL, 2004).

Article 2 determines that:

1. Governments should take responsibility for developing, with the participation of the concerned peoples, a coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity. (BRASIL, 2004)

These actions inherent to governments must include measures that promote the full effectiveness of the social, cultural, and economic rights of indigenous

and tribal peoples, and that contribute to eliminate socioeconomic inequalities that may exist among indigenous and non-indigenous peoples (BRASIL, 2004).

Article 7 of this Decree states that the indigenous and tribal peoples have the right to choose their priorities regarding the process of development, and control, to the extent possible, their own economic, social, and cultural development.

Another legal piece to be considered in the debate on tourism in indigenous territories is Decree No. 7,747/2012, which establishes the National Policy of Environmental and Territorial Management of Indigenous Lands (PNGATI), and has among its guidelines the “leadership and sociocultural autonomy of indigenous peoples, including through the strengthening of their organizations” (BRASIL, 2012a). In addition, it provides support for indigenous sustainable initiatives of ethnotourism and ecotourism, respecting the decision of the community and the diversity of indigenous peoples.

Finally, it is worth mentioning law No. 12,593/2012, which established the Pluriannual Plan (PPA) for the period from 2012 to 2015. The PPA is an instrument of government planning that aims to facilitate the implementation and management of public policies and assist in the promotion of sustainable development. Among their goals is to ensure and promote the protection, restoration, conservation, and sustainable use of the natural resources of these areas, as well as to improve the quality of life and the physical and cultural reproduction conditions of indigenous peoples, respecting their autonomy. This includes the regulation of ecotourism and ethnotourism in indigenous lands (BRASIL, 2012b).

With these legal instruments, it is possible to understand that tourism was not, at any time, prohibited. On the contrary, some proposals of tourism in indigenous lands covered, in their objectives, the intention to corroborate the development of the activity or the free choice of the communities regarding their economic development. However, as previously pointed out, the absence of regulations related to the lack of consensus among government, communities, and other involved parties about the legal basis of tourism in indigenous territories and possible negative impacts from the development of this activity, although regulation might also mitigate such effects.

It is worth mentioning that, in addition to this obstacle concerning the uncertainty of the law, another factor hinders the formulation of a policy geared to tourism in indigenous territories, as remembered by Faria (2008): indigenous issues are handled by Funai, in Brazil, and tourism (or ecotourism, as discussed by the author) was first dealt with by the Ministry of Environment (MMA) and, after 2003, became the responsibility of the Ministry of Tourism (MTur). Thus, on one hand, Funai does not have qualified human resources to deal with the subject, and, on the other, it is considered that the MTur would not have mastery of some important aspects to the development of this activity in indigenous communities.

However, it is possible to question: To whom is this policy aimed? Would it not be at the indigenous peoples? Therefore, the focus of the development of public policies for tourism in indigenous territories should be community involvement, giving voice to the main stakeholders, the individuals most benefited or potentially harmed by the introduction of this policy, considering the opinion, needs and desires of indigenous peoples, as argues Faria (2008). Thus, it is understood that the legal instruments should be based on the model of community-based

tourism, which has as motivation to overcome the capitalist utilitarian materialistic logic based on the principles of social equity, ecological prudence, and economic responsibility (FORTUNATO; SILVA, 2013), i.e., it does not represent a segment of tourism, but rather an alternative to mass tourism. Community-based tourism can be regarded as an instrument for social inclusion and promotion of sustainable development, with full participation of the population in the process of building, planning, and organizing of the touristic activities (BRANDÃO, 2012).

But what would prevent the creation of this policy? For Brandão (2012, p. 83), tourism involving indigenous communities “has not gained strength not due to lack of initiatives of indigenous peoples, but to the lack of sensitivity of managers and planners of public policies, who have not given the proper support, appreciation, and encouragement for the Brazilian indigenous culture.” This, however, is considered to be an incomplete idea, since MTur is presented as the only body responsible for this policy, ignoring the need for an institutional dialogue and that other bodies are important, such as Funai, state and municipal governments, non-governmental organizations, and indigenous associations.

Lac (2005), in his turn, points out that the jurisdiction, developed with the extinct Indigenous Protection Service (SPI) and maintained by Funai, influenced the other governmental bodies regarding action with the indigenous peoples. That is, even if indigenous autonomy is guaranteed by the Federal Constitution (BRASIL, 1988), jurisdiction would be an obstacle so that other institutions mobilized in support of the regulation of tourism in indigenous territories.

Regarding the aforementioned, Santos (2010) notes that, while the official institution for Brazilian indigenism (namely, Funai) did not take a stand, MMA and MTur funded the touristic projects of indigenous organizations, thus assuming the full responsibility of tourism institutions on the lack of regulation of the activity.

MMA was probably the organ that most supported initiatives in indigenous territories. By bilateral agreements between countries, it implemented socio-environmental projects with different themes, including tourism in the Amazon and in the Atlantic Forest (LUSTOSA, 2012). Among the implemented projects, it is possible to mention: the Demonstrative Project of Indigenous Peoples (PDPI), the Program of Support for Ecotourism and Environmental Sustainability of Tourism (Proecotur), and the Indigenous Portfolio (CI), a program developed in conjunction with the Ministry of Social Development and Fight against Hunger (MDS), as mentioned by the same author.

This shows, as pointed out by Santos (2010), that indigenous peoples present tourism in their lands as an urgent project, or it can be said that they present tourism as a current project, but that, for lack of regulation, occur sometimes in an unorganized way.

Parallel to this, Funai itself has received multiple requests from the indigenous communities, which, in line with the current indigenous policy, reflects the difficulties facing this institution to establish a proposal (which should not be characterized as a “model”) for the implementation of this activity, respecting the Brazilian indigenous and environmental legislation (SANTOS, 2010). Given the necessity of regulating the activity and the uncertainty about how to do it, some legal actions are signaling a flexibilization of the debate.

In addition to this, another measure that could corroborate with the regulation of the activity should be highlighted. The continuous pressure suffered by Funai

stimulated the creation of a Working Group on Tourism in Indigenous Lands, in 2006 (SANTOS, 2010). In August 2014, an Interministerial Working Group was established (Interministerial Ordinance no. 1,372), formed by the Ministry of Justice, MTur and by Funai, with the aim of proposing measures and actions for the regulation and development of tourist activities on indigenous lands to promote cultural appreciation and income generation through ethnic or ecotourism (BRASIL, 2014). These measures are a progress regarding governmental articulation for tourism development in communities that are favorable to this activity, although without direct participation of the indigenous communities.

The absence of regulations or legal permission is the biggest inhibitor support factor on the part of Funai, as can be seen in the study by Brandão (2012). This researcher, when interviewing Funai agents (who had their identities preserved) found that, for them, since ILs belong to the Federal Government, all that is not regulated by law or do not have clear rules cannot be developed, therefore following a different logic than that of private areas, a context in which what is not prohibited by law is allowed.

Thus, even though some agents were favorable to tourism (as well as to other economic activities, such as mining), there was no regulation and, therefore, no proper support of the indigenous institution, even though the institution was not able to prevent the activity from being developed. However, in the year of 2000, Funai sent 47 questionnaires aiming to raise data on ecotourism initiatives in IL. Nineteen questionnaires were answered and, of these, thirteen reported the existence of visitations in the respondent's community (CHAVES, 2006). Lac (2005) reports that, in the year of 2004, Funai requested every IL to send a letter expressing their desire to deploy or develop tourism, for subsequent plans, which is considered to be a demonstration that the institution was aware of the need for regulation of this activity, as well as of guidelines for its deployment.

In addition, the Funai was already supporting touristic initiatives technically and financially, as is the case of the Pataxó in Bahia, the Guarani M'bya in São Paulo and Rio de Janeiro, the Tenharim in Amazonas, and the Kaxinawá in Acre (FUNAI, 2015a).

In the year of 1997, an attempt of tourism organization on indigenous territories was developed by the Technical Group of Coordination of Ecotourism to the Legal Amazon (GTC Amazon) (OLIVEIRA, 2006). According to Oliveira (ibid.), this group, promoted by MMA, with support from Funai and the Brazilian Tourism Institute, published the *Indigenous Ecotourism Manual* (BRASIL, 1997), that same year, which, theoretically, should serve as a basis for the actions of the State, non-governmental organizations (NGOs), and indigenous populations to organize tourism. However, as pointed out by the researcher, the proposal was built with little participation of the indigenous peoples, which weighed negatively to the effectuation of the proposal. In addition, we can also highlight the fact that ecotourism was proposed as a priority segment for indigenous territories, without taking into consideration the characteristics and potential of each community. In this sense, Oliveira (2006) points out that the tourism in indigenous territories taking place in the country could not be identified from the content of the manual in question.

Lustosa (2012) calls attention to the fact that the regulation of tourism in indigenous territories does not seem to have been greatly developed. According to this researcher, Funai was adopting a tourism model that featured the vice of

jurisdiction. In addition, it was not taking into consideration the ethnic-specific conditions and was directing standardized tourism pilot projects (in the Xingu National Park and the Coroa Vermelha IL), as if it were possible to replicate the same experience in the various indigenous peoples of the country and in the various realities experienced by each community.

Brandão (2012) found that the indigenous individuals who participated in his research would like tourism to be regularized, as well as having support from the State. They also mentioned that indigenous peoples did not want to depend on the State but rather have autonomy of their own lives. Baggio (2007) analyzes that, in spite of jurisdiction being a barrier to self-management, there was an increasing tendency of respecting the free decision of indigenous peoples about their own future and what was done in their territories.

In this sense, we can emphasize some initiatives that occurred in Brazil, each with its peculiarities and developed differently, some of them imposed on communities, other developed by them, some beneficial (according to the community itself), others invasive. However, the negative examples serve as reflection on the importance of regulation, in order to inhibit illegal and abusive practices that generate only impacts in the visited communities, which are sometimes only used as touristic commonplace. We believe, as pointed out by Santos (2010), however, that the indigenous political organizations were dialoguing with the official indigenous institution, no longer in the dynamic “Funai is the one who knows,” but by the imposition of “we are the ones who know.”

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Although mobilizations for the regulation of tourism in indigenous territories happened, we would like to highlight the importance of this policy being based on sustainability. However, as pointed out by Gallois (2005), sustainability, as well as autonomy, should be the goal of this policy.

The aforementioned researcher defends the need for new practices in public policies, based on the principles that “knowing is the first step to scale the support capacity of social and political organization ways, systems of production, consumption and exchange, and local standards of sustainability” (ibid., p. 33), as well as verifying, by means of this prior knowledge, how to “help communities and ensure that their forms of organization, production, and exchange are dynamically enriched in experience controlled by the communities themselves” (loc. cit.). Aiming to support sustainable indigenous initiatives in the tourism sector, after years of debate, Funai regularized, on June 11, 2015, touristic activities on indigenous lands, more specifically community-based and sustainable tourism, through the ecotourism³ and ethnotourism⁴ segments (FUNAI, 2015a; FUNAI,

3. Ethnotourism or ethnic tourism is a pre-existing system of ethnic relations between a dominant group and one or more marginalized groups whose tourist attraction is the exoticism of a particular ethnic group. In the case of Brazil, indigenous peoples, *quilombolas*, and communities that represent the processes of European and Asian immigration and other groups that preserve their historical-cultural legacy and traditional know-how (CORBARI; BAHL; SOUZA, 2015).

4. Ecotourism is a convergence of nature tourism with cultural tourism and has a community character based on participatory planning. This segment must not be confused with ecologic tourism or any touristic activities that have the natural heritage as main attraction, as ecotourism is the union of

2015b). This regulation, which occurred through the Normative instruction no. 3/2015, is one of the developments of PNGATI (FUNAI, 2015b).

Thus, Gallois (2005) proposal was partly accomplished, since the regulation of tourism in indigenous territories contributes to the generation of income, one of the foundations of sustainability, while valuing the forms of social and political organization in the communities.

For approval and publication of this Normative Instruction, Funai promoted, in 2014, a dissemination workshop with the objective of informing the indigenous movement and improving the document's draft (BRASIL, 2014). The material discussed in this workshop, which consequently was basis for structuring the legal instrument referred to above, is the result of the systematization of the information collected by a bibliographic survey, documents on the subject and incursions to various indigenous communities in the country that have developed tourism, as informed by Funai (BRASIL, 2014).

As stated, Normative Instruction 3/2015 considers the provisions of Decree no. 5,051/2004, Decree no. 7,747/2012, and Law no. 12,593/2012, previously addressed, and also the regulation of the activity itself, and sets standards and guidelines concerning touristic activities (FUNAI, 2015b). According to this legal document, the objectives of tourism visitation in indigenous territories are:

The appreciation and promotion of sociodiversity and biodiversity by the interaction with indigenous peoples, their cultures, intangible materials, and the environment, aiming at income generation, respecting the privacy and intimacy of individuals, families, and indigenous peoples, as established by them. (FUNAI, 2015b)

Thus, it is understood that the regulation has occurred by understanding that tourism would be an important means of obtaining income for indigenous communities, at the same time as it would be a tool for strengthening of ethnicity and dissemination of indigenous cultures.

For tourist activities to occur in line with the law, it is necessary that the interested community propose a visitation plan, which shall be analyzed by Funai (FUNAI, 2015b). In other words, it is possible that the community does not receive permission to develop tourism. In addition, it is necessary to periodically send to Funai reports on the visitations, with consolidated information of all the period authorized by the institution (FUNAI, 2015b). However, there is no model, nor guidelines to establish it. This shows that, although the aim of this institution is to stimulate the autonomy of indigenous peoples in Brazil, the State still has control over decisions and activities held on ILs. Thus, the control of the experiments by their own communities, as proposed by Gallois (2005) would not occur.

Even though tourism was regulated in ILs, the projects will need to be sifted by Funai and can, therefore, not be allowed, which could result in the development of projects without State approval. As to the practice of tourism without going through the evaluation and not being authorized by Funai, al-

natural environment and cultural motivations (FARIA, 2005; 2008), although the interest, on the part of ecotourism, for the natural environment prevails.

though it is not allowed, there are no provisions in the law that indicate penalties. The Normative Instruction in question points out only cases in which the authorization may be suspended or revoked and informs that “in indigenous lands with the presence of isolated indigenous individuals or of recent contact, additional protection measures may be taken” (FUNAI, 2015b, n. p.), although it does not mention what those measures would be. In addition, the visitation activities that were already being implemented prior to the publication of the Normative Instruction would have two years to adapt to the established rules (FUNAI, 2015b). We would like to highlight, again, that there is no mention of possible penalties on indigenous communities and, therefore, the illegal practice could be maintained.

According to article 5 of the Normative Instruction, the Visitation Plan needs to include: goals and justification of the visitation proposal; target audience; predicted frequency of visits; maximum number of people per visit and duration of visits; distribution of competencies, taking into consideration social, generational and gender aspects; partners involved in the project, as well as their responsibilities and assignments; description of the activities proposed to visitors; delimitation of itinerary, with a map or sketch; conditions of transportation, lodging, food, and activities related to visitation; simplified business plan, containing costs for operation, maintenance, and monitoring of visits and activities, as well as revenue prediction, profit and investment; first aid care strategy; manual of conduct and good practice for visitors and for the community; strategy for preventing entry of drinks and drugs in indigenous communities and other illicit products; solid waste management strategy; activity monitoring strategy of visitation; and training strategy of the proposers (FUNAI, 2015b).

It is understood that this plan will serve not only so that Funai has knowledge of how tourism will be developed – and so can authorize or deny it, but to the communities themselves, which can analyze the risks, potentialities, weaknesses, and opportunities to organize themselves for the deployment and development of local tourism. The plan is considered to be a key instrument to any touristic initiatives.

For visitors to have access to ILs, they need to present identity document, or, in the case of foreigners, passport and evidentiary documentation of regularity in the Brazilian territory and individual authorization of admission, to be provided by the communities in the act of entering the IL. In addition, Funai may require vaccination booklet and medical certificate attesting that the visitor is not a carrier of infectious and contagious diseases. Furthermore, authorization shall not be granted to individuals who have been sanctioned with revocation or forfeiture of any authorization mode (touristic, research, journalism, among others) in the last five years (FUNAI, 2015b).

Finally, there is the possibility of suspension or revocation of authorization, which will occur if there is:

- I – Infringement of the rights of indigenous peoples;
- II – Land or social conflict looming in the indigenous land;
- III – Prejudice in the provision of public services;

- IV – Situation that matters at risk to life, health or safety of the visitors, of the indigenous community, or of its partners;
- V – Existence of administrative or judicial lawsuit of extrusion of non-Indigenous individuals in the indigenous land;
- VI – Confirmation of the presence of isolated Indigenous individuals in the area affected by the Visitation Plan;
- VII – Occurrence of illegal environmental acts related to the visitation activity;
- VIII – Noncompliance with any obligation imposed on the approved Visitation Plan or in this Normative Instruction. (FUNAI, 2015b, n. p.)

It is necessary to emphasize that maintaining order is if responsibility of the communities, tourists, and public or private partners, if any.

With that, as pointed out by Funai (2015b), the expectation is to contribute to the structuring of tourism as an alternative for income generation and, at the same time, as an instrument of environmental conservation and cultural appreciation. This meets Gallois (2005) proposal, when he states that, in the indigenous sector, public policies were geared to meet emerging demands, based on assistentialism. This Normative Instruction could contribute to the rupture of this assistentialism, although the expectation is that only some communities develop tourism, since not all are interested in the activity (FUNAI, 2015b).

FINAL CONSIDERATIONS

Tourism in indigenous territories, particularly inside of ILs, had been happening in Brazil without regulation. Several communities of varied ethnicities received visitors even without legal authorization of the State.

The development of tourism depended on legal authorization, although the legislation did not prohibit this practice. It is possible to notice that several legal instruments dealt with the obligation of the State to help the economic development according to the needs and aspirations of the indigenous communities as well as the search for autonomy of these peoples. Regarding tourism, some legal instruments specify the importance and need of supporting this activity, as in the case of Law no. 12,593/2012, which established the PPA for 2012 to 2015 (BRASIL, 2012b).

It was noticed that, over time, various initiatives have been developed in support of tourism involving indigenous communities, including from the Federal Government. However, the lack of consensus on the benefits of regularizing the activity, the uncertainty about responsibility (MTur, MMA, or Funai), the lack of qualified human resources concerning this issue, and the lack of direct participation of indigenous peoples in decision-making, among several other issues, contributed to the delay in the regulation of the activity.

On the other hand, both the existence of initiatives without legal authorization and the pressure suffered by the Funai for regulating tourism contributed to the institution to define standards and to regularize touristic visitation in indigenous lands, which occurred in June 2015, by Normative Instruction 3 (FUNAI, 2015b).

It is understood that the regulation of tourism in indigenous lands can generate positive effects, given that the legal instrument serves as a basis for planning, through which communities and other proposer institutions should reflect on risks, impacts, and other potential issues related to attractiveness, superstructure, and local infrastructure. In addition, the regulation of tourism allows the expansion of tourism policies in the framework of indigenous communities, and control of activities and people who enter ILS, providing, when necessary, governmental action to mitigate or prevent abusive practices by communities, tourists, or entities involved, such as, for example, projects in which only non-indigenous organizations are benefited and inhibition of illegal practices such as plants and animals trafficking. Also, the legalization of the activity can generate a sense of security regarding the implementation of indigenous tourism, in such a way that communities that had not deployed it before can think of it as a possibility to generate income and cultural appreciation.

Nevertheless, the Normative Instruction has its flaws, especially if compared with the legal instruments in which it was based. As an example: although it was developed to cooperate with the autonomy of indigenous peoples, it does not grant it in its entirety, since the communities who wish to become touristic destinations should periodically submit reports to Funai and may even have the permission denied.

As informed by Funai (2015a), it is not expected that all communities are inserted in the tourist market, since not all wish to or are prepared to receive visitors. However, tourism allows the possibility of generating income, combined with ethnocultural appreciation and dissemination.

The next step would be to develop training and qualification programs for these communities to receive the visitors; encourage the improvement of the basic and touristic infrastructure; increase the participation of indigenous people in decision-making, in the elaboration and implementation of programs and projects of tourism throughout the country; and, above all, promote cultural appreciation and ethnocultural dissemination measures for non-indigenous individuals.

Regarding the lack of autonomy of the communities – which should be encouraged because the Brazilian Government follows the Convention 169 of ILO (BRASIL, 2004) –, it is believed that it will only be possible when some legal obstacles are overcome, such as, for example, the State jurisdiction, in which the indigenous individual is subjected to legal requirements. Tourism, as an economic activity that can generate negative impacts, needs to be designed to be strengthened within the indigenous policy, but aligned to the logic of ecologic and ethnic development, based on sustainable development.

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Received on: 07/27/2016

Approved on: 01/29/2017