

LEARNER NUMBER:	51715171
NAME:	RACHEL RHAYANNE FERREIRA GOMES
COURSE:	Masters of Arts in Dispute Resolution
DISSERTATION TITLE:	Restorative Justice for Brazilian indigenous people: The TRC and the question of demarcation of lands
SUPERVISOR NAME:	Klaus Walter
WORD COUNT:	16.193
DUE DATE:	04/11/2022
DATE SUBMITTED:	04/11/2022

I certify that:

- This dissertation is all my own work, and no part of this dissertation has been copied from another source:
Yes ☒ No ☐
- I understand that this dissertation may be checked for plagiarism by electronic or other means and may be transferred and stored in a database for the purposes of data-matching to help detect plagiarism: Yes ☒ No ☐
- This dissertation has not previously been submitted in part or in full for assessment to any other institution: Yes ☒ No ☐
- I consent to the inclusion of my dissertation in an electronic database maintained by the library:
Yes ☒ No ☐

(Note that if no check boxes are selected, this dissertation will be regarded as NOT properly submitted, and may be subject to a late submission penalty)

Name: Rachel Rhayanne Ferreira Gomes

Date: 04/11/2022

***Restorative Justice for Brazilian indigenous people:
The TRC and the question of demarcation of lands***

by

Rachel Rhayanne Ferreira Gomes

Registration N°51715171

Master of Arts in Dispute Resolution

Independent College

Dublin, Ireland.

November, 2022.

Statement of Authorship

I, the undersigned Rachel Gomes hereby declare that I am the sole author of this dissertation. To the best of my knowledge this dissertation contains no material previously published by any other person except where due acknowledgment has been made. This dissertation contains no material which has been accepted as part of the requirements of any other academic degree or non-degree program.

This is a true copy of the dissertation, including final revisions.

Date: 04/11/2022

Rachel Gomes



Figure 1 extracted from APIB website

LIST OF CONTENT

<i>Acknowledgements</i>	10
<i>ABSTRACT</i>	11
<i>INTRODUCTION</i>	12
<i>CHAPTER I REVIEW OF LITERATURE</i>	15
<i>Restorative Justice</i>	15
<i>Definition</i>	16
<i>Punitive Justice vs Restorative Justice</i>	18
<i>Restorative Justice and International Law</i>	19
<i>Restoration and Reparation in International Law</i>	20
<i>International Law and Transitional Justice</i>	211
<i>The Truth and Reconciliation Commission – TRCs</i>	21
<i>Definition</i>	22
<i>Brazil Conflict Map</i>	23
<i>A Brief Brazilian Native History</i>	24
<i>The natives</i>	25
<i>The colonization</i>	24
<i>The 1948 Genocide Convention</i>	26
<i>The 1964 Dictatorship and The Truth Commission</i>	28
<i>The 1988 Constitution and The Demarcation of Lands</i>	26
<i>Indigenous Rights in Brazilian History</i>	28
<i>CHAPTER II: RESEARCH METHODOLOGY AND METHODS</i>	40
<i>Introduction</i>	40

<i>Definition.....</i>	<i>41</i>
<i>Research Method</i>	<i>43</i>
<i>CHOICE OF METHOD</i>	<i>44</i>
<i>PHILOSOPHY.....</i>	<i>45</i>
<i>RESEARCH APPROACH.....</i>	<i>46</i>
<i>RESEARCH STRATEGIES</i>	<i>47</i>
<i>TIME HORIZON</i>	<i>48</i>
<i>DATA COLLECTION METHODS.....</i>	<i>48</i>
<i>ETHICS</i>	<i>49</i>
<i>CHAPTER III.....</i>	<i>50</i>
<i>PRESENTATION OF THE DATA.....</i>	<i>50</i>
<i>Data Purpose.....</i>	<i>50</i>
<i>Survey Questionnaire</i>	<i>51</i>
<i>Interview Questionnaire – Kirsten Dales.....</i>	<i>56</i>
<i>Interview Questionnaire – Bernardo Ranieri</i>	<i>56</i>
<i>CHAPTER IV DATA ANALYSIS</i>	<i>58</i>
<i>Survey Analyses.....</i>	<i>58</i>
<i>Interview Analyses</i>	<i>66</i>
<i>Bernardo Ranieri Interview</i>	<i>66</i>
<i>CHAPTER V DISCUSSION.....</i>	<i>73</i>
<i>Literature Review</i>	<i>73</i>
<i>Survey:.....</i>	<i>76</i>
<i>Interview</i>	<i>78</i>
<i>CONCLUSION.....</i>	<i>81</i>

<i>Limitations</i>	83
<i>Recommendations</i>	83
<i>REFLECTION</i>	85
<i>BIBLIOGRAPHY</i>	87

LIST OF TABLES

<u>Table 1 Van Ness and Strong 1997, p.7.</u>	15
<u>Table 2 Zehr, Howard 2002, and 2005</u>	15
<u>Table 3 FUNAI 2013</u>	20
<u>Table 4 extracted from the APIB website</u>	32
<u>Table 5</u>	36
<u>Table 6</u>	39
<u>Table 7</u>	40

LISTS OF FIGURES

<u>Figure 1 extracted from APIB website</u>	5
<u>Figure 2 Developed by the author</u>	35
<u>Figure 3</u>	39
<u>Figure 4 extracted from SurveyMonkey</u>	45
<u>Figure 5 extracted from SurveyMonkey</u>	46
<u>Figure 6 extracted from SurveyMonkey</u>	46
<u>Figure 7 extracted from SurveyMonkey</u>	47
<u>Figure 8 extracted from SurveyMonkey</u>	48
<u>Figure 9 extracted from SurveyMonkey</u>	48
<u>Figure 10 extracted from SurveyMonkey</u>	49
<u>Figure 11 extracted from SurveyMonkey</u>	49
<u>Figure 12 extracted from SurveyMonkey</u>	53

<u>Figure 13 extracted from SurveyMonkey</u>	54
<u>Figure 14 extracted from SurveyMonkey</u>	55
<u>Figure 15 extracted from SurveyMonkey</u>	56
<u>Figure 16 extracted from SurveyMonkey</u>	57
<u>Figure 17 extracted from SurveyMonkey</u>	58
<u>Figure 18 extracted from SurveyMonkey</u>	59
<u>Figure 19 extracted from SurveyMonkey</u>	60
<u>Figure 20</u>	64
<u>Figure 21</u>	66
<u>Figure 22</u>	68
<u>Figure 23</u>	71

Acknowledgements

Midst all the people that have helped me on some level to achieve my personal growth I am truly grateful. First a special thanks to the strongest woman in my life Magda Ferreira, my mom who offered me emotional and financial support in every step of my life, which was essential for me to reach this stage. Second I would like to thank MaryAlycia Post, without her support and encouragement this dissertation would not be possible. Third I would like to thank myself for the effort and dedication to complete this challenge. I dedicate my research to my beloved Jack Beglin and to everyone that is seeking to understand the natives conflict in Brazil.

ABSTRACT

This dissertation aim is to display the definition of restorative justice and a brief history about the Brazilian natives. The objective of this dissertation is to understand if restorative justice, in specific TRCs, are an effective tool to be used by these communities to achieve the goal of the demarcation of lands. The investigation was developed through a Survey and an Interview with a specialist in indigenous rights. The research method is explained using the “Research Onion” model developed by Mark Saunders, and the methodology is a mix of quantitative and qualitative analyses. The Survey analyses conclude that the majority of the target population have an acceptable understanding of history and indigenous rights, raising the question of the need of the TRC as a mean to raise awareness, however the limitation of the method do not offered an answer to this particular question. The Interview analyses concluded that for the specialist interviewed the possibility of the realization of a TRC in Brazil depends mostly on the political power, especially depending on the results of the 2022 elections in Brazil, however the specialist did not position his impression about its efficiency which it was one of the three research questions. The final conclusion is that the TRC can be an appropriated tool to approach the conflict, but its limitations have been proved to be an obstacle to the efficiency of said tool for the regularization of demarcation of lands in Brazil.

Key words: Restorative Justice, Brazilian indigenous people, Demarcation of Lands, TRCs.

INTRODUCTION

The native indigenous people in Brazil have been facing what is in essence the same conflict for over 500 years. The native resistance effort is to have their constitutional right of having their land demarcated, to preserve their cultural heritage, to preserve the environment and their physical safety. The research aim is to provide a brief native history in Brazil to construct the conflict narrative, to provide a definition and basic understanding of Restorative Justice and TRC to define how these tools can be used in the native conflict and if these tools are efficient as a mean to reach a mutual agreement. There are three main research questions that this research intends to answer:

- 1:** What is the relation between Restorative Justice and the Brazilian indigenous case?
- 2:** Is there sufficient popular knowledge about the theme in Brazil? How the popular opinion can affect political decision-making?
- 3:** Are TRCs an effective approach to reaching restorative justice for the Brazilian indigenous people? Could the demarcation of lands be a viable compensation?

In the first chapter, Restorative Justice is aborded as a paradigm that can be used to interpret the criminal justice system, due to the essence of the process being focused on the relationship between the victim and the perpetrator it is often classified as a holistic approach and it is frequently related to mediation and Alternative Dispute Resolution (ADR). The literature review is composed of academic articles, academic journals, historic data, official statistic data, journalistic interviews, International Conventions, the definition of TRCs and how its process could be considered a tool in Restorative Justice. The influence of Restorative Justice in International Law is aborded and defined, revealing the relation between the concept of restoration in International law and the demarcation of lands as a possible compensation

resulting from a future TRC in Brazil. As the theme is quite specific and of long duration, the native history was compiled to note what is considered by historians the most influential historic conflicts, the display of legal rights assured by the Brazilian Constitution concerning the Demarcation of Lands is explored to understand how the legal obstacle, currently represented as the Marco temporal, is shaping the conflict.

The second chapter introduces the techniques and procedures of investigation used in the data collection, analysis, discussion and interpretation of the research framework. This chapter describes the methodology and the methods applied to develop the collection of data. The method chosen was the "Research Onion" model that divides the procedures into layers like an onion. The model technique's aim is to describe the choice of a mixed method, a combination of quantitative and qualitative methods, resulting in a Survey and Interview as appropriate data collection instruments for this investigation. The methodology is essential to aim in the production of a non-biased result, the consent of participants and the ethics involved in the process of collection of data is also aborded in this chapter.

The third chapter presents the data collected, the data purpose displays the three main research questions that will orientate the organization of the Survey and Interview data, but it will also guide the interpretation of the data to answer the research questions in chapter V. The Survey Questionnaire is divided into eight closed questions and each question is provided with an explanation and the aim of it. The Survey was originally applied in Portuguese and later translated into English by the researcher. The Interview Questionnaire was originally submitted via e-mail to two specialists and consisted in three open questions, due to one interviewer's agenda conflict, only one interview data was collected. The open questions are also divided and the aim of each question is explained.

Chapter four will analyse the data and examine the information collected from the Survey and Interview. The Survey analysis data will identify the target population choice and the Specialist focus Interview. This chapter abords the statical reply represented by the tables from SurveyMonkey, the eight questions were added with more information relating to the theme of each and explained. The first reply is displayed as a background reference for the specialist, the

second reply is analysed and explained using Maslow's Hierarchy of Needs model and the third reply is analysed and explained by The Culture Wheel model.

The fifth chapter presents the discussion about the data collected, this chapter is organized in a way to reply to the three research questions presented in chapter III separating the discussion into three parts. In the first part, the data from the literature review is discussed based on the Circle of Conflicts model, and it answers the first research question. In the second part, the data from the Survey have been analysed to answer the second research question and discuss the limitations of the method and the social bubble effect. The third part it is discussed the interview data and a possible reply to the third research question.

The conclusion connects the purpose and information presented in every chapter and appoints the limitation of the investigation and the TRC and drafts a possibility to be considered in the political future of Brazil concerning the demarcation of lands, the preservation of the native's traditions and environmental preservation. This investigation is concluded with a personal reflection on the overall research and contains the author's perspectives and opinions. The major contribution expected is to shine a light on this ancient and current conflict that has resulted in the genocide of most native populations in Brazil, it aims into advocating for a solution concerning the demarcation and pressure for the Brazilian government accountability.

CHAPTER I REVIEW OF LITERATURE

Restorative Justice

The term Restorative Justice is first credited in an academic article in 1977, "Beyond Restitution: Creative Restitution" by Albert Eglash. The author debates about three different approaches to understanding the concept of justice: Retributive Justice (based on punishment), Distributive Justice (based on therapeutic treatment to offenders) and Restorative Justice (based on restitution and the input of victim and offender). Despite the first academic references in the 70s, the idea of Restorative justice is as old as the earliest forms of classical concepts of justice in Greek, Arab and Roman legal culture (Braithwaite 2002). The criminologist John Braithwaite points out in his 1997 article Restorative Justice: Assessing an Immodest Theory and a Pessimistic Theory, that "restorative justice has been the dominant model of criminal justice throughout most of human history for all the worlds people". The author Zehr (1990) proposes the term "community justice" as a terminology to refer to the period before the transition from Restorative Justice to Punitive Justice because the restorative justice at the time recognized the harm, allocated the people involved in the conflict as central to achieve reconciliation and focused on the maintenance of relationships, to achieve that the process was primarily based on mediation and negotiation, rather than rules and imposed decisions. It is important to note that when community justice failed other responses to the conflict based on retribution and forced resolution were also used as mechanisms of last resort (Zehr, 1990,p.100-104-110).

The main agreement between scholars is that the transition in the concept of Justice began between the eleventh and twelfth century, gaining prominence in the nineteenth century (Zehr, 1990 p.107), driven by the desire for political power, especially countries which trace their legal heritage to the English model. It is possible to point to the reign of William the Conqueror as a turning point from restitution-centred justice to state-centred justice, based on their use of the legal process to increase their political power against the growing influence of the church (Van Ness, 1990, p.7/8).

Harold Berman, a Legal Historian argues that this change marked a “legal revolution” that resulted in the reconceptualization of the nature of disputes. The English crown self-proclaimed as the “keeper of the peace” shift the victim’s role and substituted it, so whenever peace was violated, it would be an act against the crown and not the victim afflicted by the wrongdoing. The role of the courts would be to defend the crown by “applying rules, establishing guilt, and fixing penalties” (Zehr, 1990. P.110-112). Van Ness argues that the new victim role of the crown resulted in long-lasting devastating effects on the real victims that were left with no power, no reconciliation or restitution, the effects of the transition are translated to a modern problem where victims have no control over the process without the permission of the state. The punishment for crimes serves as a statement of authority and power instead of addressing the harm caused by the wrongdoing, which resulted in the attention being focused on the action of the offender instead of the effects of its behaviour.

Definition

Restorative Justice is a course of action to respond to harmful behaviour based on the attempt to balance the needs of the victims, offender and community. The process of restorative justice is usually lead by a facilitator that uses a conjoint of practices that can include: acknowledgement of harm/ injury, restitution and apologies, aiming to provide reintegration of offenders back into their communities and healing and closure to their victims. In that sense, restorative justice is a process of direct communication that offers voice to the victims, material restitution or payments, a new mutual understanding of the facts and an agreement for improving behaviour. The restorative approach can be applied to matters involving individuals, groups or at an institutional and international level. John Braithwaite defines restorative justice as [...] a process where all stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm. With crime, restorative justice is about the idea that because crime hurts, justice should heal. [...] (2004, p.28-31).

The definition of Restorative Justice is not unified, Johnstone and Van Ness (2007, p.6) argue that restorative justice is not only a [...] persistently vague concept, it is in fact a deeply contested concept [...]. The authors identify three main conceptions for a movement to be understood as inside the idea of restorative justice: encounter (represented by the meeting of stakeholders and decision-making), reparative (represented by the outcome) and transformative (represented by the opportunity of the stakeholders to transform the situation, themselves and the community). Authors in the restorative field such as Zehr, Van Ness and Strong, restrict their analysis to community conflicts, criminal justice and domestic crime. In contraposition, Braithwaite argues that restorative justice should be applied to young and adult offenders, war crimes, corporate crime, sustainable development and peace-making. Another point of debate is if retribution and punishment can be coherently related to restorative justice (Daly 2001, Duff, 2002).

Carolyn Boyes-Watson summarizes restorative justice as [...] a growing social movement to institutionalize peaceful approaches to harm, problem-solving and violations of legal and human rights. These range from international peace-making tribunals such as the South Africa Truth and Reconciliation Commission to innovations within the criminal and juvenile justice systems, schools, social services and communities. Rather than privileging the law, professionals and the state, restorative resolutions engage those who are harmed, wrongdoers and their affected communities in search of solutions that promote repair, reconciliation and the rebuilding of relationships. Restorative justice seeks to build partnerships to re-establish mutual responsibility for constructive responses to wrongdoing within our communities. Restorative approaches seek a balanced approach to the needs of the victim, wrongdoer and community through processes that preserve the safety and dignity of all [...] (2014).

Punitive Justice vs Restorative Justice

The modern mainstream justice system is based on punitive justice, also referred to as retributive justice, which according to Tyler Okimoto in his 2008 article Retributive Justice can be understood as [...] the repair of justice though unilateral imposition of punishment [...]. Criminal justice based on punitive justice assumes that the punishment of the offender is necessary and sufficient to restore justice after a criminal offence (P,376). As for Restorative justice, it can be understood as a response to more than the criminal behaviour and the offender and the victim, it represents the rebuilding of relationships, dispute resolution and consequent peace-making, it is also useful as a data collection that helps to identify underlying causes of crime and develop strategies concerning crime prevention. The transgressions are perceived as conflicts that need to be given back to their rightful owners for them to resolve: offenders, victims, and their respective communities (Christie 1977). Bellow a table that exemplifies the main contra points of each:

	Ancient Pattern	Current Pattern
Crime	Injury to victims and their families in the context of the community	Violation of the law
Parties	Victims, offenders, community and government	Offenders and government
Goal	Repair damage and re-establish right relationships	Reduce future lawbreaking through rehabilitation, punishment, deterrence and/or incapacitation

Table 1 Van Ness and Strong 1997, p.7.

Restorative justice	Contemporary Criminal justice
What is the harm?	What law was broken?
How do we repair the harm?	Who broke the law?
Who has responsibility to repair the harm?	What the offender deserves?

Table 2 Zehr, Howard 2002, and 2005

Restorative Justice and International Law

In the International scenario, restorative justice ideas have been used in a growth wave, as examples, three main occurrences can be highlighted: the draft articles of the **International Law Commission in 1996**, that stated reparation as “ the rights of injured states and obligations of the state which has committed an internationally wrongful act”, it also have defined key terms such as reparation, compensation and restitution; the use of **Transitional justice in 1996** in the South African Truth and Reconciliation Commission (TRC) and by courts in the post-conflict in Rwanda (Minow 1998); the **United Nations Economic and Social Council (ECOSOC, 2002)** that endorsed the definition of restorative justice to include activities at all stages of the domestic criminal justice process of all its members (Van Ness and Strong, 2006, p.207).

The adaptation of restorative justice from a domestic area to an international criminal justice area caused a discrepancy in the terms restoration and reparation, when applied to crime in a domestic criminal justice approach in affluent nations versus the approach of human rights violation in poorer non-democratic nations. For the application of crime in a domestic criminal justice scenario, the idea of restorative justice is focused on repairing harm for victims of a common crime in a democratic society. In the case of human rights violation scenario, the application of restorative justice is focused on redressing victimizations and deaths caused by

abuse of power, national security, confiscation of property and other consequences resulting from internal conflicts and war (Van Ness and Strong, 2006).

Restoration and Reparation in International Law

There are two ways in which reparation is used in International Law. The first one, under the Encyclopaedia of Public International Law, Vol. 4., the earliest use of the concept can be dated to the mid-16th century related to a victor's entitlement to a "tribute on the vanquished...for internationally wrongful acts", that serve as "reparation... [but] also as a punishment and atonement". It is important to note that reparation and restoration are associated with addressing past damages and wrongs (Zehr, 2002). The idea of tributes or "war indemnities" became a popular claim to cover war costs in the 18th century. In the context of the post-World War I, reparation replaced terms such as "war indemnities" and it was used in peace treaties, today the term in International Law refers not only to war but also to a state's entitlement against another state that committed "internationally wrongful acts" (Bernhardt and MacAlister, 1992). The second use was developed in post-World War II, based on numerous key instruments of human rights grounded with **The Universal Declaration of Human Rights in 1948**. In this context, an individual can seek reparation for human rights violations. The UN Resolution of 2006 stand as a primordial document in defining rights and reparation for victims in international human rights and it identifies three main victims' rights in Section VII: access to justice, reparation for harm suffered and access to relevant information concerning violation and reparations mechanisms (A/RED/60/147, p. 6).

International Law and Transitional Justice

Bickford defines transitional justice as “ a framework for confronting past abuse as a component of a major political transformation” (2004, p.1045). Transitional justice is not a classification of justice, but a context of justice for societies facing transformations that could result in human rights violations. The International Centre for Transitional Justice (ICTJ), argues that transitional justice “ emerged in the late 1980s and early 1990s, mainly in response to political change in Latin America and Eastern Europe and demands in these regions for justice” (2008, p.1). The challenge of the time was to address the State’s use of violence and torture against citizens, without undermining the possibility for states to shift to democracy. These shifts, were initially referred to as “ transitions to democracy”, and later fixed as “transitional justice” (ICTJ 2008, P.1). The legal base for transitional justice was laid by the **Inter-American Court of Human Rights** in 1998, which stated “ four fundamental obligations in the area of human rights: [...] to prevent human rights violations, to conduct investigations, to impose sanctions on those responsible, and to ensure reparation for the victims [...] (ICTJ 2008, p. 1). The complexity of these situations, such as legal costs and political and judicial corruption makes the standard approach of prosecution and trial to violation impractical. ICTJ claims that a “holistic approach” is necessary to address these violations, and a variety of approaches are recommended, including truth commissions, reparation programs, change of the state’s security system (police, military and judiciary) and memorial activities.

The Truth and Reconciliation Commission – TRCs

The Greensboro Truth and Reconciliation Commission in the US 2006, define Truth Commission as a mechanism of transitional justice, notwithstanding the fact that it can also be used to address political conflicts in countries at peace. Brahm argues that there are diverse goals, procedures of operating and outcomes related to the Truth Commissions. The author claims that these commissions delivers restorative justice in a manner that heals trauma and restores victim’s

dignity (2004, p. 6). The connection between Truth and Reconciliation Commission (TRC) and restorative justice is made in 1995 in the South Africa TRC, when Desmond Tutu, a chairperson, associated the traditional African jurisprudence (ubuntu) to restorative justice. Tutu argued that instead of having prosecution for the state violence and human rights violation under the apartheid regime, the best approach would be a restorative approach (1999).

Roche summarize that “there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimization” (2007, p.78).

Minow argues that the TRC emphasizes in truth-telling, public acknowledgment, and reparation are crucial elements for restoration of justice and community (1998, p.91-92).

Definition

A Truth and Reconciliation Commission (TRC) is defined by Androff D. as a particular response to political repression, human rights violations and mass violence (2010, p.1961). It first emerged during the 80’s as a response to the Apartheid in South Africa, and to the spread of dictatorial regimes in different countries in South America. TRC’s are in essence an institutional post-conflict task to uncover past wrongdoing of Governments or other state actors. The TRCs aim is to allocate accountancy to perpetrators, to advance truth-seeking based in testimonials and verified documents, and finally to offer reconciliation by aiming victims and perpetrators to share their experience and helping to rebuild the social fabric that was damaged by the display of violence (Androff D. 2010, p.1964). The purpose of restorative justice in the TRC is to be more effective into curing the social fabric, differently than the retributive justice model observed in 1945 in the Nuremberg war crimes tribunals.

Priscilla Hayner describes the five main characteristic encompassing TRCs as:

- I- It is focused on the past, rather than in ongoing events;
- II- Investigates a pattern of events that took place over a period of time;
- III-Engages directly and broadly with the affected population, gathering information on their experiences;

IV-It is a temporary body, with the aim of concluding with a final report; and

V-It is officially authorized or empowered by the state under review.

Hayner clarify that the commissions serve as a way of establishing the historical truth, raise popular awareness about human rights violation and to offer the state the chance to acknowledge its past wrongdoings and the promise of non-repetition. However it is important to understand the difference between truth and “historical truth”, as the latest is not a “judicial truth”, meaning that it does not have a criminal punitive aspect. The TRCs avoid the invasion of the domestic judicial area and it does not substitute the State’s obligation to sentence and execute judicial matters against perpetrators (Hayner, 2010).

Brazil Conflict Map

A Brief Brazilian Native History

The natives

The history of Brazil begins with the natives indigenous peoples. The debate about the origins of these peoples is still a matter of dispute between archaeologists (P. Ash, D. Robinson, 2011,p. 289). The most accepted theory based on anthropological, genetic (autosomal DNA and mitochondrial DNA) and linguistic evidence is that the majority of the Amerindian people are descendants of migrants from Mongolia and Siberia who would have crossed the Bering Strait in the minimum of three different migration waves. The Brazilian natives are believed to be descended from the first Siberian wave, that crossed the Bering Land Bridge at the last Ice Age, between 13.000 and 17.000 years ago (Linda Cordell et al, 2008). The oldest human remains found in Minas Gerais, a state in Brazil, named Luzia, dates back to at least 10,000 years (Robert Levini et al, 2012, p. 11), this archaeological discover is a fact checking that there were native communities living in that area for centuries before the colonizers arrival. It is estimated that at

the time of first contact with the colonizers the territory of current Brazil had as many as 2.000 tribes and a population of 3 million people (The National Indian Foundation, table 1 - FUNAI,2013). The indigenous people were mostly semi-nomadic tribes who subsisted on fishing, gathering, hunting and migrant agriculture, and although some believe that these tribes lived in peace the truth is that these tribes were involved in diverse tribal wars in dispute for the best territory when migrating and even cannibalism (Ramos, R. 2009) .

The colonization

The colonization occurred from 1500 to 1815 when Brazil became a monarchy. The colonial time is marked by indigenous insurrections, some of the most important ones are: Confederação dos Tamoios (1554-1567), Guerra dos Aimorés (1555-1673), Guerra dos Potiguaras (1574-1599), Guerra dos Bárbaros (1651-1704), Guerra dos Açus (1686-1692), Revolta de Mandu-Ladino (1712-1719), Guerra dos Manaos (1723-1728), Resistência Guaicuru (1725-1791), Guerra Guaranítica (1753-1756) and Guerra de 1808 (1808-1824) (Milanez, F. 2021). The indigenous resistance have been active since the first colonization attempt, the natives never stopped their incursion to preserve their lives and territory. As a justification for the colonization, the Portuguese supported by the Catholic Church, affirmed that the process was necessary to save the souls of the natives that lived in sin and had no capacity to distinguish right of wrong (Araujo, V. 2006). Darcy Ribeiro point out in his book *The Indian and the civilization* (free translation), that the genocide of these communities occurred by force, represented by the most advanced technology of the colonizer, however the knowledge of the area were an native advantage so the main strategy used by the colonizer was the intentional dissemination of diseases such as smallpox and variola, that have annihilated entire tribes without even being in direct contact. The catechization, genocide, rape and assimilation were tactics implemented by the colonizers to subdued the natives. Bellow a table extracted from FUNAI that shows the demographic data of the indigenous Brazilian population that from 1500 to 2010 suffered a collapse of 99,74%:

Year	Coast Population	CountrysidePopulation	Total	Population %
------	------------------	-----------------------	-------	--------------

1500	2.000.000	1.000.000	3.000.000	100,00
1570	200.000	1.000.000	1.200.000	95,00
1650	100.000	600.000	700.000	73,00
1825	60.000	300.000	360.000	9,00
1940	20.000	180.000	200.000	0,40
1950	10.000	140.000	150.000	0,37
1957	5.000	65.000	70.000	0,10
1980	10.000	200.000	210.000	0,19
1995	30.000	300.000	330.000	0,20
2000	60.000	340.000	400.000	0,20
2010	272.654	545.308	817.962	0,26
<i>Fonte: Azevedo, Marta Maria. 2013</i>				

Table 3 FUNAI 2013

The 1948 Genocide Convention

The international treaty developed by the United Nations General Assembly that criminalizes genocide known as the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) is the first legal instrument to classify genocide as a crime. The Convention defines genocide as acts committed against national, ethnical or religious groups and establish five acts in which it may occur: killing, causing serious bodily or mental harm, preventing births, imposing living conditions intended to destroy the group and forcibly transferring children out of the group. Victims are targeted because of their real or perceived membership of a group, not randomly (Article II). Brazil ratified the convention in 1952 and incorporated article II into the penal laws, although the State argued against the inclusion of cultural genocide affirming that minority groups could use the legal dispositive to oppose the assimilation process in the country (May, Larry 2010).

The 1964 Dictatorship and The Truth Commission

The Military dictatorship in Brazil was established in 1964 after the Brazilian Armed Forces coup d'état, it lasted for 21 years ending in 1985 pressure by the popular movement Diretas Ja (Direct Now), which claimed direct presidential elections. The dictatorship killed 434 people and tortured over 20,000 people (Human Rights Watch HRW), the movement was supported and financed by the US government as a way to stop the alleged communist threat in Brazil (Blakeley, R. 2009).

The Figueiredo Report made by public prosecutor Jader de Figueiredo in 1967 was hidden for over forty years. The Report was only rediscovered by the National Truth Commission (CNV, 2014), which was tasked with the investigation of human rights violations between 1964 to 1988. The Report uncover that the SPI (Indian Protection Service) had enslaved, tortured, killed, raped and stolen indigenous land, the report reveals that entire tribes were eradicated in Maranhao and Mato Grosso, it also stated that members of the SPI and landowners deliberately introduced smallpox to isolated villages, the same tactic used by the colonizers (Watts, J. 2013). The report aimed the National Truth Commission to unveil and acknowledge the death of at least 8,000 indigenous people during the period under investigation, 13 recommendations were made to the Brazilian government that included a public apology, the creation of a specific truth commission for indigenous issues, a commemorative date, the creation of museums, production of didactic and audio-visual material to be shared in society, implementation of acts to preserve the indigenous culture and return of territories. Unfortunately, few of the recommendations have been implemented (Demetrio, A and Kozicki, K. 2019).

The 1988 Constitution and The Demarcation of Lands

The 1988 Constitution marked the establishment of democracy in Brazil, it emphasis human rights and assured new rights to the population such as the creation of the free of charges Unified Health System -SUS- (Chapter II Article 196), free education (Chapter V Article 206) and it

recognizes the indigenous people's right to pursue their traditional heritage and ensure the permanent and exclusive possession of traditional lands (Chapter VII Article 231, Federal Constitution). It also kept the formal protection against invasion of their territory from the previous constitution of 1967 (Borges, B. 2011). The Demarcation of lands is assured in article 67, and it foresees its implementation in the five following years, in reality, it is passed 34 years and the Brazilian government is still failing in demarcating all the indigenous territories, in protecting the territories that are demarcated and its communities from protracted conflicts that threaten their safety and cultural heritage (Schwartzman, S. 1996). The Indian National Foundation (FUNAI) is the responsible organ for demarcating the territory, however, due to the underfunding and not specialized leaders in front of the command, the organ is not apt to fulfil its goals. The Marco Temporal (timeframe) was a legal thesis presented in the territory dispute case of the Raposa Serra do Sol advocating that the demarcation should be done based on the territories inhabited by natives on the date of the Constitution establishment, the thesis was considered valid by the Superior Federal Court (STF) in 2009. In 2019 the thesis was brought up again in the territory dispute case of the Reserva Biologica do Sassafras, and due to the public visibility, the STF declared that the decision made on this case will set precedent for the Brazilian judiciary system. The Minister Edson Fachin stated that every demarcation process is suspended until the end of Covid-19, however, no decisions have been made and it is still on hold. Bolsonaro is favourable to the Marco Temporal and affirms that "it would be a hard strike in the agribusiness, with catastrophic internal and external implications" (free translation, Fernandes, A. 2021). Fachin declared that is against the Marco Temporal and that it only caused the paralysation of all the demarcation process and intensified the conflict (free translation, Consultor Juridico, 2021). Official data published by FUNAI calculates that there are 487 approved lands for demarcation and 241 in waiting. Bolsonaro's government was the first to not demarcate any territory since the re-democratization of Brazil. Following a few predecessor presidents and the number of territories demarcated in their government: Fernando Collor (1990-1992) demarcated 58, Itamar Franco (1992-1995) 39, Fernando Henrique Cardoso (1995) 108, Luiz Inacio Lula da Silva (2003-2011) 81, Dilma Rousseff (2011-2016) 26, Michel Temer (2016-2019) 3, Jair Bolsonaro (2019-2022) 0 (PEREIRA, J. INFOAMAZONIA, 2022).

Indigenous Rights in Brazilian History

Bellow is represented in a table containing the main legal rights concerning the natives in Brazilian history, the data was extracted from the APIB official site and translated and organized in a table by the author for better visualization.

1600 - 1700	
1680	The King's charter declared that the natives had the right of occupy their chosen lands and it would be free of any taxation from the Portuguese administrator.
1686	The Mission Regiment, decreed by Pedro II, King of Portugal, assured the natives the right of non-vacating their lands. The lands where an exchange for the "civilization" process.

1700 -1800	
1755	The Pombalina Law determined that the natives had the entire dominance and pacific occupation of the lands, to benefit from it as well as its descendants.

1758	The Pombalino Directory of Maranhão e Grão-Pará established that the natives are the primary and natural landowners.
-------------	--

1800 - 1900	
1822	The Samaria regime was extinct. (Samaria was the distribution of fertile land to Portuguese administrators)
1833	In the Imperial government, the Portuguese provinces had legislation over the natives, which started the forced acquisition of original lands.
1850	The Land Law n.601 determined that the acquired original lands do not need legitimation or to be returned from the natives communities that inhabited the areas. This law established that the natives did not have legitimacy over the territories and that the Law would design lands for the purpose of "civilize" the natives.
1854	The decree 1.318 regularized the Land Law of 1850. The text defines in the Article 72 and 75 that the natives have the choice of don't vacate its lands, the decree assured the

	exclusive possession of lands to “civilized” natives.
1855	The legislation that assure that natives inhabiting extinct traditional villages (aldeamento) have the possession of the lands, being reiterated in 1857 and 1870.
1887	The extinct villages possession is transferred to the Portuguese Provinces.
1889	The beginning of the Republic the states have the legislation over the lands and are responsible for promoting the catechization and civilization of natives.

1900 - 2000	
1906	The Law n.1.606 defined that the Union is responsible for indigenous policy. The responsibility of the area was under the influence of the newly created Ministry of Agriculture.

1908	For the first time Brazil was internationally accused of genocide regarding the occasion slaughter of indigenous people by German settlers in the South of Brazil.
1910	The Decree 8072 created the Service for the Protection of Indians and Localization of National Workers, renamed in 1918 as the Service for Protection of Indians (SPI). It prescribes in the article 2. Paragraph 12 that: [...] the restitution of land that has been usurped, should be promoted whenever it is possible[...]. The SPI would be re-integrated from the Ministry of Agriculture to the Ministry of Labour, Industry and Commerce in 1930. A new re-integration was done in 1934 to the Ministry of War and return later to the Ministry of Agriculture in 1939, that remained under its influence until 1967 when it was extinct.
1934	The Federal Constitution determined in article 129 that: " the possession of forest lands that are permanently located in them will be respected, being however forbidden its alienation".

1936	The Decree 736 defines in the Article 3 that the SPI is responsible for “ preventing the lands inhabited by aboriginal people from being treated as a vacant land, to demarcate the lands, ensuring respect, recognizing and legalizing the possession of the Indians”.
1937	The new Federal Constitution in Article 154 did not differ substantially from the document on the indigenous theme of 1934.
1946	The new Constitution defined in Article 8 that the Union legislates on the “ incorporation of aboriginal people into the national community”, the content is also similar to the document of 1934.

<p>1967</p>	<p>The new Constitution defined in Article 14 that the Union legislates the lands occupied by natives, that are property of the Union. The dominance and ownership of indigenous lands became the State's property, while the exclusive possession and usufruct of the land continued to belong to the indigenous people. The Law n.5.371 extinguished the SPI after the corruption scandal and crimes against indigenous people revealed by the Figueiredo Report, instead the National Indian Foundation (FUNAI) was created under the Ministry of Interior influence. The ministry is the same that led to the occupation of Amazon lands from 1970 onwards, when various indigenous people when forcibly contacted and evicted from their territories.</p>
<p>1969</p>	<p>The Constitutional amendment 1, Article 4 and 8 defines that " the lands inhabited by aboriginal people are inalienable" and it reiterate their right to the exclusive usufruct of their natural wealth. The Article 198 also determine the nullity and extinction of legal effects that had " the domain, possession or occupation" of indigenous lands without proper reward for it.</p>

1973	The Indian Statute created by Law n.6001, established the rules for demarcation of indigenous lands, determining that it should be administratively demarcated until 1978.
1976	The Decree n. 76.999 determined that the demarcation referrals were under the influence of the Executive Power.
1983	The Decree n. 88.118 defined that the delimitation of indigenous lands is inside the responsibility of the FUNAI and the ratification of the homologation decree is issued by the President of the Republic.
1987	The Decree n. 94.945 created special procedures for indigenous lands locates along the border of Brazil. As a note it is important to contextualize that in 1985 the World Bank halted payments on a loan to Brazil duo to international pressure over the consequences in the environment and the native people living in the area.The Northwest Region Integrated Development Program (Polonoroeste) was a project of 1.6 billion Dollars to pave 1,500 km of road and for the resettlement of indigenous people.

1988	<p>The Constitution of 1988 (in use until today) in chapter VIII, Article 231 recognize indigenous rights over the lands they traditionally occupy. According to the text, indigenous lands that are inhabited on a permanent basis, used for productive activities, essential for the preservation of environmental resources necessary for the well-being, physical and cultural reproduction of its occupants according to their use, customs and traditions. The text state that the Union should complete the demarcation of all indigenous lands by 1993.</p>
1989	<p>The Convention n. 169 on Indigenous and Tribal Peoples of the International Labour Organization is published. It represents the main international convention concerning indigenous people. The text affirm that indigenous people must be consulted in initiatives and project that concern their lands.</p>
1990	<p>FUNAI is integrated under the influence of the Ministry of Justice.</p>

1991	The Decree n. 22 amended the 1987 Decree n. 94.945, it adapted the procedure for demarcating indigenous lands to the text of the Federal Constitution. Before the rules for demarcation were not established prior consultation or the possible role of the people, maintaining the process and initiative exclusively for regulatory organs.
1992	The Convention on Biological Diversity was signed in Rio de Janeiro.
1996	The Decree n. 1.775 changed the administrative procedure for demarcation of indigenous lands. The FUNAI now has the power of demarcation, to berate the self-demarcation, the excessive bureaucracy and the reconceptualization of indigenous lands

2000-2020	
2007	Approved the UN Declaration on the Rights of Indigenous People, that established an universal framework of minimum standards for the survival, dignity and preservation of indigenous traditions and well-being.
2012	The Decree n.7.747 instituted the National Policy for Territorial and Environmental Management of Indigenous Lands (PNGATI). The ordinance n. 303 of the Attorney General's Office (AGU) aimed to prevent new land demarcations, and specially prevent the enlargement of previously demarcated areas.
2016	It was approved the American Declaration on the Rights of Indigenous People in the Organization of American States.

2017	The ordinance n.001 of the Attorney General's Office (AGU) re-established the effectiveness of the ordinance n.303 that prohibited the expansion of indigenous lands already demarcated. It also instituted the Maro Temporal, according to which indigenous people who were not in possession of their lands on October of 1988 (the date of promulgation of the Constitution), lost their rights over these lands.
2018	The technical note n.2 of the the 6 th Chamber of Coordination and Review of the Federal Public Ministry on the 2017 AGU ordinance, concluded that there is "a nule manifest of the normative ordinance" and that the " Brazilian government uses artifices to withhold the rights of indigenous people to their territories".
2019	The Provisional measure 870, transferred the competence of demarcating indigenous lands from the FUNAI to the Ministry of Agriculture. The Congress later determined that the demarcations would remain in the Ministry of Justice area of influence.

<p>2020</p>	<p>The ordinance n.1 of the AGU that established the Marco Temporal was suspended by the Federal Supreme Court by the decision of Minister Edson Fachin. The normative instruction n.9 of FUNAI, exempted the Union from its responsibilities towards indigenous lands that were yet not approved and excludes them from the Land Management System, an organ of the National Institute of Colonization and Agrarian Reform (INCRA), which started to be able to certify properties within the limits of indigenous lands not yet homologated, which encourage invasions of these lands.</p>
--------------------	--

Table 4 extracted from the APIB website

CHAPTER II: RESEARCH METHODOLOGY AND METHODS

Introduction

At this chapter it will be discussed the procedure, techniques to identify, select, organise and analyse the collected research's data about the specific theme. In accordance with the author Creswell (2003) methodology is represented as a coherent group of methods that correlate with one another and generates data and findings that reflects the research question and follow the researchers purpose. Polit and Beck (2004) describe methodology in a condensed way as referring to obtain, systematise and analyse data.

Walliman (2017) describes research as a type of investigation, that seeks the facts through the interpretation of results in a systematic way. In that sense " investigation, interpretation and systematic" are the features definition that organize and structure this research. The research is based on a framework that encircle: the gather of data through procedures, the methodology and a paradigm. The procedure is described as the techniques used for data collection, the methodology describes how the data is collected and the paradigm describes, objective or subjective, the interpretation of reality.

Research Framework

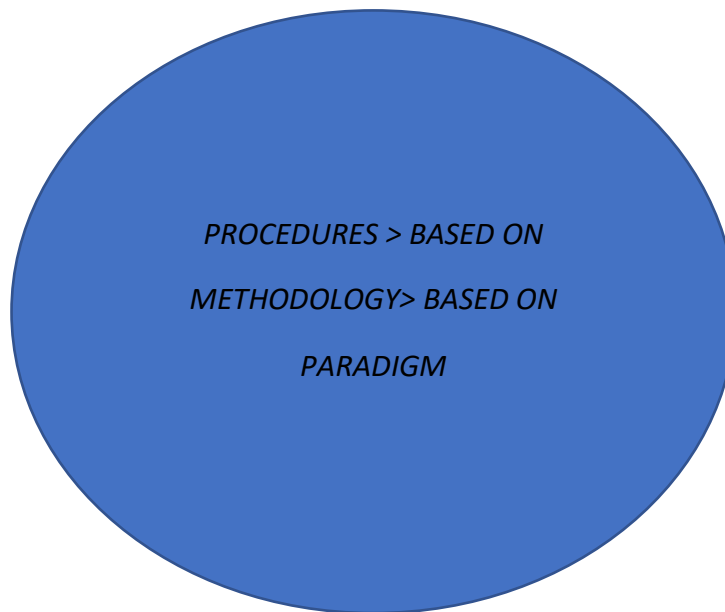


Figure 2 Developed by the author

Definition

Research is defined by Walliman (2011, p.7) as " an activity that involves finding out, in a more or less systematic way, things you did not know". Brown (2006) defines that " methodology is the philosophical framework within which the research is conducted or the foundation upon which the research is based". In that sense the research methodology can be understood as a systematic investigation. The research methodology must describe: research methods, approaches and the design, justifying the researchers choice.

Allan and Randy (2005) affirms that the research methodology should contain two criteria: that the methodology should be the most appropriated to the specific goal of the research and that it should be done in a matter to enable the replicate in other research of the same nature. Bellow a table presented by Cohen et al (2007) and extracted and modified from Greenfield (1975).

DIMENSIONS OF COMPARISON	OBJECTIVIST	SUBJECTIVIT
PHILOSOFICAL BASIS	REALISM	IDEALISM
ROLE OF SOCIAL SCIENCE	EXPLORING UNIVERSAL LAWS OF THE SOCIETY AND THE BEHAVIOUR OF PEOPLE WITHIN IT	EXPLORING HOW THE WORLD IS INTERPRETED BY DIFFERENT PEOPLE
COMPREHENSION METHODS	STUDYING THE TYPE AND NATURE OF VARIOUS RELATIONSHIPS THAT	STUDYING SUBJECTIVE MEANINGS THAT INDIVIDUALS IMPOSE UPON THEIR ACTIONS

	ALLOW THE COLLECTIVITY TO EXIST	
THEORY	A RATIONAL CONSTRUCTION THAT HAS BEEN PROPOSED BY RESEARCHERS IN ORDER TO EXPLAIN THE HUMAN BEHAVIOUR	A SET OF MEANINGS USED BY INDIVIDUALS IN ORDER TO INTERPRET THEIR WORLS AND BEHAVIOUR
RESEARCH	VALIDATION OF THEORY THROUGH EXPERIMENTATION	SEARCHING MEANINFUL RELATIONSHIPS AND ESTABLISHING THE CONSEQUENCES OF ACTIONS
METHODOLOGY	THE USE OF QUANTITATIVE ANALISYS	THE USE OF QUALITATIVE ANALYSES
SOCIETY	IS MANAGED BY A SET OF GENERAL VALUES AND REGULATIONS	IS MANAGED ON THE BAIS OF VALUES POSSESSED BY PEOPLE WITH POWER

Table 5

Research Method

Dawson (2009) refers to methodology as a whole strategy for researching the subject, that also involves considerations such as challenges, restrictions and ethical decisions. The three different methods are: quantitative, qualitative and mixed. Monette et al (2010), describes qualitative methods as the acknowledgement of abstraction and generalization. These abstractions can be identified in three main phenomena: human feelings and experiences; meaning and relationships and social norms and cultural practices. Vaus (2002) notes that "qualitative methods are often regarded as providing rich data about real-life people and situations and being more able to make sense of behaviour and to understand behaviour within its wider context. However, qualitative research is often criticised for lacking generalizability, being too reliant on the subjective interpretations by researchers and being incapable of replication by other researchers".

The quantitative method is described by Bryman, A and Bell, E (2015) as "entailing the collection of numerical data and exhibiting the view of the relationship between theory and research as deductive, a predilection for natural science approach, and as having an objectivist conception of social reality". This method is based on random sampling and structured data collection instruments, it is an easy method to be replicated.

The mixed method is a junction of both quantitative and qualitative. These mixed methods seek to investigate perceptions between a quantitative study of public data and the qualitative research approach. This dissertation will employ mixed methods, it will be divided between a survey and an interview. The survey is separated into eight closed questions, with three reply options: true, false and I'm not sure. Its main goal is to evaluate general knowledge about indigenous Brazilian rights and history. The interview consisted of three open questions to one specialist. Its main goal is to get specialized data about the demarcation of lands, the effectiveness of TRCs and indigenous rights.

Choice Of Method

The model chosen to analyse this research was developed by Mark Saunders, Philip Lewis and Adrian Thornhill. The “Research Onion” is a model that pursues the clarification of the various stages of dissertation research. It seeks to assist students to develop an organized technique for non-biased research. Below a figure extracted from the Research Methods for Business Students, (p.124), by Mark Saunders, Philip Lewis and Adrian Thornhill, 2016, England, Pearson Education Limited.

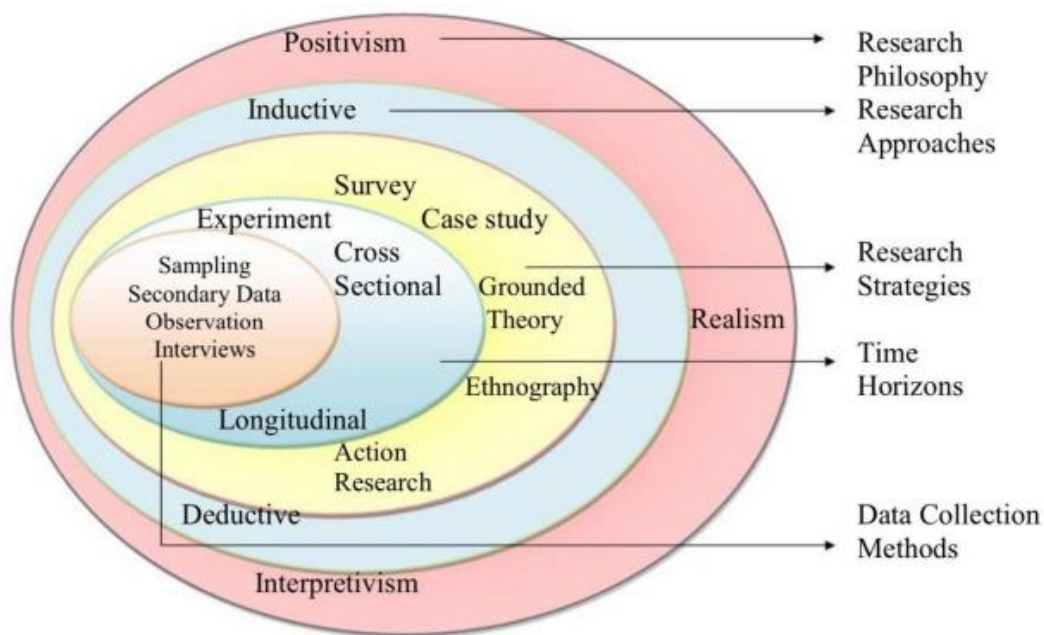


Figure 3

Philosophy

The philosophy refers to the first layer of the “onion”, which relates to the philosophical experiences that can be divided into Positivism, Realism and Interpretivism. The chosen philosophy for this research will be interpretivism. Interpretivism is associated with the philosophical position of idealism, social constructivism, phenomenology and hermeneutics, which are approaches that reject the objectivism that the meaning consists within the world independently of consciousness. The interpretivism is a qualitative analysis, that mainly focuses on the meaning and may employ multiple techniques in order to reflect on the data collected. The interpretivism approach can be based on **Relativist ontology**, which perceives reality as intersubjectively based on meaning and understanding on social and experiential levels, or **Transactional or subjectivist epistemology**, which perceives the link between researcher and subject (Collins H, 2010). Below a detailed table adapted and modified from Pizam and Mansfield (2009) to better understand Interpretivism:

ASSUMPTION	INTERPRETIVISM
NATURE OF REALITY – RELATIONSHIP BETWEEN SOCIETY AND THE INDIVIDUAL	SOCIALLY CONSTRUCTED, MULTIPLE INDIVIDUALS ARE INTRICATE AND COMPLEX, DIFFERENT PEOPLE EXPERIENCE AND UNDERSTAND THE SAME “REALITY” IN DIFFERENT WAYS
GOAL OF RESEARCH	UNDERSTANDING, WEAK PREDICTION THE MAIN POINT OF RESEARCH IS TO GAIN INDEPTH INSIGHT INTO THE LIVES OF RESPONDENTS
FOCUS OF INTEREST	WHAT IS SPECIFIC, UNIQUE AND DEVIANT

KNOWLEGDE GENERATED	MEANINGS, RAPPORT, RELATIVE (TIME, CONTEXT, CULTURE, VALUE BOND)
SUBJECT/ RESEARCHER RELATIONSHIP	INTERACTIVE, COOPERATIVE, PARTICIPATIVE
DESIRED INFORMATION	WHAT SOME PEOPLE THINK AND DO, WHAT KIND OF PROBLEMS THEY ARE CONFRONTED WITH, AND HOW THEY DEAL WITH THEM

Table 6

By the Interpretivism approach, this research will employ two interviews with specialists and a survey of a general Brazilian population as methods to better understand the pattern of understanding of reality, history and culture of Brazilian indigenous history and rights.

Research Approach

The research approach is related to the second “onion” layers and can be divided into deductive or inductive. Creswell (2018) describes the research approach as data collection techniques and processes which can include general assumptions to particular data collecting, evaluation and interpretation methodologies. The chosen approach for this research will be the inductive approach which can be described as a contribution to the emergence of new theories and generalization, it does not involve a formulation of hypotheses, it starts with a research question and focuses on the objects that need to be achieved during the research process. The inductive approach will follow the bellow sequence:

Observation/ Tests → Patterns → Theory

The bellow table was extracted and modified from Saunders, M. Lewis P and Thornhill, A. (2012) for better understanding:

	INDUCTION
LOGIC	INFERENCE, KNOW PREMISES ARE USED TO GENERATE UNTESTED CONCLUSIONS
GENERALIZABILITY	GENERALISING FROM THE SPECIFIC TO THE GENERAL
USE OF DATA	DATA COLLECTION IS USED TO EXPLORE A PHENOMENON, IDENTIFY THEMES AND PATTERNS AND CREATE A CONCEPTUAL FRAMEWORK

Table 7

Research Strategies

The research strategy is the third layer of the “onion” and can be characterized as a route for the researcher to find the study purpose. Sanders (2016) describes the strategy as a plan of intervention for reaching an specific objective. The research strategy will be guided by the research questions and objectives, as well as the research philosophy. Some of the techniques for data collection can be listed as : Surveys, Case Study, Grounded Theory, Ethnography and Action research.

The chosen strategies for data collection of this research will be a mix, and it includes a : Survey and an Interview designed for the specific theme analyses, the Brazilian indigenous case. The purpose of the Survey is to determine how this certain population respond to general historical facts about the indigenous history and rights, and the purpose of the Interview with a specialist

is to bring a focus and specialized interpretation of the Brazilian indigenous reality following the research question intention.

Time Horizon

The fourth layer of the “onion” is divided into experiment, cross-sectional and longitudinal. This research will employ the cross-sectional time horizon. Dawson (2009) points that cross-sectional methods are observational in nature and a descriptive research, it is not relational or causal, that means it evaluates variable at single point in time. The benefit of the cross-sectional method is that the data is collected at once and the limitation relies on the difficulty in determining causal effects.

Data Collection Methods

The fifth and last layer of the “onion” is divided in sampling, secondary data, observation and Interviews. The data was collected through a survey and an interview. For the survey, designed on the platform “SurveyMonkey”, the target population of one hundred and seven general Brazilian citizens represents the whole group of people from which the sample will be made. For the Interviews a set of three open questions were adapted to each specialist area of expertise. The questions were sent and received in a written form, due to time zone incompatibility, schedule and time scarcity. The semi-structured data collection from specialist will allow the research to achieve a more specific data with accurate information.

Ethics

Participants of the Survey and the Interview involved in this research were informed about the research topic and asked for consent to use the data for research purposes. In the Survey participants are anonymous and the first question is asking for consent, as for the Interview it was sent an Informed Consent Form and the Ethical Code to be sign authorizing the data collection. These forms guarantee the legal precautions concerning this research and also providing information about the participants rights of confidentiality and voluntariness.

This research follows the Principle of the Data Protection Regulation Act 1988 and assures that will: Keep data accurate, Retain it no longer than necessary for specified purposes, keep personal data safe, obtain and process personal data lawfully, fairly and in a transparent manner.

CHAPTER III

PRESENTATION OF THE DATA

Data Purpose

This dissertation is a requisite for the conclusion of the Master's degree program of Independent College in Dublin. The main goal of this data collection purpose is to answer the second and third research questions. The interesse to investigate the theme was sparked by the theme of Restorative Justice that is a part of the dispute resolution area, in an essay about restorative practices and the TRCs, this sparkle mixed with current events in Brazil resulted in three main research questions for this dissertation.

- 1:** What is the relation between Restorative Justice and the Brazilian indigenous case?
- 2:** Is there sufficient popular knowledge about the theme in Brazil? How the popular opinion can affect the political decision-making?
- 3:** Are TRCs an effective approach to reach restorative justice to the Brazilian indigenous people? Could the demarcation of lands be a viable compensation?

The methods for collection of data chosen was a Survey and an Interview. The SurveyMonkey was the platform used to collect the data for the Survey. The Survey was based on eight short closed questions in Portuguese, and later translated by the author to English to be presented in these research. The platform delivers the data with graphics and percentages depending on the question. The survey was answered by 107 people that agreed voluntarily into participating in this research, the main purpose of this survey was to have a generalized notion of the understanding of the Brazilian TRC, the 1988 Constitution and the question of demarcation of lands by the Brazilian citizens.

The Interview was conducted with two specialists and it is composed by three open questions designed in a similar way, but specific to each specialists area of work. The main purpose of the

interview is to have a more credible and focused notion of the effectiveness of restorative practices in the international scenario and the demarcation of lands.

Survey Questionnaire

Q1 Are you over 16 years old and consent to participate voluntarily in this academic research?

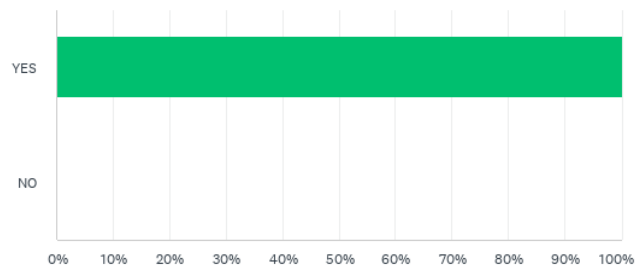


Figure 4

The objective of this question is to assure voluntariness and collect the consent of participants, the Survey is also anonymous which improve the veracity in the replies, once participants are not afraid of judgment.

Q2 Are you native Brazilian and/or naturalized?

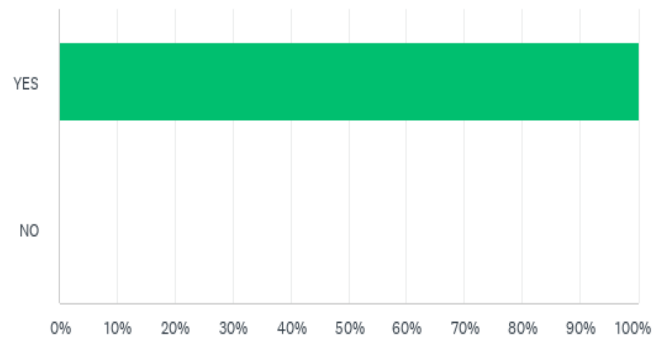


Figure 5

The purpose of this question is to guarantee that participants are Brazilian and/or have experienced the Brazilian citizenship. This will assure knowledge of the facts and genuineness in the answers.

Q3 Brazil was officially found by Portuguese in the year 1500a.d. Before the arrival of the colonizers the land that today is know as Brazil, were home to approximately three million (3.000.000) people divided in 2.000 different tribes and dialects.

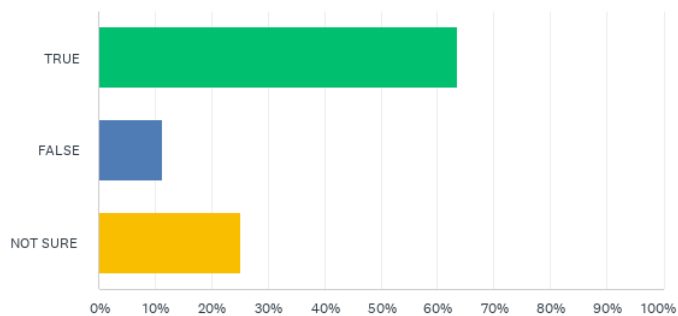


Figure 6

The purpose of this questions is to identify the understanding about historic facts about the land that comprise Brazil today before the arrival of the colonizers.

Q4 The Brazilian prehistory do not have records and it is considered almost inexistent.

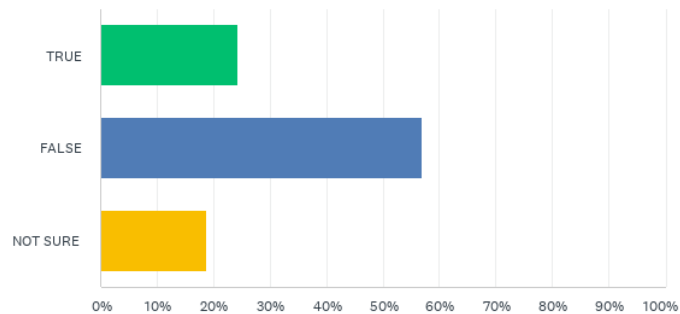


Figure 7

The purpose of this question is to understand the general knowledge of Brazilians about the Brazilian prehistory.

Q5 The National Truth Commission 2011 was established during Dilma Rousseff government with the intent of investigate human rights abuse during the Military Dictatorship 1946 to 1988. During this period the native indigenous people were persecuted and murdered by governmental officials. The indigenous population in Brazil in the years 1940 was of 200.000, and in 1957 was registered the total of 70.000, a decrease of 130.000 people in less than two decades.

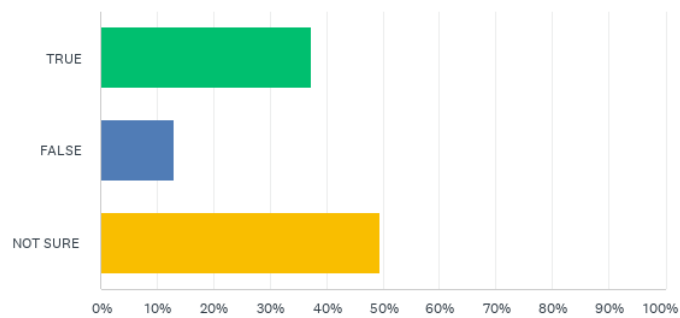


Figure 8

The purpose of this question is to gather the most common knowledge about the TRC in Brazil and the effects of the military dictatorship persecution against the indigenous native population.

Q6 The Brazilian Constitution of 1988 established the indigenous right over the traditional lands covered by the native nature. In accordance to the Brazilian constitution, the natives have the right of use of the lands that are possessed by the Union.

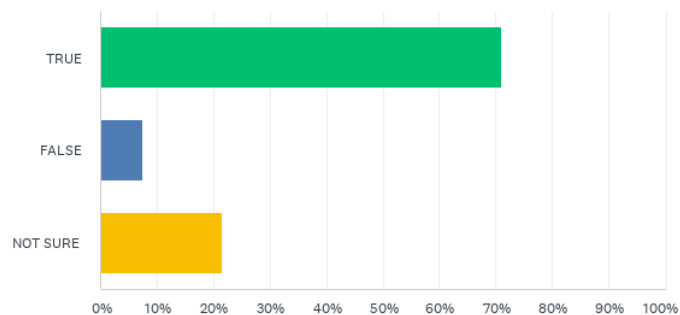


Figure 9

The purpose of this question is to estimate the understanding of the 1988 Constitution concerning specifically the demarcation of lands and the indigenous right of land use.

Q7 The demarcation of land is important for the preservation of traditional communities.

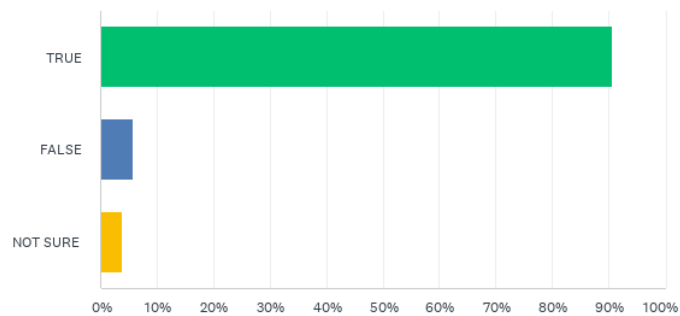


Figure 10

The purpose of this questions is to understand if the general public understands the connection between the demarcation of lands and the preservation of indigenous lives.

Q8 It is necessary an unified indigenous representation inside the legislative and senate to assure that the native communities rights are discussed and contemplated, same as the forest, rivers and wild life preservation.

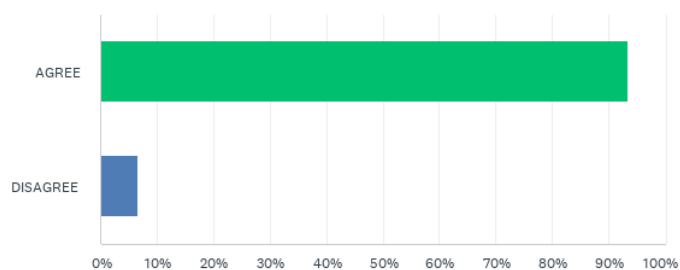


Figure 11

The purpose of this question was to define the position of participants about indigenous rights, political participation and environmental preservation. All the questions in this survey was aimed at understand the general Brazilian feeling about Brazilian history and indigenous rights.

Interview Questionnaire – Kirsten Dales

The interview with Kirsten Dale was delayed duo to unforsaken circumstances which resulted in the impossibility to sum her replies on time for presentation of this research.

Interview Questionnaire – Bernardo Ranieri

I: Would you state your professional background and comment on the research and work you have been developing in environmental justice and indigenous rights?

The purpose of this question is to understand the specialist background, experience credibility and work experience. This question is designed to understand the area of knowledge of the interviewed and how this will be connected to the theme of the research.

II: In the journal *The Demarcation of Land and the Role of Coordinating Property* (2011), authors Gary D. Libecap and Dean Lueck abord that [...] land demarcation is one of the earliest activities of organized human groups. It defines property boundaries, parcel shapes [...] but more importantly it also defines the [...] foundation for land use and land markets.[...]. The demarcation of land offers a sense of safety, a place where a community can develop, grow and keep its tradition. Based on your experience, would you comment on the main impacts aboriginal communities in Brazil face due to the lack of Land demarcation?

The purpose of this question is first to give a short definition of the demarcation of Land and secondly to connect the demarcation with the effects caused in the communities that are facing this specific struggle. The intention is to understand the human effect behind politics, and how it impacted other spheres of this community's daily life. This is a specific question about native Brazilian indigenous people, because of the area of expertise of the specialist the response will be precise and credible.

III: In recent years there have been a growth wave towards Reconciliation and Restorative justice in the international scenario. The 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) fomented reconciliation efforts and Truth and Reconciliation Commissions (TRCs). As examples of recent TRCs moved by aboriginal communities are: New Zealand 1975, USA in 2004 – 2006, Canada in 2007-2015 and Australia in 2021. The Ghana 2012 UN report: Building Just Societies: Reconciliation in transitional settings, defined Reconciliation as “a key objective in building sustainable peace and preventing a relapse into conflict. It is about (re) building relationships among people and groups in society and between the state and its citizens. The process is highly context-sensitive, and each society has to tailor its approach to the nature of the conflict and the character of the transition.”

In your professional opinion, are the TRCs and Reconciliation strategies an effective way in which to bring awareness about the importance of the demarcation of lands for traditional native communities in Brazil?

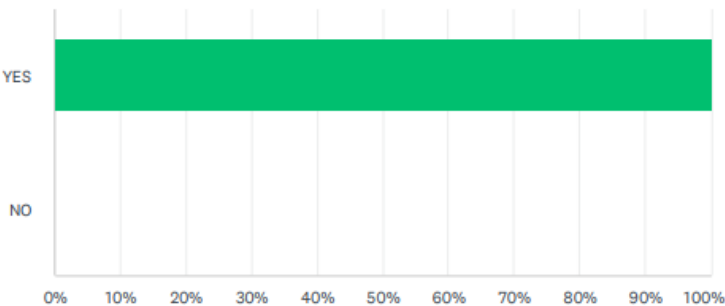
The purpose of this question is to get specific analyses to corroborate the second research question. It is to understand the international movement about Restorative Justice and TRCs. The effectiveness is questioned to reach a specialized response about the connection between the TRCs and the possibility of land demarcation as a compensatory measure. This question is directed specifically at the Brazilian case and its intuition is to help the researcher to collect and specialized opinion about the theme.

CHAPTER IV DATA ANALYSIS

Survey Analyses

Q1 Are you over 16 years old and consent to participate voluntarily in this academic research?

Answered: 107 Skipped: 0



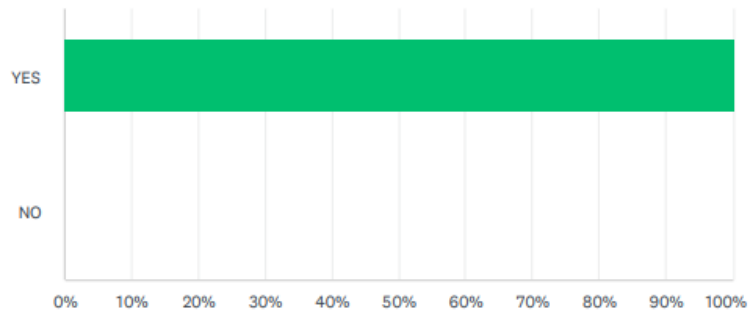
ANSWER CHOICES	RESPONSES	
YES	100.00%	107
NO	0.00%	0
TOTAL		107

Figure 12

The research collected a total of 110 answers, but three participants selected NO in the first question which resulted in the exclusion of these participants replies. The total amount used for this research is of 107 voluntarily consenting participants. The minimum legal age to vote in Brazil is 16 years old, it is a voluntary act until the citizen reach 18 years old, in which case the vote is mandatory. The age 16 was chosen in this question because it is an age culturally and legally expected of these individuals a certain understand of the social and political context.

Q2 Are you native Brazilian and/or naturalized?

Answered: 107 Skipped: 0



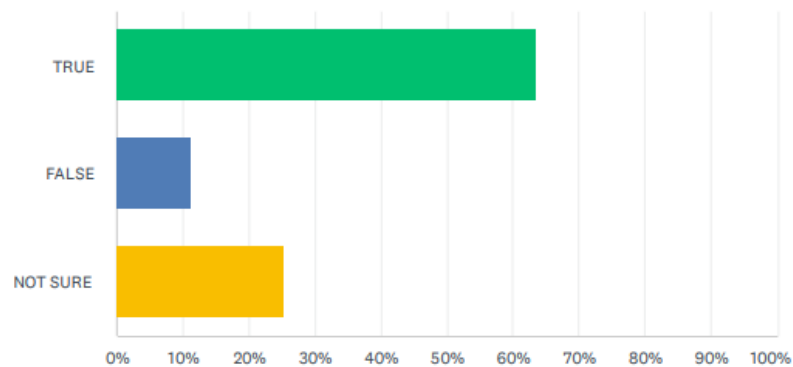
ANSWER CHOICES	RESPONSES
YES	100.00%107
NO	0.00%0
TOTAL	107

Figure 13

For this research it was important to gather information from participants that have experienced the cultural, historical and political context of Brazil, for this reason the target population is Brazilians, natives or naturalized. Data collected: 100% answered YES. The Survey replicants were from diverse states in Brazil and age range. The level of education and economical class was not a criteria for this Survey purpose.

Q3 Brazil was officially found by Portuguese in the year 1500a.d. Before the arrival of the colonizers the land that today is know as Brazil, were home to approximately three million (3.000.000) people divided in 2.000 different tribes and dialects.

Answered: 107 Skipped: 0



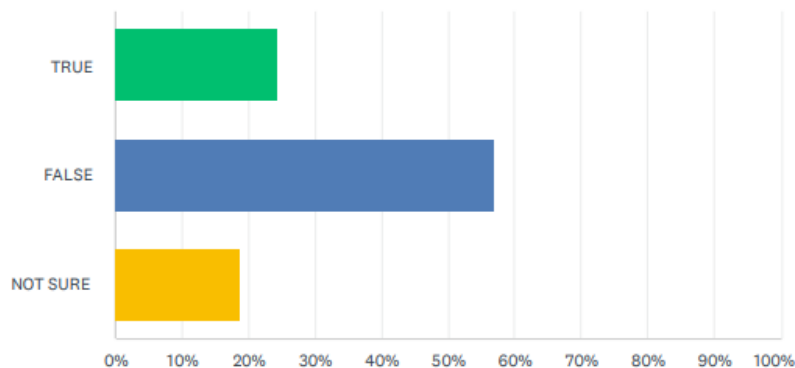
ANSWER CHOICES	RESPONSES
TRUE	63.55% 68
FALSE	11.21% 12
NOT SURE	25.23% 27
TOTAL	107

Figure 14

The data collected in this question is a base to understand the popular knowledge about the historical date learned in early years education in Brazil but also to explore the understand of the diversity of native population that was living in the area that is todays Brazil and the impact on the population number caused by the conflict. The data shows: 63,55% answered TRUE, 11.21% answered FALSE and 25.23% answered NOT SURE. My expectation for this data is confirmed in the numbers, a little more than half of the target population have the minimum adequate understand of these facts, but the remaining of around 39% is still an expressive number that can be an indicative for worry (FUNAI table 3).

Q4 The Brazilian prehistory do not have records and it is considered almost inexistent.

Answered: 107 Skipped: 0



ANSWER CHOICES	RESPONSES	
TRUE	24.30%	26
FALSE	57.01%	61
NOT SURE	18.69%	20
TOTAL		107

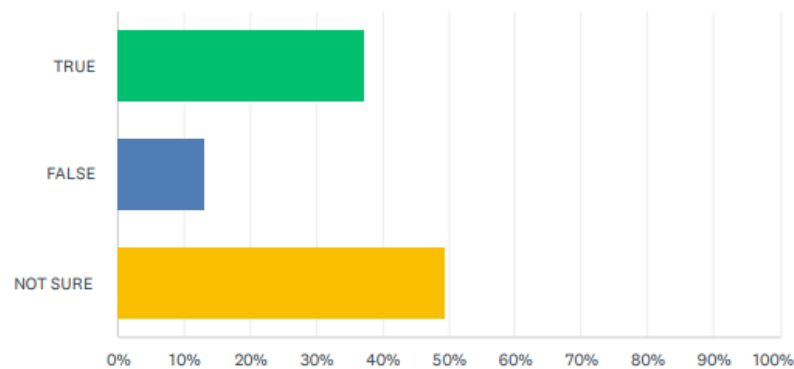
Figure 15

As seen previously in the literature review, the natives have inhabited the region for over 10,000 years and left behind records of its early civilizations. The pottery and rock art can be found all over the national territory, the main archaeological site in Brazil for rock art is the Parque Nacional da Serra da Capivara - or in a free translation: the Capibara Ridge National Park – and it is recognized by UNESCO in the World Heritage List. The importance of this question is to understand how the record of ancestry is perceived in the general population.

The data shows: 57.01% answered FALSE , 24.30% answered TRUE and 18.69% answered NOT SURE. The interpretation of data in this particular target population surprised by the majority of correct answers, although the remaining total of 42,99% of incorrect answers still a concerning evidence.

Q5 The National Truth Commission 2011 was established during Dilma Rousseff government with the intent of investigate human rights abuse during the Military Dictatorship 1946 to 1988. During this period the native indigenous people were persecuted and murdered by governmental officials. The indigenous population in Brazil in the years 1940 was of 200.000, and in 1957 was registered the total of 70.000, a decrease of 130.000 people in less than two decades.

Answered: 107 Skipped: 0



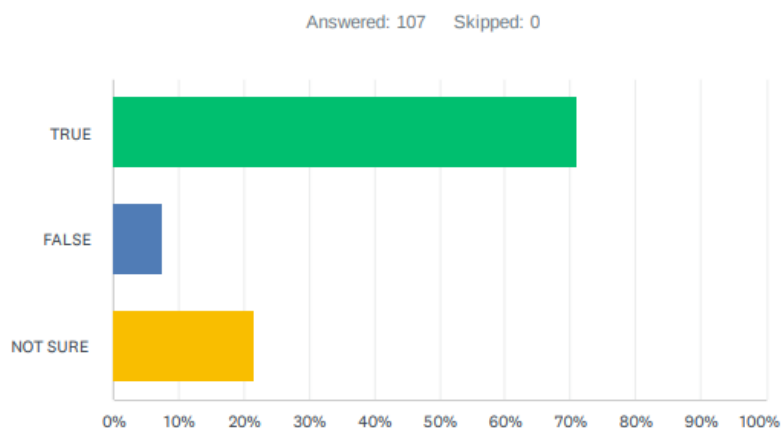
ANSWER CHOICES	RESPONSES	
TRUE	37.38%	40
FALSE	13.08%	14
NOT SURE	49.53%	53
TOTAL		107

Figure 16

The main intent of this question is to analyse the impact that the National Truth Commission has left in the general public as a comparative mean to understand the effect of a possible future TRC. One of the main goals of a TRC is to raise awareness to the public, and as seen in the data collected, the data reflects an expressively negative review into its goals of awareness. The data shows: 37.38% answered TRUE, 13.08% answered FALSE and 49.53% answered NOT SURE. The amount of correct answers is 37.38% against 62,61% incorrect. It is possible to infer that the TRC in Brazil had an inexpressive impact in the general public awareness in Brazil up to this data, one of the possibilities can be due to the 1979 Amnesty Law that granted amnesty for political crimes

committed by the Brazilian armed forces and government members between 1961 to 1979 (Blankendaal, Stjntje., 2012). The lack of punishment and the inefficiency to execute the recommendations interfered with the impact of the first TRC in Brazil. It is also relevant to understand the lack of impact specially related to the level of persecution suffered by natives in the time frame of the question.

Q6 The Brazilian Constitution of 1988 established the indigenous right over the traditional lands covered by the native nature. In accordance to the Brazilian constitution, the natives have the right of use of the lands that are possessed by the Union.



ANSWER CHOICES	RESPONSES	
TRUE	71.03%	76
FALSE	7.48%	8
NOT SURE	21.50%	23
TOTAL		107

Figure 17

This question supports the demonstration of the general knowledge about the right of land use in Brazil dictated by law. The data shows: 71.03% answered TRUE, 7.48% answered FALSE and 21.50% answered NOT SURE. The surprised interpretation is that the majority of the target

population have the right legal interpretation and understand of the right of land usage in Brazil by natives, representing a good shift into the Brazilian society’s perception of the natives.

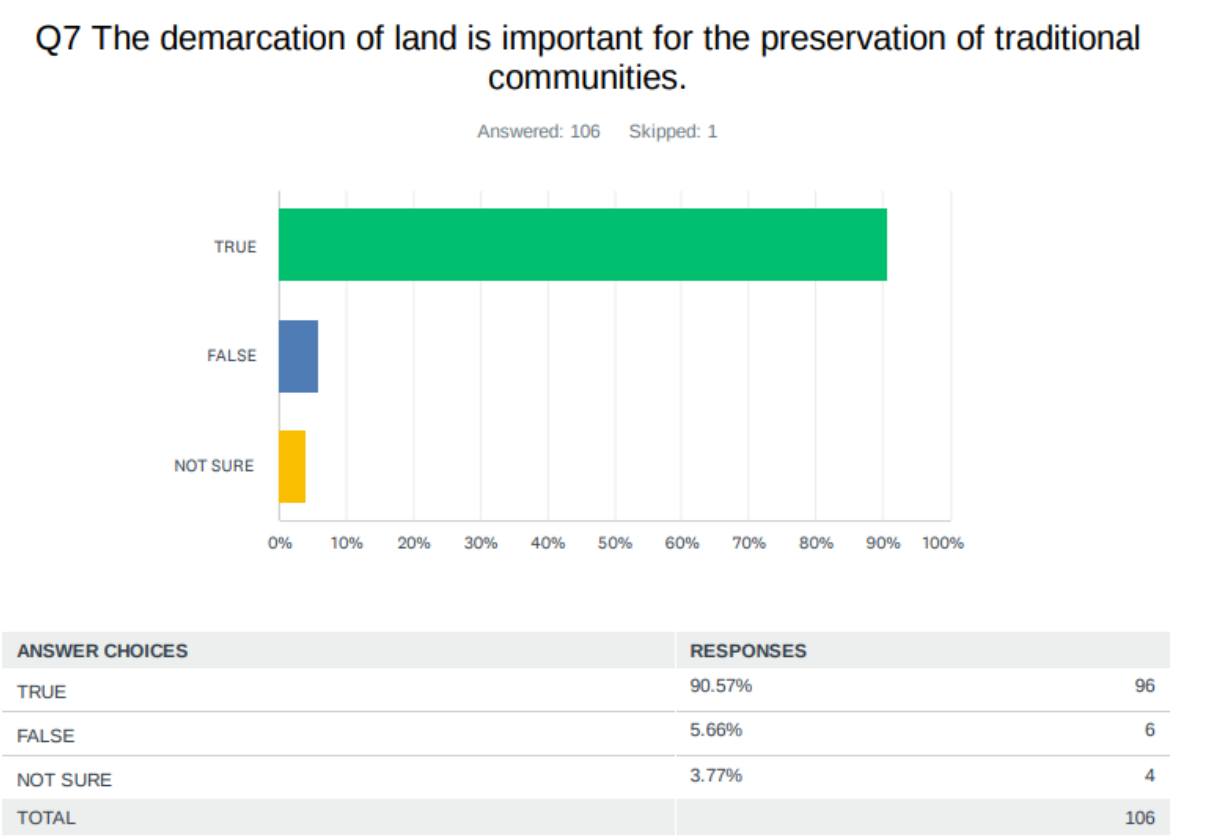
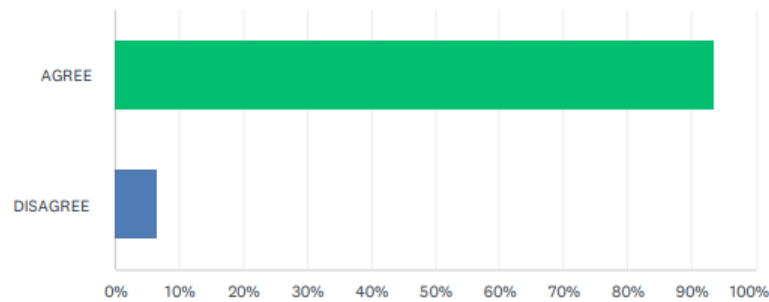


Figure 18

The purpose of this question was to understand how the general public can relate the demarcation of lands to the preservation of the traditional communities in Brazil. The data shows: 90.57% answered TRUE, 5.66% answered FALSE and 3.77% answered NOT SURE. The interpretation is that majority of the target population understands that the right of this communities to use the land under the protection of the State is directly linked to the safety, for protect and preserve the life and traditions of these communities.

Q8 It is necessary an unified indigenous representation inside the legislative and senate to assure that the native communities rights are discussed and contemplated, same as the forest, rivers and wild life preservation.

Answered: 107 Skipped: 0



ANSWER CHOICES	RESPONSES	
AGREE	93.46%	100
DISAGREE	6.54%	7
TOTAL		107

Figure 19

The question purpose is to understand the popular perception of indigenous people assuming political positions in order to defend and implement the indigenous traditions into the mainstream political system. The data shows: 93.46% answered AGREE and 6.54% answered DISAGREE. The data corroborates the results of the 2022 elections in Brazil that have displayed an increase of native candidacy in 119% between 2014 to 2022 (APIB – Articulation of Indigenous People, 2022).

Interview Analyses

Bernardo Ranieri Interview

Bernardo: I have a B.Sc. degree in Biology and a M.Sc. degree in Plant Biology from the Federal University of Minas Gerais, Brazil. My experience covers over 20 years in research, science-policy, and consulting on aspects of social-ecological systems: ecosystem services, nature-based-solutions for ecological-restoration & regenerative agriculture, biodiversity conservation, sustainable-development, impact-mitigation, ecological & human-health risk assessments, and environmental justice. My core work spanned over the Brazilian biodiversity hotspot biomes (Mata Atlântica and Cerrado) and mega-diverse ecosystems (Amazon and Caatinga).

I am currently a Senior Expert at Fundação Renova, a NGO responsible for reparation of the Samarco tailings-dam collapse in 2015 (MG, Brazil). I lead technical coordination, management and legal compliance on contaminated-sites reclamation, human-health & ecological risk assessments. I am also a senior expert for conservation actions, ecological restoration, impact-assessments in protected areas, traditional-peoples' rights and regenerative agriculture. The objectives of my work include assuring that ecosystems impacted by mining tailings are restored so that traditional and indigenous peoples have access to the natural resources. With my work, I identify potential risks of chemical contaminants to ecosystems and human health. I then prioritise and prescribe actions to remediate chemical contaminants in soils, and water resources to eliminate the risks of traditional peoples' exposures to contaminants through consumption of local fauna and flora, and agricultural crops.

Researcher: The first question purpose is to understand the background of the interviewed and establish an academic and work narrative to support the expertise. Amid the assorted areas that Bernardo Ranieri have experience on, a particular one is of most interest for this research: the experience with traditional people's rights.

Bernardo: In the Brazilian legislation and policies, the identification of traditional and indigenous communities is essentially linked to their territories. The traditional communities are recognized by the federal government as “socially differentiated groups; occupying a defined territory and using natural resources as conditions for their cultural, social, ancestral, religious and economic traditions, which are transmitted through generations”¹. With my work at Fundação Renova (Renew Foundation), it became obvious that the demarcation of lands is a very significant leverage for Quilombolas and indigenous peoples to make demands for their rights due to potential impacts of the tailings dam burst. Any demands by a group that self-identifies as traditional, but does not have their lands demarcated, was ignored by the foundation, based on legal requirements. Nonetheless, the current federal government by the conservative president Jair Messias Bolsonaro, has shown a complete disregard to the rights of traditional and indigenous peoples and their territories. Since the beginning of his mandate, Bolsonaro has developed a strong effort to undermine the rights of indigenous peoples within their lands, even if demarcated. He has made great efforts to dismantle, defund and detract the objectives of the indigenous rights enforcement agency in the country (the FUNAI). Encouraged by Bolsonaro, mining requests on Indigenous lands filed with the ANM in 2020 have increased substantially, reaching a record number of 145, the highest number in 24 years. The InfoAmazonia project “Mined Amazon” ²shows that under Bolsonaro, the ANM irregularly keeps active over 3 thousand requests for mining in Indigenous lands in the Amazon. According to the standard permitting procedures, these should be automatically denied based on the current legislation. The rhetoric by the president during his government and the presidential race have

Decreto 6.040 de 7 de fevereiro de 2017- Política Nacional de Desenvolvimento Sustentável dos Povos e Comunidades Tradicionais (PNPCT)

2 Menezes and Barbosa Jr., 2021. Environmental governance under Bolsonaro: dismantling institutions, curtailing participation, delegitimising opposition. Z Vgl Polit Wiss (2021) 15:229–247. <https://doi.org/10.1007/s12286-021-00491-8>

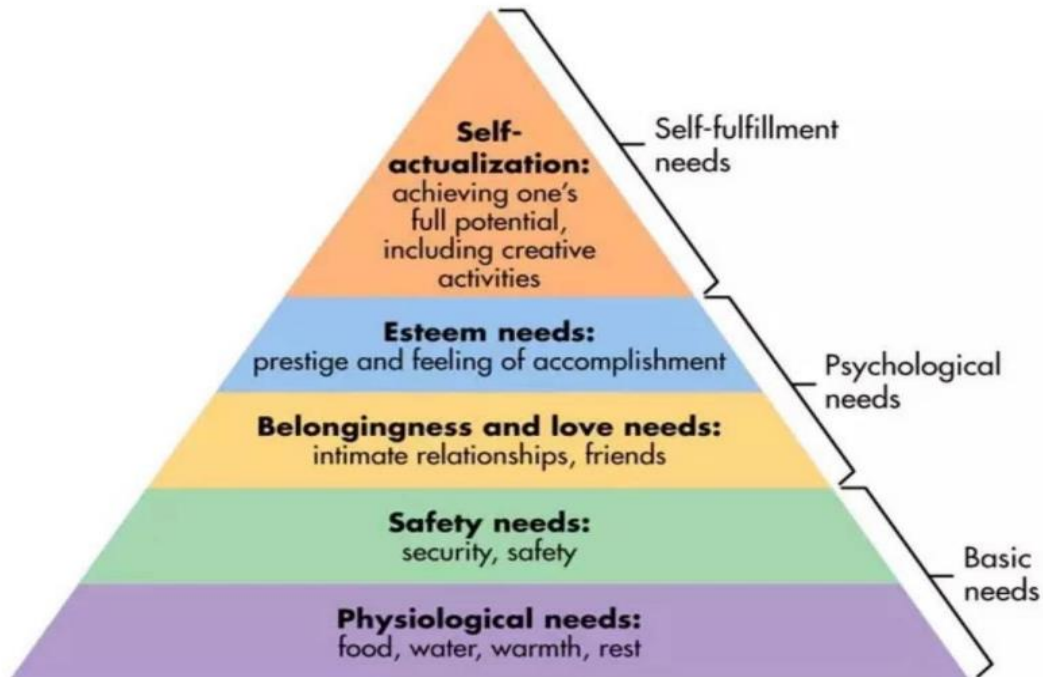
1 <https://infoamazonia.org/en/project/amazonia-minada/>

2 <https://mapbiomas.org/terras-indigenas-contribuem-para-a-preservacao-das-florestas#:~:text=Dados%20do%20MapBiomas%20mostram%20que,foram%20desmatados%20em%20%C3%A1reas%20privadas.>

created a sense of empowerment among the garimpeiros (goldminers), who now believe they can resume illegal extraction with impunity. This sense of impunity has had catastrophic consequences to indigenous and traditional peoples. The presence of garimpeiros in Indigenous communities is usually associated with the degradation of their traditional livelihoods (introduction of alcohol and drugs), health (spread of diseases, especially Covid-19), and violence (including murder and sexual and gender-based violence towards Indigenous women and children). Cases of violence by garimpeiros towards Indigenous peoples exploded in the past three years. In addition, coordinated attacks on equipment and infrastructure of the enforcement agencies have become more common. The inflammatory rhetoric by Bolsonaro and the weakened enforcement capacity in remote regions has also worsened the safety of field-based environmentalists and social activists, who are prone to be killed by violent offenders.

Researcher: To abord this reply in relation to the demarcation and the impacts in the traditional communities, it is important to explore Maslow's Hierarchy of Needs (1987). The model is a psychological theory based on five levels of human need displayed in an hierarchical triangle. The first level is Physiological needs (food, water, rest), the second level is Safety needs (security, physical safety to exist), the third level is Belonging and love needs (the sense of community and the passage of traditions), the forth level is Esteem needs (accomplishment) and the last level, self-actualization (achieving one's potential). In the Brazilian Legislation case, as explored by the interviewer, the identification of this communities are connected to their territory, which means that the lack of demarcation is also an erasure of these communities. The lack of demarcation of lands in conjunction with the government policies of Jair Bolsonaro, bruise all the levels of the hierarchy of needs. The lack of demarcation bruises the first and most important level that is the access to food and water, that is aggravated by the contamination caused by mining and other livestock activities. The incentive of Bolsonaro government to mining activities and general deforestation empowered even more the conflicts between the natives and the garimpeiros. The garimpeiros rise in violence bruise the second level of Maslow's Hierarchy needs, that affects physical, emotional and mental safety of these communities locked in these conflicts. Most of

the attacks against the traditional communities are made by gun force, setting fires in tribes and forests and kidnaped and rape of vulnerable. The Global Witness NGO 2020, ranked Brazil as the fourth most deadly country in the world to environmentalist activists, a proof that even who tries to help this communities have their safety at risk. It is possible to infer that the demarcation of lands have a great impact into all the levels of the model, without the safe access to the land this communities cannot develop and thrive as long as this conflict is not address by the political agenda. My recommendation would be to add environmental safety as one of the requisites of self-actualization, cause only once an individual have all their needs met they can fully understand the need to be in harmony with the environment and the importance of all its life. Below a figure to illustrate the model:



Source: <https://www.simplypsychology.org/maslow.html/>

Figure 20

Bernardo: The current government is openly favourable to the development of economic activities, especially artisanal mining in demarcated traditional lands. In his last year as president, Bolsonaro has put great effort into realizing some of his major campaign promises, which were to deregulate and loosen environmental restrictions for garimpeiros. In 2020, a bill submitted by Bolsonaro himself (PL191/20) proposed to allow mining activities in consolidated Indigenous lands and protected areas. Nonetheless, MapBiomas shows that between 1990 e 2020 from a total of 69 million hectares, 1,1 million occurred within demarcated indigenous lands. The scenario of approval of the bill introduced by Bolsonaro in 2020 (PL191/20), allowing mining activities in consolidated Indigenous lands, will most likely pass in congress as a strategy by the conservative party in congress to leverage his re-election. This scenario, associated with his efforts to dismantle and weaken the environmental enforcement agencies, will most likely worsen the deforestation trends in Indigenous lands. Therefore, initiatives such as the TRCs and Reconciliation strategies have no room in the current government's policies and will remain as such if Bolsonaro is re-elected. The congress, which is most favourable to the government, has approved requests for priority in this matter so that the approval of the PL191/20 is achieved before the next presidential elections in October 2022. This scenario, associated with his efforts to dismantle and weaken the Indigenous rights enforcement agency (FUNAI), will worsen the violations of Indigenous people's rights, including violence towards environmentalists and vulnerable women and children of communities affected by ASM.

Researcher: To approach this reply about the effectiveness of TRCs in raising awareness about demarcation in Brazil, it is important to note the cultural influence on the conflict. Mayer(2012) states that different cultures can lead to internal conflict since culture affects people's conflict styles. Mayer's point of view suggests that the cultural matrix influences the conflict behaviour and it can also affect the capacity of the parties involved in the conflict to perceive themselves as parts of the conflict. In the case of Brazil, the beginning of cultural conflict can be pointed at as early as colonial times. The cultural conflict between the native's lifestyles and beliefs against the colonizers persists nowadays, although it has changed over time accompanying the changes

in culture. My perception, as a Brazilian researcher, is that the majority of the population that has adapted to the colonizer's lifestyle and beliefs has disassociated themselves as parties in these specific conflicts. It is complicated to explore the cultural impact in Brazil's case because the culture and beliefs of the natives have been assimilated into the mainstream culture, which is a result of the assimilation of diverse cultures that have found home in Brazil throughout the years, such as European, African and Asian. Bellow a table to illustrate what composes culture:



Figure No. 6: The culture wheel . (TCW, 2020)

Figure 21

The analyse of culture to answer the effectiveness of TRCs is connected to the need to understand how it is the right way to bring awareness in a determined culture, observing and acting in accordance with the cultural aspects that are efficient to the situation. In the answer, Bernardo Ranieri explores the current political context as a definitive obstacle to the effectiveness of a TRC for the question of the demarcation of lands. It is possible to infer, that for the interviewed it is impossible to formulate a TRC in Brazil if there is no national political interest. The researcher's perception is that Brazilian politics is also influenced by a cultural conflict that can be quantified by the division of this election that divided Brazil almost in half. Bolsonaro's government was elected in 2018 by manipulating his elector's values, traditions and rituals, arts and the sense of a greater community, most of them based on fake information. The elections of 2022 are a defining point in history, if re-elected Bolsonaro will keep his environmental destruction affecting not only the native communities but also worsening climate change around the globe. For the complexity of the intrinsic conjunction of cultures found in Brazil, it is important to shine a light on how the cultural conflict is affecting political and environmental policies.

CHAPTER V DISCUSSION

Literature Review

The data displayed in this chapter assisted in reaching an answer to the first research question: What is the relation between Restorative Justice and the Brazilian indigenous case?

Based on the Literature Review the research aim is to establish a connexion between restorative justice and the Brazilian indigenous case. By offering the definition of restorative justice, TRCs and a brief native history it is constructed as a base to understand the matter and how it could be connected. First, it is important to analyse the history of the natives to understand the causes of conflict, the model used in the analysis is the circle of conflict developed by C. Moore. The author defines five different dimensions as observed in the table below:

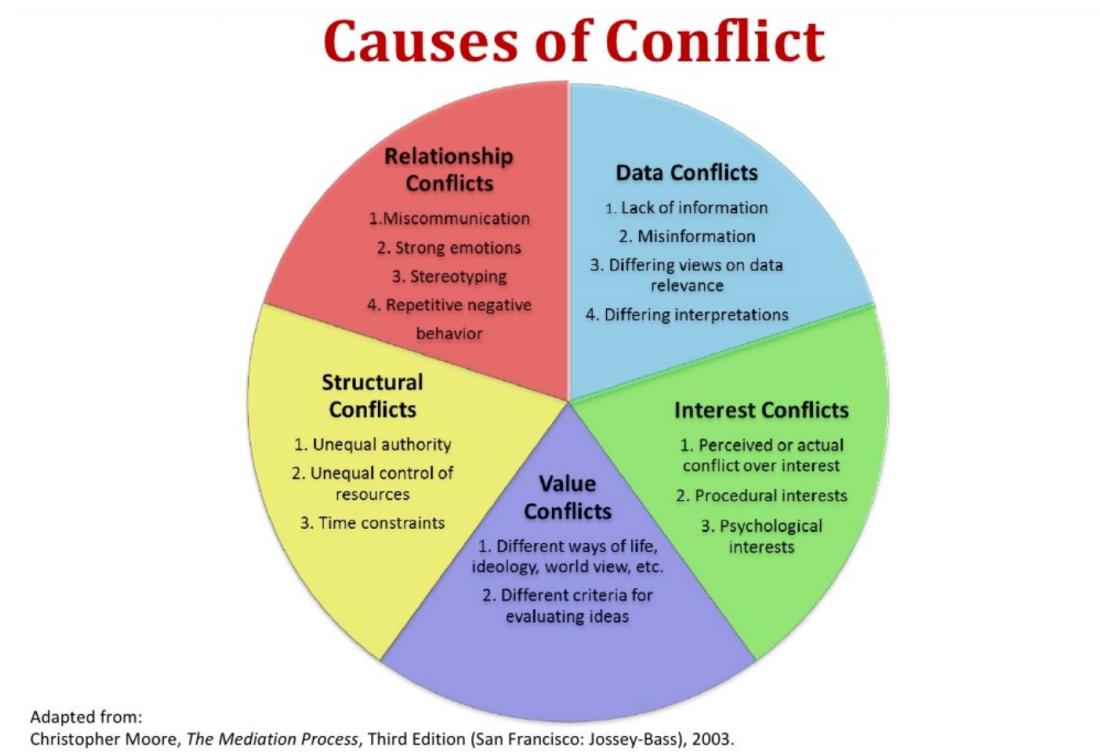


Figure 22

The **Relationship Conflicts** dimension encompasses interpersonal differences, miscommunication, emotions, lack of trust, different conflict behaviour styles and occasionally the language. In this case, the relationship between the native communities and

The Brazilian government is marked by a lack of trust due to the inefficiency of the government in regularising and protecting the areas inhabited by these communities, especially in the current government that has incentivised mining activity in protected areas. The emotional conflict is also observed due to the long history of the conflict, the language can represent an obstacle depending on the tribe, the miscommunication is often noticed due to interpersonal divergence.

The **Data Conflict** dimension encompasses misinformation, lack of information, different views of the relevance of data or the interpretation of the data's meaning. In this case, the data conflict can be observed in the fake dissemination of information about the native culture, such as the stereotype of drunkenness, the lack of cultural exchange leading to a lack of information about these communities and especially the miss-interpretation of deforestation and contamination pools by the government.

The **Interest Conflicts** dimension encompasses the conflicting interests, the interests around the decision-making or psychological interests (identity, autonomy, power). In this case, it is possible to observe a common interest in the land, but a different position on how to use it. The interest of the Brazilian government is to allocate the areas for cattle creation and agriculture as a financial aim, the communities understand the lands as sacred and they should be used in a harmonical environmental relationship. By denying the demarcation of lands the government is denying these communities their identities and autonomy, as a way to gain power and decision-making natives are pleading for political candidacy.

The **Value Conflicts** dimension encompasses differing world views, criteria for evaluating ideas or a perceived disrespect or violation of a personal value. In this case, the native communities have different values than the mainstream society, the sacred of the land and the semi-nomadic life style is perceived as a disrespect for disabling the land and as an obstacle to the financial

evolution of the country. For these communities, the environment and their lives are being disrespected and annihilated.

The **Structural Conflicts** dimension encompasses the authority, unequal power and control of resources. In this case, the conflict is structured in the culture, history and traditions. The conflict faced by these communities is as old as Brazil. It is possible to identify the indigenous case in all the five dimensions established by Moore, it is impossible to deny the status of the conflict in the case. The neglect and inefficiency of the Brazilian government in dealing with the case aroused the question: If the punitive justice system has not been able to deal with it, could restorative justice restore this relationship?

In accordance with the Handbook on Restorative Justice Programmes prepared by the United Nations Office on Drugs and Crime (UNODC) 2006, there are three critical steps to the process of restorative justice: an identifiable victim, voluntary participation and the offender have to accept responsibility for the criminal behaviour. The Handbook also appoint seven objectives of restorative justice:

- Supporting victims, giving them a voice, encouraging them to express their needs and offering assistance.
- Repairing the relationships damaged by the crime, in part by arriving at a consensus on how to best respond to it.
- Denouncing criminal behavior as unacceptable and reaffirming community values.
- Encouraging responsibility taking by all concerned parties, particularly by offenders.
- Identifying restorative, forward-looking outcomes.
- Reducing recidivism by encouraging change in individual offenders and facilitating their reintegration into the community.
- Identifying factors that lead to crime and informing authorities responsible for crime reduction strategy.

Analysing the restorative process it seems an appropriate approach to deal with this conflict. The first requirement is filled by identifying the native communities as victims, the problem is the second and third requirements, which depend on the goodwill of the State. The seven objectives are essential steps to integrate these communities and provide compensation and accountability to the government. The TRC is explored as a possible restorative tool to achieve the mentioned goals. The limitation of restorative justice is first the voluntary aspect which decreases the chances of participation of the State, second the non-binding character it only offers recommendations, that is also depending on the government's execution and thirdly it is the long-term effect, which difficult the analyse of the effectiveness of the process. The intrinsic complexity of the conflict, the human rights violation and the genocide present in the Brazilian case make it suitable to be dealt with a restorative justice approach, especially when accounting for the understanding of the justice of these communities that are closer to the concept of restorative justice than the current punitive justice system.

Survey

The Survey intended to understand if the target population had a historical and legal understanding of the theme shortly and quickly. The data collected was surprising in demonstrating that the majority of replicants had such an understanding, and also how close the sum of incorrect answers and not sure would result in such a close number. There are three main limitations of this survey method, the first one is that the number of interviewers represents a low percentage of the total population of Brazil and the sample collected could diverge considerably if increased to include a bigger number of replicants. The second limitation is that the Survey did not consider the regionality or socio-economic status as a variant which could also represent new data to be compared and aggregated to the results. The third limitation is the phenomenon known as social bubbles, which is based on how personal relationships can be connected and represented in different bubbles, formed by common connections and interactions in an invisible way shaping the reality perception of the ones in the same bubble. For

the research, this means that if the replicants are part of a similar bubble the results would be different than the data collected from a different bubble. Bellow an image to illustrate how social bubbles work:

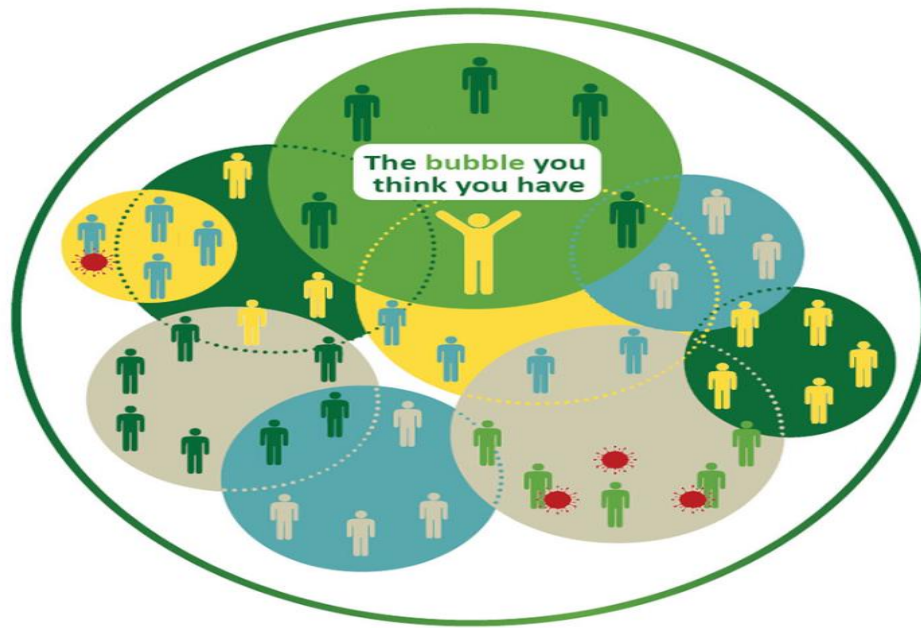


Figure 23

The close duality in the replies corroborates the analyse by showing how a cultural conflict could be shaping the formation of bubbles and subsequently the transmission of information. The Survey assisted in reaching an answer to the second research question: Is there sufficient popular knowledge about the theme in Brazil? How the popular opinion can affect political decision-making?

Based on the data collected the researcher infers that because of such proximity in numbers of correct and incorrect answers there is still a need to bring awareness to the Brazilian society, this polarization can also be noticed in the presidential elections 2022, where 50,83% voting for Lula and 49, 10% voting for Bolsonaro. It is possible to make a connection between the two data in the sense that almost half population supporting Bolsonaro and his catastrophic environmental agenda can be related to a lack of information represented by the incorrect and not sure answers,

and the correct answers can be related to the other over half of the population that understands the necessity to protect the environment and its people. This correlation can represent an answer to the second part of this question, the researcher believes that popular opinion can affect political decision-making, especially by their vote. The population have the power to influence by voting for more indigenous candidates, by voting for candidates that are committed to the environmental and indigenous cause and by charging politicians after elected to fulfil their campaign promises. Based on the data analysis and the lack of execution of the previous recommendations of the first TRC and its perceived impact on public opinion, for a future TRC to be effective in raising awareness it would be needed to first guarantee that there is no political obstacle to the fulfilment of the recommendations to assure the credibility and fixation of the information published by the Commissions. The mechanism of awareness raising of the TRC can be a strong agent in reducing the advance of extreme right-wing movements in Brazil and act as a reintegration mechanism for these communities restoring the social fabric, easing the current polarization, pressuring the political system to insert indigenous communities in the decision-making and for the accountability of the State.

Interview

The interview intention was to collect two specialized answers to be compared, however due to the impossibility of one of the Interviewers this research was limited to approach a comparison, the limitation of this method is also represented by the lack of adversarial contra point. However the replies of Bernardo Ranieri offered a point of view of how the demarcation of lands are an essential resolution for the safety of native indigenous people, how the political context in Brazil is so delicate at present moment due to the elections and how the re-election of Bolsonaro would determine the impossibility of a future TRC in Brazil. The data collected in the interview was collected before the elections of 30 October 2022 and it assisted into reaching an answer to the

third research question: Are TRCs an effective approach to reach restorative justice to the Brazilian indigenous people? Could the demarcation of lands be a viable compensation?

Based on the data collected the research infers that before questioning the effectiveness of a TRC, the political context should be analysed to verify the possibility of implementation. The international community is based on an anarchic system, which means that there is no ruler of countries, and an international actor cannot interfere directly on domestic affairs without inciting war. The international community can influence the internal politics by economic sanctions and other means to pressure certain governments, but it is restricted by the self-autonomy and sovereignty of each country. The TRCs are an international mechanism to aid countries into conserving their democracy by making the states accountable for human rights violations. Despite of the intentions, the TRC is a non-binding resolution which means that the governments still require to do their part in the implementation and execution of recommendations.

The TRC can be used as a tool to de-escalate the conflict by offering reparation, that could be interpreted as the demarcation of lands. The section IX in the UN Resolution of 2006 affirms that the reparation should be “proportional to the gravity of violation and harm suffered” , bellow five forms in which reparation can take form and how it could work to reach restorative justice to the Brazilian indigenous people (A/RED/60/147, p. 7-9):

Restitution: it aims to restore the victims original situation, it can include restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

Compensation: it aims to provide economically assessable damage, such as physical or mental harm, lost opportunities, material damages and loss of earnings, moral damage, cost for assistance and services.

Rehabilitation: it aims to include medical and psychological care as well as services.

Satisfaction: it aims to include measures to cease continuing violations, verification of the facts and full and public disclosure of the truth, the search for those missing, dead or abducted, and assistance in the recovery of the bodies, restoring the dignity, the reputation and the rights of the victim, an official declaration, public apology, sanctions against persons liable for the

violations, commemorations and tributes to the victims, an accurate account of the violations that occurred, and educational material at all levels.

Guarantees of non-repetition: it aims to include a variety of measures to reform the military, the police, other security forces, and the judiciary, and measures for preventing future violation.

The process could offer a fair recommendation for this conflict, and a TRC is not the only tool that could be used, restorative justice can also be incorporated into the traditional justice system to reach a resolution. As much as the process is judged as appropriate, it does not mean that it is the most effective, due to the limitations of restorative justice that depends on the government execution. The previous TRC in Brazil (Comissão Nacional da Verdade–CNV–2012) still has not proved to be effective, the commission uncovered 8,300 indigenous Brazilians victims of the Military Dictatorship between 1961 to 1979, but few to none recommendations or active efforts were executed to aim these communities (Brasil,K. and Farias,E., 2014). The still latent lack of effectiveness over the first TRC in Brazil, especially in relation to the natives, are an indicative of the importance of the commitment of the State in relation to these efforts, so the effectiveness of the TRC is connected directly to the State capacity to execute its recommendations, because if there is no visible improvement there is no perceived need for it.

CONCLUSION

In conclusion for the Literature Review in Restorative Justice the focal point is that restorative justice is not a new wave in the legal practice or a new concept of justice to an overwhelmed judicial system, but it is in fact a return to the roots of justice from both Western and non-Western cultures. Howard Zehr wrote in his 1985 article *Retributive Justice, Restorative Justice* that " [...] we must remember that many of the problems in the way we do justice today are rooted in our understanding of justice, and that this particular understanding is only one possible way, one paradigm. Others are possible, others have been lived out, others have actually dominated most of our history. In the long sweep of things, our present paradigm is really quite recent.[...]". So the use of Restorative Justice is not a novelty to deal with modern problems, but in fact, it is the paradigm of justice that resembles the perception of justice of these indigenous communities, where the community have their own organization and the tribe chief (Paje) represents the justice process, acting almost as a mediator reconciling the community. The use of Restorative Justice for the conflict in question is deemed appropriated for the approximation to their traditions, for the complexity surrounding the conflict and because the mainstream justice system have been constantly failing these communities.

In conclusion for the Literature Review in the conflict mapping, it is possible to infer by the demographic data that these communities have been facing genocide and have less than 1% of its original population. From the data it is possible to conclude that there have been an organized indigenous resistance and that there are legal dispositive in Brazilian law that aimed into protecting this communities, but the lack of execution efforts have been resulting from the conflict of interest of the Brazilian government. The erasure of this people have shift the resistance perception of how to fight for their rights, it is possible to see a higher insertion of these communities in universities and in the political scenario. This new perspective aim to insert the communities interests in the centre of the decision-making, bringing the effort to the same legal arena where their rights have been frozen. The importance of this communities ingress in political positions is the shift of articulation and understanding of justice, creating a favourable initiative for creation of mechanism, such as the TRCs, that aims this communities interests. The

climate change have started shifting the position of international actors that have been growing concerns about the environment and the climate effects, changing the pressure in the international community to adequate their domestic politics to more environmentally friendly actions. The importance of Amazon is indisputable and international funding have been invested in Brazil to combat the deforestation. After Lula's election victory the Environment Ministry of Norway have declared to the AFP that it will resume the funding to combat deforestation in Brazil, the country is responsible for funding 93,8% of the Amazon Fund, that had previously halted aid in 2019 in Bolsonaro's government duo to the rapidly increase in deforestation. The funding was resume because of Lula's campaign promises of 0% deforestation and the commitment made for the indigenous communities and environment protection. The international financial investments is one of the main pressure that can change politics in Brazil, and the combination of international pressure and Lula's commitments it opens the possibility for a TRC realization resulting in the execution of demarcation of the lands. Brazil have an historic debt with this communities and it is urgent the initiatives to protect the natives from extinction, to restore the social fabric and insert this communities in the decision-making.

The conclusion of the Survey is that the data collected aimed into the understanding of the polarization happening in Brazil and it was possible to make a connection between the data and the election results. The limitations of the Survey was based on the small amount of participants (if compared to the total population amount), the lack of collection of socio-economic data and the amount of questions. The intuit of the Survey was to be short to stimulate the rate of completion, but it occasioned the lack of more detailed data that could aim into this conclusion. The conclusion for the Interview is that the data collected was influenced by the doubt of the interviewed about elections, the projection of Bolsonaro's victory reflected in a negative perception about the possibility of a TRC realization, I believe that if the interview was done after election the previsions would have been more positive about the effectiveness and realization of a native focus TRC.

Limitations

The limitations presented at this research was first marked by the linguist barrier, the translation of data and the proper academic writing was a challenge in the development of the Literature Review and in the collection of data. A second limitation at this research is represented by the limitation of the restorative justice system and the TRC, the voluntariness of the process capacitate the State's tactics to slow or stop the process entirely. There is also a limitation to the International influence inside domestics affairs and the process is dependable of the organization of influent States that can pressure Brazil to execute their own law. This research was also limited by the time restrains to develop it and to collect data, especially for the Interview.

Recommendations

Based in the data collected this research recommends the execution of the recommendations of the National Truth Commission, the execution of a TRC dedicated exclusively to the indigenous case. The future TRC may be a reality after the Lula's election victory. The first attempt of a TRC in Brazil was first requested in 2009 in the second mandate of president Luiz Inacio Lula da Silva. The president dropped the attempted proposal duo to the pressure of the military sector, that feared the commission would occasioned a revision of the 1979 Amnesty Law . It is important to note that because of the Amnesty Law was considered constitutional by the Supreme Court in Brazil, the Truth Commission did not aggregate the reconciliation approach to its development. The result of this interference was that most perpetrators have not been judicially punished, some of which still appears in the payroll of state pensions, the lack of reconciliation affected the reconstruction of the social fabric as for the extent of which the TRCs proposes to reach. From this first attempt is possible to track the challenges faced back then and plan strategies to avoid them.

In 2010 the Inter American Court of Human rights declared the Amnesty Law incompatible with its Convention, claiming that the law lacked legal effect and it should not be an obstacle to the Truth Commission constataion of human rights violation (Amnesty International,2012). The weight of the international pressure corroborated to make the commission a reality in 2012-2014, during Dilma Rousseff government. The National Truth Commission was installed almost 30 years after the military dictatorship, the investigation that lasted two years reported the most committed human violations during the dictatorship as: unlawful and arbitrary detentions and incarceration, systematic torture using physical and psychological methods, rape and sexual assault, executions, disappearance and concealment of bodies (Filho, P., 2012). This information illustrates the power of international influence that can pressure for the realization of a new TRC, the challenge for the organization of the international actors comes from the impact caused by Covid-19 and the War in Ukraine, besides all the other conflicts happening around the world. The recommendation for a new TRC for the Brazilian indigenous conflict is a possible and positive prevision. Lula reassured his campaign promises with the environment preservation and indigenous rights, his previous modo operandi set precedent for the realization of the TRC and its recommendations as well as influencing the STF to decide against the Marco Temporal and unblocking the demarcation of lands predicted in the constitution. What it will determine the possibility of a resolution for this conflict is how Lula will govern midst a cultural conflict, a divided nation and a strong political opposition, the political strategy of the president will determine not only the future of the demarcation of lands and the preservation of the environment, but also the future of the left wing and social movements influence in Brazil.

REFLECTION

As an indigenous Brazilian descendent the problem faced by many indigenous tribes in Brazil have sparked the curiosity in understanding which tool is missing to execute the indigenous right for the regularization and execution of the demarcation of land that is assured by the Brazilian Constitution of 1988. As a bachelor in International Relations, the new wave of restorative justice and TRCs being used by indigenous communities in Canada (2007-2015), USA (2004-2006), Australia (2021) and New Zealand (1975), raised in me the question if a TRC could be used in the Brazilian case, being the demarcation of lands a possible compensation. The interest of the possibility of finding a solution in the international scenario was what drove this research questions. The investigation in the Survey was surprising, particularly I expected different results, the data collected revealed that most of the target population had an acceptable understanding which it was not predicted by me. I believed that one of the problems was that the majority of Brazilians did not understand the importance of the demarcation of lands and the environmental consequences due to the absence of it. However the data of this specific target population changed my preconceptions and drove me to a different position: if the awareness is not such a problem what it is?

The Interview was supposed to be realized with two specialist to offer a comparison, but due to personal reasons one of the Interviewers had to be withdrawn from the research, which was a problem, due to time restrictions I could not find a new suitable specialist to collect the data, at the end I decided to proceed with only one specialist and explore the data in more detail. The data collected from the specialist pointed out that the main problem lies in the Brazilian politics and its conflict of interest, which represents a more complicated issue, because if the problem is political and even the TRCs depend on political execution, how could I offer a recommendation if Bolsonaro's government position is in contraposition to environmental conservation? The Interview was collected before the elections in 30 of October 2022, and due to the uncertainty it drove me to a very pessimist conclusion. After the election results, once again my position was shifted when Lula was elected president in a tight dispute against Bolsonaro. In his first speech after re-elected, Lula reaffirmed his commitment with the environment and the indigenous

cause, which fuelled me with the possibility of a TRC being the right tool to achieve the demarcation of lands and its assurance. In conclusion this dissertation have been a roller cost of emotions and it was challenging for me to maintain a non-biased investigation duo to my emotional connection to the theme, as an avoidance technique I followed the scientific method and executed the investigation on my best capacity to produce a valid and interesting research to bring light to these 500 years old conflict and its ramifications that can affect not only Brazil, but the climate change around the world.

BIBLIOGRAPHY

Albert, I. & Munafo, M. (2008) 'Key Concepts in Health Psychology' SAGE Publications

Alexander, Robert Jackson. (1991), '*Juscelino Kubitschek and the Development of Brazil*'. Ohio University Centre for International Studies.

Alida M C. (2005). '*Go-Betweens and the Colonization of Brazil : 1500-1600*'. Austin, TX: University of Texas Press.

Allan, AJ, Randy, LJ (2005,) 'Writing the Winning Thesis or Dissertation. A Step-by-Step Guide', California, Corwin Press

Amnesty International, (2012), '*Brazil: Historic efforts by federal prosecutors to challenge decades of impunity for military regime*' Available at: <https://www.amnesty.org/en/documents/pre01/223/2012/en/> (Accessed: 17/06/22)

Amobos K. and Romero E. (2015), '*The Report of the Brazilian Truth Commission: Late Truth without Justice?*', Blog of the European Journal of International Law, 19 June. Available at: <https://www.ejiltalk.org/12892/> (Accessed: 21/10/22)

Andrew A, and Andrew von Hirsh. (1993). '*Desert and the Three Rs*' Current Issues in Criminal Justice 5(1): 9-12. Available at: (Accessed: 03/06/22)

André D and Kozicki, K(2019). "A (In)Justiça de Transição para os Povos Indígenas no Brasil". Revista Direito e Práxis. 10 (1): 129–169, DOI: 10.1590/2179-8966/2017/28186

Androff. D.K (2010), '*Truth and Reconciliation Commissions (TRCs): An International Human Rights Intervention and Its Connection to Social Work*' The British Journal of Social Work, Volume

40, Issue 6, September 2010, Pages 1960–1977, <https://doi.org/10.1093/bjsw/bcp139>
(Accessed: 10/06/22)

Antony D.R. (2002). *'Restorative Punishment and Punitive Restoration'* in Walgrave L (eds) *'Restorative Justice and the Law'*, Cullompton, Willan Publishing

Araújo, A. V, Carvalho – Wapixana J. B and Oliveira – Pankararu P.C et al (2006), *'Indigenous Peoples and the Law of "Whites": the right to difference'* Série Via dos Saberes n. 3. Edições MEC/Unesco, Available at http://trilhasdeconhecimentos.laced.etc.br/livros/arquivos/CoLET14_Vias03WEB.pdf (Accessed: 08/07/22)

Articulation of Indigenous Peoples of Brazil, *'Maquina De Moer Historia: Sobre o Marco Temporal, Por Marcos Sabrru'* Available at <https://apiboficial.org/marco-temporal/>
(Accessed: 15/07/22)

Ash P.J and Robinson D.J (2011). *'The Emergence of Humans: An Exploration of the Evolutionary Timeline'*, London, John Wiley & Sons..

Australian Government: Institute of Criminology, *'About Us'*, Available at: <https://www.aic.gov.au/about-us>, (Accessed: 22/07/22)

Beto B and Gilles G.(2011) *'Indigenous Rights in Brazil: Stagnation to Political Impasse'* South and Meso American Indian Rights Center, Available at <http://saiic.nativeweb.org/brazil.html>
(Accessed: 07/10/22)

Bickford, L. (2004). '*Transitional Justice*' in '*Encyclopedia of Genocide and Crimes against Humanity*', vol 3, (eds)by Dinah Shelton, Howard Adelman, Frank Chalk, Alexandre Kiss, and William A. Schabas, Detroit, Macmillan Reference

Braithwaite, J. (2004). '*Restorative Justice and De-Professionalization*'. *The Good Society* 13(1), 28-31. doi:10.1353/gso.2004.0023.

Bryman A. & Bell, E. (2015) '*Business Research Methods*' 4th edition, Oxford University Press

Brown R.B, (2006) '*Doing Your Dissertation in Business and Management: The Reality of Research and Writing*', Sage Publications

Brahm, E (2004) '*Truth Commissions*' in '*Beyond Intractability*', (ed) Guy Burgess and Heidi Burgess, Conflict Research Consortium, University of Colorado, Boulder

Brasil, K and Farias, E. (2014) '*Comissao da Verdade: Ao menos 8,3 mil índios foram mortos na ditadura militar*', Amazonia Real, Available at: <https://amazoniareal.com.br/comissao-da-verdade-ao-menos-83-mil-indios-foram-mortos-na-ditadura-militar/> (Accessed: 14/10/22)

Bueno, E. (2021) '*Brasil Uma Historia*', Casa dos Mundos Editorial Production and Games LTDA

Bottoms, A E. (2003) '*Some Sociological Reflections on Restorative Justice*' in Andrew von Hirsch, Julian Roberts, Anthony E. Bottoms, Kent Roach., and Mara Schiff (eds.) '*Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*', Oxford, Hart Publishing,

Cordell L.S, Lightfoot K; McManamon F and Milner G (2008) '*Archaeology in America: An Encyclopedia*' Vol. 4, New York, Greenwood Publishing Group

Collins, H. (2010) 'Creative Research: The Theory and Practice of Research for the Creative Industries' AVA Publications

Cohen, L, Manion, L, Morrison, K & Morrison, R.B ` (2007), *Research Methods in Education*, Routledge

Consultor Juridico (2021), '*Fachin votes against the time frame thesis; STF resumes trial next Wednesday*' Available at: <https://www.conjur.com.br/2021-set-09/fachin-vota-tese-marco-temporal> (Accessed: 08/07/22)

Cameron K.S and Quinn R. E, (2011) '*Diagnosing and Changing Organizational Culture: Based on the Competing Values Framework*', Wiley, Available at: <https://www.wiley.com/en-us/exportProduct/pdf/9781118003329> (Accessed: 23/09/22)

Classics in the History of Psychology (2000), '*Maslow, A. H. (1943), A Theory of Human Motivation*' York University, Toronto, Ontario, Available at: <https://psychclassics.yorku.ca/Maslow/motivation.htm>, (Accessed:16/09/22)

Casey, Claire, McNally, Sinéad, Quinn, Marian and O'Keeffe, Aine (2013) *Restorative Practices in Action: Tallaght West - A Case Study*. The Irish Review of Community Economic Development Law and Policy, 2 (1). pp. 63-70.

Dawson, D. C. (2009). '*Introduction to Research Methods*' 5th edition ed. Oxford, UK

Derby J (2021), '*Restorative Justice: Principles and Practice*' Prison Fellowship International, Available at: <https://restorativejustice.org/wp-content/uploads/2022/06/RJE-Resource-HANDBOOK-on-Restorative-Justice-Principles-and-Practice.pdf>, (Accessed: 09/09/22)

Freitas A (2015) *'Brazil makes promises at the Climate Summit after pulling out of the Paris Agreement'* CNN Brazil, Rio de Janeiro, Available at <https://www.cnnbrasil.com.br/politica/brasil-faz-promessas-na-cupula-do-clima-apos-deixar-de-lado-acordo-de-paris/> (Accessed: 26/08/22)

Fisher, R., Ury, W. and Patton, B. (1991), *'Getting to Yes: Negotiating Agreement without Giving In'*, 2nd ed, London, Houghton Mifflin.

Fernandes A (2021), *'Time frame: Bolsonaro asks STF not to change rule and protect agribusiness'* Correio Braziliense, Available at: <https://www.correiobraziliense.com.br/politica/2021/09/4949654-marco-temporal-bolsonaro-pede-que-stf-nao-mude-regra-e-proteja-agronegocio.html> (Accessed: 19/08/22)

Glasl, F. (1982). *'The Process of Conflict Escalation and Roles of Third Parties'* In: Bomers, G.B.J and Peterson, R.B. (eds) *'Conflict Management and Industrial Relations'*. Springer, Dordrecht, https://doi.org/10.1007/978-94-017-1132-6_6, (Accessed: 12/08/22)

Global Health Rights, *'Federal Constitution of Brazil'* (2010), Chapter VII, Article 23, Biblioteca Digital, Available at: <https://www.globalhealthrights.org/wp-content/uploads/2013/09/Brazil-constitution-English.pdf>, (Accessed: 05/08/22)

Goleman, D..(1995) *'Emotional Intelligence'*. New York, Bantam Books

Gerry J, (2003). *'A Restorative Justice Reader. Cullompton'*, Johnstone, Willan Publishing.

Gerry.. J (2008). *'The Agendas of the Restorative Justice Movement'* in Miller H.V, (eds) *'Restorative Justice: From Theory to Practice'*, Bingley, Emerald Group,

Gabbay D.V (2005), *'Justifying Restorative Justice: A Theoretical Justification for the Use of Restorative Justice Practices'* J. Disp. Resol. (2005) Available at: <https://scholarship.law.missouri.edu/jdr/vol2005/iss2/4>, (Accessed: 29/07/22)

Greensboro Truth and Reconciliation Commission (2006). 'Final report'. Available at www.greensborotrc.org (Accessed: 02/09/22)

Green, James N., et al., editors. (2019) *'The Brazil Reader: History, Culture, Politics*. Duke University Press',. JSTOR, <https://doi.org/10.2307/j.ctv120qrdk>. (Accessed: 02/09/22)

Government of Brazil (2020) *'Who are'* Ministry of Justice and Public Security, National Indian Foundation, Available at <https://www.gov.br/funai/pt-br/atuacao/povos-indigenas/quem-sao> (Accessed: 10/06/22)

Hayner, P.B (2011), *'Unspeakable truths : transitional justice and the challenge of truth commissions'*, New York, N.Y., Routledge

Herman B, (1994), *'Justice as Sanctuary: Toward a System of Crime Control'* Bloomington, Indiana University Press

Hayner, P. B. (1994), *'Fifteen Truth Commissions--1974 to 1994: A Comparative Study'* Human Rights Quarterly, vol. 16, no. 4, 1994, pp. 597–655. Available at: JSTOR, <https://doi.org/10.2307/762562>. (Accessed: 02/09/22)

Historian of the U.S Department of State. (2007), '198. *Telegram From the Department of State to the Embassy in Brazil*', Foreign Relations of the United States, 1964–1968, Volume XXXI, South and Central America, Mexico, Document: 197, Available at: <https://history.state.gov/historicaldocuments/frus1964-68v31/d197> (Accessed: 02/09/22)

International Institute for restorative Practices, 'We Teach, We Learn, We Share. Together' Available at: www.realjustice.org/uploads/article_pdfs/man05_wachtel.pdf (Accessed: 12/08/22)

International Centre of Transitional Justice (2008) 'What is Transitional Justice?' Available at: <http://www.ictj.org/en/tj/> (Accessed: 19/08/22)

International Institute for Restorative Practices (2005) '*Report on the IIRP's 7th International Conference, "The Next Step: Developing Restorative Communities"*' Available at: <https://www.iirp.edu/news/report-on-the-iirp-s-7th-international-conference-the-next-step-developing-restorative-communities>, (Accessed: 29/07/22)

International Institute for Restorative Justice (1999), '*Restorative Justice: Assessing an Immodest Theory and a Pessimistic Theory*' Available at: <https://www.iirp.edu/news/restorative-justice-assessing-an-immodest-theory-and-a-pessimistic-theory> (Accessed: 09/09/22)

Johnstone, Gerry, and Daniel van Ness (2007), '*Handbook of Restorative Justice*' Cullompton, Willan Publishing.

Johnstone, Gerry, and Daniel van Ness (2007), '*The Meaning of Restorative Justice*' in Johnstone G and Daniel van Ness (eds) '*Handbook of Restorative Justice*' Cullompton Willan Publishing

Jacob, B. R. (1970) *'Reparation or Restitution by the Criminal Offender to His Victim: Applicability of an Ancient Concept in the Modern Correctional Process'* The Journal of Criminal Law, Criminology and Police Science 61(2): 152-167.

Jansen R (2019) *'Human Rights Watch: ditadura no Brasil torturou 20 mil pessoas; 434 foram mortas ou desapareceram'*, Estadão, São Paulo, Available at: <https://politica.estadao.com.br/noticias/geral,human-rights-watch-ditadura-no-brasil-torturou-20-mil-pessoas-434-foram-mortas-ou-desapareceram,70002770377> (Accessed: 12/08/22)

John W. Creswell, J. D. C.(2018) *'Research Design, Qualitative, Quantitative and Mixed Methods Approaches'*. Fifth edition. USA, SAGE publications.

Kegan R and Leahy K (2001) *'The Real Reason People Won't Change'*, Harvard Business Review, The Magazine, November, Available at: <https://hbr.org/2001/11/the-real-reason-people-wont-change>, (Accessed: 26/08/22)

Kathleen D (2001). *'Conferencing in Australia and New Zealand: Variations, Research Findings, and Prospects'* in Morris A and Gabrielle M (eds) *'Restorative Justice for Juveniles: Conferencing, Mediation and Circles'* Oxford, Hart, Publishing

Kathleen D and Immarigeon R (1998). *'The Past, Present and Future of Restorative Justice: Some Critical Reflections'* The Contemporary Justice Review 1 (1): 21-45.

Littlejohn, S.W. & Foss, K.A. (2009) 'Encyclopedia of Communication Theory' Vol.1, SAGE Publication

Long G. (2013), '*Chile still split over Pinochet legacy*' BBC News, Santiago, Available at: <https://www.bbc.com/news/world-latin-america-24014501> (Accessed: 29/07/22)

Libecap G.D and Lueck D (2011). '*The Demarcation of Land and the Role of Coordinating Property Institutions*'. Journal of Political Economy, 119(3), 426–467. <https://doi.org/10.1086/660842>

Larry M (2010) '*Genocide: A Normative Account*' Cambridge University Press.

Martha M (1998). '*Between Vengeance and Forgiveness*'. Boston, Beacon Press

Monette, D.R., Gullivan, T.J. & DeJong, C.R. (2010) '*Applied Social Research: A Tool for the Human Resources*' Cengage Learning

Myers, M.D. (2008) '*Qualitative Research in Business & Management*' SAGE Publications,

Marsh, L (2017) '*Becoming Restorative: Three Schools Transitioning to a Restorative Practices Culture*'. Centre for Urban Education Success, University of Rochester.

Moore, C.W (1996) '*The Mediation Process: Practical Strategies for Resolving Conflict*' ,2nd edition, New York, John Wiley & Sons Inc pp. 60-61

Mayer, B. (2000), '*The Dynamics of Conflict Resolution: A Practitioner's Guide*' San Francisco, Jossey-Bass

Menkel-Meadow, C (1995). "*Whose Dispute Is It Anyway? A Philosophical and Democratic Defense of Settlement (In Some Cases)*" Georgetown Law Faculty Publications and Other Works. 1767 Available at: <https://scholarship.law.georgetown.edu/facpub/1767>

Marchant A (1942) '*From Barter to Slavery: The Economic Relations of Portuguese and Indians in the Settlement of Brazil, 1500-1580*', Baltimore, Johns Hopkins Press

Milanez F and Santos F.L (2021) '*Wars of Conquest : From the Portuguese invasion to the present day*', Oxon, Harlequin

Marshall T F and Merry S (1990). '*Crime and Accountability: Victim Offender Mediation in Practice*', London: Home Office. CJ 125993 Available at: <https://www.ojp.gov/ncjrs/virtual-library/abstracts/crime-and-accountability-victimoffender-mediation-practice> (Accessed: 29/07/22)

Nils C. '*Conflicts as Property*' The British Journal of Criminology, vol. 17, no. 1, 1977, pp. 1–15. JSTOR, <http://www.jstor.org/stable/23636088>. (Accessed: 12/08/22)

Ness, D. V. and Strong, K. H. (2014) '*Restoring Justice*'. 5th ed Taylor and Francis. Available at: <https://www.perlego.com/book/1505985/restoring-justice-an-introduction-to-restorative-justice-pdf> (Accessed: 19/08/22)

O'Leary Z (2004) '*The essential guide to doing research*' Sage Publications

Oxford Learner's Dictionaries, (2022) '*Indigenous*', Oxford University Press, Available at <https://www.google.com/search?q=avalivle&oq=avalivle+&aqs=chrome..69i57j0i10i512l9.3520j0j7&sourceid=chrome&ie=UTF-8> (Accessed: 08/07/22)

Paulo F (2012) *'Truth Commission in Brazil: Individualizing Amnesty, Revealing the Truth'*, Vance Centre, Available at: <https://www.vancecenter.org/wp-content/uploads/stories/vancecenter/truthcommission.pdf> (Accessed: 15/07/22)

Pereira J (2022) *'President Jair Bolsonaro was the only one not to demarcate indigenous land since the country's redemocratization; Indigenous people began to protect and demarcate ancestral territories on their own'* InfoAmazonia, Available at: <https://infoamazonia.org/2022/10/27/sem-terras-demarcadas-indigenas-se-arriscam-fazendo-autodemarcacao-durante-o-governo-bolsonaro%E2%80%9C/#:~:text=De%20acordo%20com%20dados%20da> (Accessed: 17/06/22)

Polonsky, M.J. & Waller, D.S. (2011) *'Designing and Managing a Research Project: A Business Student's Guide'* 2nd edition, Sage Publications

Roche, D (2007) *'Retribution and Restorative Justice'* In the *'Handbook of Restorative Justice'*, edited by Gerry Johnstone and Daniel van Ness, Cullompton, Willan Publishing

Ruth B (2009) *'State Terrorism and Neoliberalism: The North in the South'*, New York, Routledge.

Ribeiro, D. (2017) *'The Indians and Civilization: The Integration of Indigenous Peoples in Modern Brazil'*, 7th edition, Brasília, Global Publisher

Stijntje B (2012) *'Brazil Won't Overturn Amnesty'* International Justice Desk.

Restorative Justice: Strategies for Change (2012) *'Irish Prison Service*

Restorative Practices in Prisons – Wheatfield Prison' Available at: <https://restorativejustice.ie/restorative-practices-in-prisons-wheatfield-prison/> (Accessed: 15/07/22)

South Dublin County Council, (2009), '*Report of the South Dublin County Joint Policing Committee*' Available at: <https://www.sdcc.ie/en/services/community/joint-policing-committee/report-of-joint-policing-committee-20091.pdf>, (Accessed: 03/06/22)

Simply Psychology (2022), '*Maslow's hierarchy of needs*' Available at: <https://www.simplypsychology.org/maslow.html> (Accessed: 10/06/22)

Said, A. and Lemos, I (2011), '*Chamber approves creation of Truth Commission*' Globo.com, Available at: <https://g1.globo.com/politica/noticia/2011/09/camara-aprovacao-da-comissao-da-verdade.html> (Accessed: 17/06/22)

Saunders, M, Lewis, P. and Thornhill, A. (2012) '*Research Methods for Business Students*' 6th edition, Pearson Education Limited

Sandole, D. (1998) '*A Comprehensive Mapping of Conflict and Conflict Resolution: A Three Pillar Approach*, Peace and Conflict Studies: Vol. 5 : No. 2 , Article 4.

Schwartzman, S Araújo V, Pankararú, A.P (1996). '*Brazil: The Legal Battle Over Indigenous Land Rights*'. NACLA Report on the Americas. 29 (5): 36–43. doi:10.1080/10714839.1996.11725759

Saunders, M., Lewis, P. and Thornhill, A. (2016) '*Research Methods for Business Students*'. 7th Edition, Pearson, Harlow.

Suffolk University, '*Carolyn Boyes - Watson, PHD*', Centre for Restorative Justice, Available at: <https://www.suffolk.edu/academics/faculty/b/o/carolyn-boyes-watson> (Accessed: 22/07/22)

Tony M (1998). *'Restorative Justice: An Overview'* in Johnstone G (eds) *'A Restorative Justice Reader'* (2012), New York, Rutledge

Tutu, D (1999). *'No Future without Forgiveness'*, London, Rider Books.

Thompson, L and Nadler, J (2000) *'Judgmental Biases in Conflict Resolution and How to Overcome Them'*, in Deutsch, Morton and Peter T. Coleman, eds. *'The Handbook of Conflict Resolution: Theory and Practice'*. San Francisco, CA: Jossey-Bass Publishers, p 213-235

Tony M. (1997). *'Seeking the Whole Justice'*, (Paper presented at the *Repairing the Damage: Restorative Justice in Action Conference*) Institute for the Study and Treatment of Delinquency, London, March 20.

United Nations Office on Drugs and Crime (2016), *'Handbook on Restorative justice Programmes'*, New York , Criminal Justice Handbook Series, Available at: [https://www.unodc.org/pdf/criminal_justice/Handbook on Restorative Justice Programmes.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_on_Restorative_Justice_Programmes.pdf), (Accessed: 10/06/22)

United Nations General Assembly (1948), *'The Universal Declaration of Human Rights'*. New York, United Nations Department of Public Information, Available at: http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf (Accessed: 17/06/22)

United Nations Climate Change, *'What is the Paris Agreement?'* <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement> (Accessed: 22/07/22)

United Nations Climate Change, (2021) *'Cop26 The Glasgow Climate Pact'* <https://ukcop26.org/wp-content/uploads/2021/11/COP26-Presidency-Outcomes-The-Climate-Pact.pdf> (Accessed: 29/07/22)

United Nations Office on Genocide Prevention and the Responsibility to Protect *'Genocide: Background'* Available at: <https://www.un.org/en/genocideprevention/genocide.shtml>, (Accessed: 19/08/22)

United Nations General Assembly (2006). *'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: Resolution / General Assembly, 21 March A/RES/60/147*. Available at: <http://www.unhcr.org/refworld/docid/4721cb942.html> (Accessed: 14/10/22)

United Nations High Commissioner for Human Rights, (2002), *'Annual Report 2002: Implementation of activities and use of funds'* , Geneva, Switzerland, Available at: <https://www.ohchr.org/sites/default/files/Documents/AboutUs/annualreport2002.pdf> (Accessed: 21/10/22)

Vaus, D. (2002) *'Surveys in Social Research'* , New York, Taylor and Francis

Van Ness D.W, Strong K.H, Derby and J.L. Parker L (2022) *'Restoring Justice An Introduction to Restorative Justice'*, New York, Routledge

Van Ness D W (1990) *Restorative Justice (From Criminal Justice, Restitution, and Reconciliation, P 7-14, 1990, Burt Galaway and Joe Hudson, eds. -- NCJ-126460)*

Von Hirsh A, Roberts J.V and Roach K etal ed. (2003.) *'Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?'* Bloomsbury Publishing

Wenzel, M., Okimoto, T. G., Feather, N. T. and Platow, M. J. (2008). '*Retributive and restorative justice.*', *Law and Human Behaviour*, 32(5), 375–389. <https://doi.org/10.1007/s10979-007-9116-6> (Accessed: 05/08/22)

Watts, J and Rocha J (2013) '*Brazil's 'lost report' into genocide surfaces after 40 years*'. The Guardian Online, Available at: <https://www.theguardian.com/world/2013/may/29/brazil-figueiredo-genocide-report>, (Accessed: 10/06/22)

Williams, P.L (2015) '*Operation Gladio: The unholy alliance between the Vatican, the CIA, and the Mafia*', New York, Prometheus Books.

Walliman, N. S. & Walliman N. (2011) '*Research methods: the basics*' Taylor and Francis

Yamagata-Lynch, L.C. (2010) '*Activity Systems Analysis Methods: Understanding Complex Learning Environments*' New York, Springer Publications

Zehr H. (1990), '*Changing Lenses: A New Focus for Crime and Justice* ,Waterloo, Herald Press