

Gypsies, Coloniality and the Affirmation of Human Rights in Brazil

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Abstract

In Brazil, different ethnic and social minorities (Quilombolas, Indigenous peoples, people with disabilities, the elderly) have expressly got recognition in the Federal Constitution of 1988 and other normative instruments as subjects of human rights. This scientific article deals with one such minority: the Gypsies. This article adopts the following problem of research: what is the relationship between colonial policies that aimed at the management of the Gypsy and the construction of the political-legal status of these peoples in Brazil? This research has made use of the following methodological resources: the participant observation of the authors in view of the legislative process of Bill 248/2015; the documentary research on the records of colonial and post-colonial laws that had directed to the management of Gypsies in Brazil; as well as the literature review, which intertwines the studies on the Gypsy question with decolonial theory.

Keywords: *Gypsy question; ethnic minority rights; decolonial studies; colonial laws; sociology of law.*

Introduction

In Brazil, different ethnic and social minorities (quilombolas, indigenous people, people with disabilities, the elderly) have expressly got recognition in the Federal Constitution of 1988 and other normative instruments as subjects of rights and duty of the State in ensuring their protections, as well as inserting them into inclusive public policies. For example, Article 215, paragraph one, which seals the State's duty to protect "manifestations of popular, indigenous and Afro-Brazilian cultures, and those of others groups participating in the national civilisation process"; as well as Article 216, subsections I and II, which protect as Brazilian historical heritage "the forms of expression" and "the modes of creating, making and living" of the "different forming groups of Brazilian society"¹.

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Acknowledgements: This article is the result of a partnership with ASCOCIC (Community Association of Gypsies of Condado-PB), especially the lessons learned with the Gypsy leadership Maria Jane. I would also like to thank the two anonymous reviewers, as well Professor Luiz Eduardo Figueira, PhD advisor, for his patience and generosity in believing in my research.

¹ See Brazilian Constitution, available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm (Accessed: 16 February 2020)



In this context, after the enactment of the Federal Constitution, subalternized peoples have achieved greater spaces for dialogue and access to public revenues through public policies aimed at a historical reparation of exclusion. For example, the obligation teaching of Afro-Brazilian, African and indigenous culture and history in schools, as well as the policy of racial quotas in federal public universities and public service entrance examination, issues provided. However, some ethnic minorities remain with little or no visibility and continue with insufficient participation in political and academic discussions.

This scientific article deals with one such minority: the Gypsies. Not the Gypsy musician, eternal traveller, and colourful garments. Far from these representations inserted in the popular imaginary, the analysis developed here has given prominence to the groups and/or people that act in the process of Bill 248, of April 25, 2015 (PLS 248/2015), which proposes the creation of the *Statute of the Gypsy*. In this scenario, there is a diversity of people who identify themselves as Gypsies; the majority are men and women who are linked to or leaders of civil associations, who act in the face of the state bureaucracy, who circulate in bodies and instances of the public administration of the Legislative, Executive and Judiciary Branches, pleading for political participation, rights and affirmative action.

This article adopts the following problem of research: what is the relationship between colonial policies aimed at the management of the Gypsy and the construction of the political-legal status of this population in Brazil? This study has three specific objectives. The first topic discusses the role of the *Statute of the Gypsy* and, the same time, the context then was developed the first public policies aimed at this ethnic minority in Brazil, considering the the legal instruments pos-colonial, especially criminal law, which has been applied until today, focused on the criminalization of Gypsies in Brazil. The second topic seeks to analyse the colonial laws produced specifically for Gypsy², taking into consideration the category “coloniality”. The third topic reflects on the possibilities of the process of affirming human rights overcome “antigypsyism”.

This research has made use of the following methodological resources: the participant observation of the author in view of the legislative process of Bill 248/2015; the documentary research on the records of colonial laws that had applied in Brazilian territory, as well as the literature review. This research hypothesises that the affirmation of human rights has been one of the strategies adopted by the State, as well as claimed by some Gypsies leaderships, with the aim of interfering with the political-legal status of Gypsy in Brazil, although this

² This article makes a methodological option for highlighting Portuguese colonial laws aimed at the management of Gypsy people between the 16th and 18th centuries. It is emphasized that Brazil, as a colony of Portugal, was governed by the Portuguese laws instituted.



strategy is insufficient to deal with colonial settlements, which renew and resignify representations about this ethnic minority.

With the independence of Brazil, there was no break in the policies directed at Gypsy populations, as occurred during the colonial period, between the 16th and 18th centuries, even in the face of the inclusion of liberal principles in the Brazilian Constitution. From 1822, the year in which Brazil became a sovereign country, and, above all, throughout the 20th and 21st centuries, it is possible to identify other legal instruments that were and are mobilized to criminalize Gypsy existence, through Criminal Law. “Racial theories enabled intellectuals and politicians to implement a conservative programme that justified differential citizenship within a liberal and republican framework” (Fotta, 2019: 23)

It does not seek to describe or simply analyse the proceedings of Bill 248/2015 or the colonial laws aimed at Gypsies. From the participating observation of the authors in the spaces where the rights of Gypsy are discussed, such as public hearings, in the governmental spheres (Federal Senate), it is possible to establish a bridge between colonial policies towards Gypsy and the current attempt to affirm the human rights of this minority.

The proposal to create the *Statute of the Gypsy*

It is possible to say that the Gypsies are indirectly cited in the Brazilian Constitution, in article 215, legal instrument recognising who are the subjects of cultural rights, by adopting the expression “other groups participating in the national civilization process”. This means that there is no direct citation of the Gypsy in the Constitution, as occurs with the Indigenous in article 231³. However, the lack of express mention of Gypsy did not prevent these groups from organising themselves to claim the protections that other groups enjoyed for this constitutional mention. The emergence of Gypsies associations in different parts of Brazil is noticeable from the 1980s and 1990s onwards (Moonen, 2013: 20).

The *Being Gypsy* as a political action has provoked a series of debates, in different spheres of state, especially since the promulgation of the Federal Constitution⁴. The Second National Programme of Human Rights (II PNDH)⁵ was the first legal instrument of the Brazilian state bureaucracy to make direct reference to “Gypsies”, in the sense of consider these as subjects of human

³ This constitutional rule (article 231) recognizes that indigenous peoples must have recognized, by Brazilian State, their social organization, customs, languages, beliefs and traditions, and the original rights over the lands that they traditionally occupy.

⁴ The expression “*Being Gypsy* as a political action” means to say that the material reality of the gypsies began to motivate the Brazilian state to include this issue in your the governmental agenda.

⁵ See II PNDH, available at: <<http://www.dhnet.org.br/dados/pp/pndh/index.html>> (Accessed: 07 April 2020)

rights, in 7 articles, established in 2002, the last year of the second term of President Fernando Henrique Cardoso⁶ (Ferrari; Fotta, 2014: 113).

According to Franz Moonen (2011: 8), in Brazil, “the first pro-Gypsy policies” started effectively in 2005, from the first term of President Luis Inácio Lula da Silva⁷. After this year, it is possible to identify an intensification in the production of normative instruments of the Executive Branch that seek to guide the other federative entities to insert Gypsies on their political agendas⁸. On May 25 2006, a Presidential Decree instituted the “National Gypsy Day”⁹; in 2009, the Third National Programme of Human Rights (III PNDH) was launched, which refers to the Gypsies rights; the Ministerial Order 940, of April 28 2011, which regulates the card that gives access to the Brazilian universal health system; Resolution 03, of May 16 2012, of the Ministry of Education, which defines guidelines for the provision of school education for nomads populations; the Ministerial Order 1.315, of November 23 2016, of the Ministry of Justice and Citizenship, which institutes the National Policy Plan for Gypsy People - PNP / Gypsies; and Ministerial Order 4.384, of 28 December 2018, from the Ministry of Health, which proposes and establishes guidelines for a National Policy for Health of the Gypsy People.

Faced with the absence of a specific ordinary law aimed at the protection of Gypsies in Brazil, as occurs with other social and ethnic minorities (youth, the elderly, Indigenous peoples), the Senator Paulo Paim (Partido dos Trabalhadores) presented Bill 248/2015 (PLS n° 248/2015), on 29 April 2015, which proposes the creation of the *Statute of the Gypsy*, with the aim of “guaranteeing the Gypsy population equal opportunities” (article 1)¹⁰. The initial text of the bill, submitted to the Federal Senate, proposes 19 articles, divided into 4 titles. The “Title II - Fundamental Rights” is divided into 7 chapters (preliminary provisions; education; culture; health; access to land; housing; labour).

The Brazilian Legislative Power adopts the bicameral model and, for this reason, all bills must be analyzed and voted on in both “legislative houses”. Before being voted on in plenary, the bills are discussed and then voted on thematic committees. In the case of Bill 248/2015, the Federal Senate is the “proposing house”, while the Chamber of Deputies will be the “reviewing

⁶ Presidential term of FHC (1994-2002).

⁷ Presidential term of Lula (2003-2010); Presidential term of Dilma Rouseff (2011-2016); Presidential term of Michel Temer (2016-2018); and Presidential term of Jair Bolsonaro (2019 -).

⁸ It should be noted that the first ministry (called SEPPPIR) created exclusively to articulate the agenda of promoting racial equality occurred in 2003. See the law that created SEPPPIR, available at: http://www.planalto.gov.br/ccivil_03/LEIS/2003/L10.678.htm (Accessed: 12 April 2020)

⁹ Melo and Veiga (2012: 44) defends that the institution of a “National Gypsy Day”, in 2006, was a strong gesture of public recognition of gypsies, emphasizing for the first time its importance in the historical and cultural formation of Brazilian national identity.

¹⁰ For Bill 248/2015 (Statute of the Gypsy), see: <https://www25.senado.leg.br/web/atividade/materias/-/materia/120952> (Accessed: 16 February 2020)



house". Since 2015, the *Statute of the Gypsy* has been discussed and approved by two thematic commissions of Federal Senate.

At the 7th Extraordinary Meeting of the Committee on Education, Culture and Sport, held on March 27, 2018, the report of Senator Hélio José (Partido MDB), favourable to the project, was approved¹¹. At the 15th Meeting of the Social Affairs Committee, held on May 9, 2018, Senator Hélio José's report was also approved. After the approval of Bill 248/2015 in the aforementioned thematic commissions, this project was forwarded to the Commission on Human Rights and Participatory Legislation, where it waits to have your deliberate matter¹².

In the course of processing Bill 248/2015, only one public hearing was held, on May 29, 2018, to discuss the items of the *Statute of the Gypsy* proposal¹³. This event was attended by different Gypsies leaders from Brazil, people who organize themselves through civil associations, that were constituted to fight for the rights of the Gypsy¹⁴.

The Federal Senate website, through a public consultation on the Bill 248/2015, which creates the *Statute of the Gypsy*, promoted a poll that asks: "do you support this proposition?". There were two possible answers: yes and no. Until April 20 2020, 91 people answered "yes" and 72 people "no"¹⁵.

The public hearing to discuss the proposal for the *Statute of the Gypsy*, in the Federal Senate, was broadcast live on TV Senado, and also on the internet, with the possibility for viewers to interact. The full video, which has 2 hours, 19 minutes and 12 seconds, is available on the Youtube platform and also on the Federal Senate website¹⁶. For sharing the messages in table 1, this article does not intend to induce that they represent the thought patterns of Brazilians, that is not reflecting how the general population understands the proposal for the *Statute of the Gypsy*. On the other hand, these messages reveal the permanence of stigmas and representations about Gypsies, that have been built over the past

¹¹ For 7th Extraordinary Meeting of the Committee on Education, Culture and Sport, see: <https://www12.senado.leg.br/multimidia/evento/79328> (Accessed: 06 April 2020)

¹² For 15th Extraordinary Meeting of the Social Affairs Committee, see: <https://legis.senado.leg.br/comissoes/reuniao?7&reuniao=7505&codcol=40> (Accessed: 06 April 2020)

¹³ For public hearing about *Statute of the Gypsy*, see: <https://www.youtube.com/watch?v=SCzcao1ZUn4&t=4337s> (Accessed: 06 April 2020)

¹⁴ During the public hearing on the "Statute of the Gypsy", the following associations were present: Associação Nacional das Etnias Ciganas (proponent of the bill); União Cigana do Brasil; Associação dos Ciganos do Estado do Ceará; Associação de Preservação da Cultura Cigana do Estado do Ceará; Associação Comunitária dos Ciganos de Condado-PB; Coletivo do Acampamento de Guarulhos; e Centro de Estudos e Discussões Romani.

¹⁵ For the consultation on the Bill 248/2015 (Statute of the Gypsy), see: <https://www25.senado.leg.br/web/atividade/materias/-/materia/120952> (Accessed: 16 February 2012)

¹⁶ See public hearing on bill 248/2015, available at: <https://www.youtube.com/watch?v=SCzcao1ZUn4&t=4337s> (Accessed: 16 february 2020)

few centuries and that are constantly reframed, they are “dirty”, “dangerous” beings, “people who don’t work”.

Table 1. Some chat messages made during the live broadcast of the public hearing on 29 May 2018

Profiles	Content of messages
Cristian Souza	Wow! See the level of our parliamentarians! Statute of the Gypsy?! What else will they invent?
Alug & Tok Stúdios	THE GYPSIES HAVE HORRIBLES STORIES OVER BRAZIL.
Alug & Tok Stúdios	I’m white poor skin man and don’t have any rights for me, isn’t?
Alug & Tok Stúdios	WILL THE GYPSY HAVE MORE RIGHTS THAN ME ????
lc A exterminadora do futuro (means the exterminator of the future woman in english).	Fuck off, woman Gypsy, go to work and go shower
Wictor Pazini	Is this Statute of the Gypsy a joke? Kkkk
lc A exterminadora do futuro	The Gypsy wanna take a shower.
Cristian Souza	Wow! See the level of our parliamentarians! Statute of the Gypsy?! What else will they invent?
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lc A exterminadora do futuro	Fuck off, woman Gypsy, go to work and go shower
Wictor Pazini	Is this Statute of the Gypsy a joke? Kkkk
lc A exterminadora do futuro	The Gypsy wanna take a shower.
Pequeno Ponei (Little pony)	Where is the Football players statute? I also wanna my rights.
Edilson Bueno	Gypsies?? The real Brazilians?
JR	Seriously? Statute of the Gypsy?
Nilton Francisco	Statute of the Gypsy? Take a shame on that face !!!!
JR	If we have an ethnic group that needs help, than we have such historical debt, these are the indigenous people
JR	I do not doubt that in some time they will be discussing about the statute of the latin communist
JR	This is pathetic. There is spending our money on these stupid things
Cristian Souza	I already imagine that they will want to create some Foundation to spend even more state money..
Cristian Souza	The Gypsies have a different lifestyle - Ok nothing against, the problem is the taxpayer having to pay for it!!!

These messages reproduced during the *chat* that occurred simultaneously with the live broadcast of the public hearing on the *Statute of the Gypsy* do not only concern Gypsies, but also what is the role of the State in relation to this people or in the face of other social/ethnic minorities. When someone question the need for a *Statute of the Gypsy* and makes negatives insinuations, which in these interlocutors are trying to say is that there is no necessary of specific bill of rights for Gypsies people, for humanitarian purposes, aimed at the Gypsy population, on the contrary, it is up to the State to abstain. The State should not have the resources to intervene in the Gypsy question.

It is important to note that before the Bill 248/2015 proposal, some public hearings were held in the Brazilian National Congress in which themes related to Gypsy people were discussed, directly or indirectly. It is mentioned: the public hearing about “Gypsy citizenship” held at the Senate Commission on Human Rights and Participatory Legislation, which took place on May 25, 2011¹⁷; the public hearing about “Rights of the Gypsy People”, held at the Senate Commission on Human Rights and Participatory Legislation, held on December 12, 2012¹⁸; the public hearing to discuss the application of the “ILO Convention No. 169” at the Senate Commission on Human Rights and Participatory Legislation, October 14, 2013¹⁹.

The Bill 248/2015 is accompanied, formally, by a “Justification”, than has five short paragraphs, which, among them, stands out here the stretch than makes direct reference to the “history of the Gypsies in Brazil”: “Although the Gypsies arrived in Brazil, with the precursor João Torres, even in 1574, they still suffer material inequality with the rest of the Brazilian population”²⁰.

When identifying and analyzing the set of normative instruments that directly or indirectly, sought to manage the “Gypsy existence”, before and after the colonial period, it is possible to understand the “Justifications” activated in Bill 248/2015 to try to introduce a *Statute of the Gypsy* in the Brazilian legal system.

In the present study, it is assumed that legal instruments, over the years, have been and still are fundamental for the deepening of discriminatory and racist policies aimed at Gypsy people. Brazil’s independence process was not crossed by radical ruptures; there were few changes in relation to the ruling

¹⁷ For the public hearing on “gypsy citizenship”, see: <https://www.youtube.com/watch?v=TqxBxKFMkZY> (Accessed: 06 April 2020)

¹⁸ For the public hearing on “Rights of the Gypsy People”, see: <https://www12.senado.leg.br/noticias/materias/2012/12/12/desconhecimento-esta-na-raiz-do-preconceito-contraciganos> (Accessed: 06 April 2020)

¹⁹ For the public hearing on “the application of ILO Convention No. 169”, see: <https://www.youtube.com/watch?v=JE0JTF1XtP4> (Accessed: 06 April 2020)

²⁰ For Bill 248/2015 (Statute of the Gypsy), see: <https://www25.senado.leg.br/web/atividade/materias/-/materia/120952> (Accessed: 16 February 2020)

classes that started to direct the newly sovereign Nation-State, since 1822²¹. The continuity in racist and anti-Gypsy practices can be seen in the official documents of criminal proceedings, whose condition or practices related to Gypsy people were decisive in justifying condemnations.

Based on searches of the Federal Official Gazette website²², or Official Gazette of State of São Paulo²³, for example, using as keyword “cigano” (Gypsy man in Portuguese) or ‘cigana’ (Gypsy woman), it is possible to find several criminal proceedings, from the beginning of the twentieth century until the year 2019, which the practice of “palmistry”, as well the practice of “trades”, “exchanges” and “other negotiations”, involving Gypsy people, are treated as a crime of “larceny” or “theft”.

It is possible to indicate the Brazilian legal instruments that, directly or indirectly, contributed to the consolidation and legitimization of “antigypsyism” in society in general, from the 19th century, when the country became independent from the Portuguese metropolis²⁴. They are: the Royal Criminal Code of 1830 (article 295)²⁵; the Penal Code, instituted by Decree n° 847, of October 11, 1890 (articles 157, 158 and 399)²⁶; the Brazilian Constitution of 1934 (art. 138)²⁷; Decree-Law No. 406, of May 4, 1938 (article 1, item II)²⁸; the Penal Code, approved by Decree-Law No. 2,848, of December 7, 1940 (articles 283 and 284)²⁹; and Decree-Law 3688/1941 (article 27)³⁰, known as Penal Misdemeanor Law.

Araújo describes a judicial process, that took place in 1937 (State of the Rio Grande do Norte), in which foreign Gypsy women (Syrian origin) were criminally denounced for practising palmistry and “for using the culture's magic and mysticism to deceive and consequently steal a victim” (2018: 55).

²¹ About the essence of the Brazilian ruling classes, see the book “Cidadania no Brasil: o longo caminho”, by José Murilo de Carvalho (2001). About the social history of the Judiciary, marked by conservative continuity, averse to social transformations, despite constitutional texts offering progressive alternatives, see the work “Judiciário, política e transição”, by Gurgel and Almeida (2016).

²² For the Federal Official Gazette, see: <http://www.in.gov.br/consulta> (Accessed: 06 April 2020)

²³ For the Official Gazette of the State of São Paulo website, see: <https://e-diariooficial.com/diario-oficial-do-estado-doe/sao-paulo> (Accessed: 06 April 2020)

²⁴ By the end of the nineteenth century, in Brazil, “the gypsies everywhere became once again popularly viewed as a community of rogues” (DONOVAN, 1992: 47).

²⁵ It refers to the crime of vagrancy (article 295). According to Fotta, “during the first half of the nineteenth century, besides continued accusations of theft, Gypsies in Brazil were targeted as a part of the fight against vadiagem (vagrancy), which became a crime under the new Royal Criminal Code of 1830”.

²⁶ It refers to the spiritism, magic, the use of talismans, the cartomancy (article 157), the healerism (article 158) and vagrancy (article 399) as the types of crimes.

²⁷ The state's duty to promote eugenic education.

²⁸ The ban on the entry of foreigners who were Gypsy.

²⁹ It refers to the crimes of quackery (article 283) and healing (article 284). This Penal Code is still in force.

³⁰ It refers to the crime of predicting the future and explaining dreams. The article 27 was repealed only in 1997.



It is following below other examples of criminal process and official state documents, involving Gypsies, from beginning of the 20th century until 2019³¹:

(...) I recommend to you (police officers), the maximum energy and rigor, to do the legal repression of vagrancy in our municipality (...) repress, arrest or scare vagabonds and Gypsies. (São Paulo, 1908: 2724)

Criminal Appeal n. 7,836 - Capital - Maria Nicolavich - Justice. The appealing defendant was a Gypsy woman, living at the expense of the poor in spirit, two of whom, deceiving and asking, had been taking large sums (...). (São Paulo, 1942: 12)

(...) The Gypsy woman Indalina Ivancovich, also known as “Madame Rosa”, has been deliberately exploring public credulity through palmistry, prediction of the future and similar practices. (São Paulo, 1955: 42)

(...) The Criminal Contravention Police Department opened 86 new cases in the decocorer last March (...) seven cases for exploitation of public credulity (Gypsies, fortune tellers, etc.). (São Paulo, 1960: p. 2)

(...) crimes of larceny in a criminal continuity, against an elderly couple, promising to be able to cure 'the evil that plagued that family', through a ritual (...) the accused do not have a permanent or permanent residence, because they are nomads, belonging to groups of Gypsies. (Santa Catarina, 2019)

As Durkheim (2005) defends, the crime is useful and necessary for society because ends up regulating moral evolution. The regulation of morals in Brazil also used the criminalization of practices associated with Gypsy people, such as palmistry. Until 1997, for example, it was considered criminal, liable to punishment, who practiced palmistry or cartomancy, being, therefore, “moral regulating agent”, because without crime there would be absolute no contestation by individuals of these practices. Today, the opposition of these practices is due to racism itself, which is structural.

On the other hand, the repeal of article 27 of Penal Misdemeanor Law, in 1997, did not extinguish harassment and bullying of Gypsy women living on palmistry or fortune telling, after all, the racism is structural, not a sum of individuals behaviors. The fact that identified as Gypsy man or Gypsy woman,

³¹ The four quotes below are from São Paulo because this state has made documents available since 1890. For State of São Paulo's Official Gazette website, see: <<http://www.imprensaoficial.com.br/>> (Accessed: 13 April 2020)

³² The only criminal case quoted below, from the State of Santa Catarina, was extracted from the JusBrasil website. For Federal Official Gazette website, see: <<http://jusbrasil.com.br/>> (Accessed: 13 April 2020)

by some physical trait, clothing or other characteristic, can expose this person or group to situations of discrimination and violence.

The reports of Gypsy people, captured during the field research in the public hearings, indicate the permanence of practices violent, either from state bureaucratic authorities (such as the police, for example) or, in general, from society. Although there are no more specific laws in Brazil criminalizing identity and Gypsy culture, as occurred in the past, this population or what it represents continues target of social regulation.

The following below it is highlighted some speeches by Gypsy leaders during the Senate's public hearing held, in May 2018, about proposal of creation of Statute of the Gypsy:

Luiz Bruno: I'm here representing the Gypsies of Maranhão (Brazilian province), but there is a lot there prejudice, I wanted to pass to the Special Department for Racial Equality Promotion, you know that the Gypsy lives to buy, sell and exchange, right? But I have an older son (...), he is being approached twice three times by the police there when he goes out to make an exchange, make a for that reason, I wanted to ask for a measure of racial equality, human rights and senator Paulo Paim. His son is starving, he can't go out anymore sell a car, to exchange, to buy, because it's being approached, there are days when is being approached three times a day, and I'm here to declare for all competent authorities in order to see, intervene in that police there, in this Maranhão Justice, from Alto do Parnaíba do Maranhão's city.

Maria Jane: (...) here we are not individual, the fight is one, the pursuit of the police is the same, the lack of healthcare is the same, education is a struggle for all (...) Because the statute is our root, it is our base, it is what we will have to say, 'here it is in our statute', just like there in the Constitution, right? 1988. Do you understand?

Carlos Calon: (...) people still think that we are a chicken and little child thief (...) When we arrived at the municipality to work, sell towels, sell clothes, selling shoes, anyway, any kind of work, the city comes, takes our merchandise, hits us, shames us before our family, our women, our children, our grandchildren (...) I don't even know how to make a retirement for me, I have afraid to go and be arrested, because people look at my face, they look at my document and look at me. I can't laugh, because if I laugh I show my gold teeth, is able to trap me in the middle of the street, on the bus.



The “Justification” of Bill 248/2015 makes no reference to expulsions, racism and state violence, especially that practised by police forces in the face of Gypsy people in Brazil. However, in practically all the speeches of Gypsy leaders, during public hearings held in the National Congress, situations of persecution, racial discrimination and criminalization are reported, whether practised by the State or by society in general. For example, during the public hearing on the *Statute of the Gypsy*, fourteen Gypsy people were present and spoke, of whom seven spoke directly about situations of violence involving police action.

It is for this reason that, in the next topic, a survey of a series of anti-Gypsy colonial laws was selected, between the 16th and 18th centuries, established in Portugal, then directly intervened in the management of Gypsy people in Brazil. This country was a Portuguese colony until 1822. These instruments are taken as a sample of the roots of antigypsyism in Brazilian society and, above all, in state practices.

Colonial laws on Gypsy

Lacking sovereignty over a specific territory, in the sense of having a nation-state, the Gypsies can be considered an ethnic minority in different parts of the world. Especially in the case of Brazil, where there are records of people who are identified and identify themselves as Gypsies since the beginning of Portuguese colonization, with the 15th century onwards being a period marked by the intensification of the diaspora of Gypsies from Western Europe (Fraser, 1992: 14). The first mention of Gypsies in Brazil, banished to overseas colonies by the Crown, is related to Bahia's province and dates from the end of the sixteenth century (Fotta, 2019: 5).

In 1574, there are records that João Torres and Angelina were deported to Brazil as part of the conviction for being Gypsies. Although they are always cited as the first Gypsy to enter Brazil, as reproduced in the Brazilian primers on public policy, academic texts and in most of the speeches that occurred during public hearings and other events on the “Gypsies rights”, Franz Moonen (2011) ponders that it is not really known whether they boarded, survived the trip and arrived at their destination. Beyond this, Fotta defends that “the total number of individuals exiled as Gypsies to Brazil is impossible to estimate, as many of the ship registers have since been lost” (2019: 11).

According to Angus Fraser (1992: 14), since the 15th century the word *vigano*, Gypsy in Portuguese, which derives from the Spanish word *gitano*, has been used as an insult. There are claims that the term Gypsy was “first recorded in Portuguese in *A farsa das viganas*, a theatre text by Gil Vicente” (Teixeira, 2008: 9), in 1521. In this theatrical text, the figure of the Gypsy is used as a new social type in the kingdom (in 1526), not only to portray the Gypsies, but to parodically approach the tactics of nobility to remain in power, with

endogenous marriages, in a cultural bond closed by inbreeding and political bargaining (Noranha, 2019: 1).

Pieroni affirms that, in Portugal, “one of the first measures taken, in order to resolve the social discomfort caused by the Gypsies, was decreed by D. João III, in the year 1535. (...) foreign Gypsies were expelled, nationals forbidden to wear their use and to dedicate themselves to idleness and vagrancy” (1991: 220). This author adds that it was “only at the end of the 17th century that we can see widespread exile of Gypsies to Brazil” (1991: 231), however, in both two places, “despite the imperative tone and the severity of the laws, the judicial measures have not succeeded in making Gypsies disappear as their intention had been since the 1537 charter” (1991: 237).

In this study, the Gypsy question in Brazil is related to the concept of coloniality, thought of by Quijano (2002) as something that transcends the particularities of historical colonialism and does not disappear with independence or decolonization. This theoretical proposal is an attempt to understand modernity as a process intrinsically linked to the colonial experience. This difference between coloniality and colonialism thus makes it possible to identify and explain the permanences in colonial forms of domination, such as race, even after the end of colonial administrations.

Fotta highlights that, with the exception of the first half of the eighteenth century, between the late sixteenth and late nineteenth centuries, “the central authorities were ambivalent about Gypsies in Brazil. They were largely officially ignored at all levels of power. Nevertheless, a longer-term look reveals not a coherent policy as such, but sporadic attempts to discipline them” (2019: 4).

The decolonial perspective has explained that through the coloniality of power, the “other” becomes interiorised and racialised in the modern era. In accordance with Vrabiescu (2013), the myth of the “nomad Gypsy”, that started in 13th-14th centuries, is a way of internalizing into modernity the Gypsy as the “other”, the nomadism is conferred as a socially unproductive lifestyle, and, the same time, is used to question the condition of the Gypsy as a people with their own culture because the principle of territorial belonging is taken as the nucleus of the collective identity.

Garcés affirms that “the anti-Gypsy/anti-Roma as a product of the modernity and dimension of the coloniality of power practised in the interior of Europe, is based on the very emergence of modern nation-states” (2016: 228), taking into account the reality of Spain. This author adds that it is possible to observe how the emerging state - nation, through the laws/sanctions, accumulated its power within its borders, negating and many time annihilating the Gypsy difference. “With this anti-Gypsy legislation, it was intended to definitely oblige the Gypsy communities to connect to the land and use their hard work to build the state” (2016: 234).



Annibal Quijano defends that the history of colonial power had two decisive implications for the somewhat colonized peoples. A large number of different peoples, “each with its own history, language, discoveries and cultural products, memory and identity were stripped of their own unique historical identities”. The second implication is perhaps less “obvious, but no less decisive: their new racial identity, colonial and negative, implied the divestment of their place in the history of human cultural production. From then on, they would be nothing more than inferior races, capable only of producing lower crops” (2002:9).

Although Quijano (2005) emphasizes the *Indigenous* or *peoples forcibly brought from the future Africa as slaves*, here it is argued that the Gypsies were also and still are inserted in the colonial forms of domination, a process that is central to the constitution of the nation-state, the justice system and the subjectivities established as standard in the contemporaneity. In Portugal, in the sixteenth century, the category of Ciganos emerges from a variety of sources: “foreign traders sometimes accused of fraudulent behaviour; vagrants (*vadios*) without stable employment; or masterless men who gained a living through negotiation or theft (...) The term “Gypsy” starts to denote specific habits and a way of life” (Fotta, 2019: 8).

When taking into account the information obtained in the field research, through the participant observation of the authors on the process of Bill 248/2015, it is possible to note that episodes or narratives of expulsions, exterminations, killings, defamation, slander or insults involving the Gypsies, due to their ethnic-racial condition, did not remain in the past. They are a reality. For this reason, it is possible to affirm, in agreement with Marilena Chauí, that it is a mistake to suppose that authoritarianism is “a political phenomenon that periodically affects the State, because, in fact, Brazilian society is authoritarian and that from it come the diverse manifestations of political authoritarianism” (2000: 94). On the other hand, the mobilisation of the Gypsy question by the Brazilian State in recent decades, linked to the rhetoric of social inclusion and of a multicultural country, contributes to the promotion of what Chauí calls the *founding myth*.

Today, in Brazil, there is the pretension to institute a “Law” for the Gypsies; however, this proposal is not unprecedented, only its humanitarian purpose. It should not be forgotten that for centuries Colonial Laws on the Gypsy have been in force, as the historical records of laws and ordinances issued in the Kingdom of Portugal call it. Between the 16th and 18th centuries, dozens of laws, decrees, charters and trades were produced in Portugal with the intention of administering, controlling and exterminating the Gypsies and the way of life-related to them, legal instruments that directly or indirectly influenced Brazilian reality.

Table 2. Some examples of laws from the colonial period (Portugal-Brazil) specifically aimed at “Gypsies” peoples^{33 34}

King’s charter of 13 March 1526	It determines that no Gypsies enter the Kingdom.
Law of 28 August 1592	It determines the death penalty, imprisonment and degrading to Gypsies man, with penalties specito Gypsies women.
King’s charter of 07 January 1606	It determines the execution of the Gypsies who are found to be “whips” and “galleys”, and the women whips only.
King’s charter of 24 October 1647 and the King’s charter of 05 february 1649	It determines the right places to live for the Gypsies who remained in the Kingdom of Portugal, prohibiting them from using their contraptions, trading and shopping, and establishing various other provisions in this regard, adjectivating these people as “slut”.
Decree of 30 June 1648	It prohibited giving or renting houses to Gypsy.
Decree of 20 September 1649	It determines the eviction of Gypsy.
Decree of 27 August 1686	It provides for the enforcement of the Expulsion of Gypsy and Travellers to Africa and Maranhão.
Law of 10 November 1708	Attributing practices of “theft, deception and many other offences”, prohibits the “use of trage, tongue or Girigonça” and the practice of “buenas dichas”. It determines imprisonment of Gypsy men and degradation of Gypsies women who do not conform to established standards of living.
King’s charter of 20 September 1760	It determines that Gypsies degrading to Brazil are occupied with duties, in case men serve in the army, and in case Gypsy women are collected in houses.
Execution of 8 February 1761	It determines to enforce the law on Gypsy in Brazil.
Latter of notification of 12 July 1761	It provides for the enforcement of the law on Gypsy in Brazil, referring to the prohibition of Gypsy from selling horses or slaves as provided for in the Royal Decree of 20 September 1760.

According to Portuguese researcher Elisa Costa, it is possible to argue that the punishments for the Gypsy began at an early stage. The author ponders that

³³ For informations about Portuguese colonial laws, see: <http://www.governodosoutros.ics.ul.pt/index.php?menu=inicio> (Accessed: 16 February 2020).

³⁴ It is possible to quote other legal instruments aimed at Gypsy people, that were not mentioned in table 2: Law XXIV of 26 November 1538; Ordinations and Laws of Portugal’s Kingdom (1603); King’s charter of 13 September 1613; Royal charter of 28 March 1618; Royal charter of 30 June 1629; Decree of 28 February 1718; Decree of 17 July 1745; Royal charter of 10 March 1755. For more information on anti-Gypsy laws, see the work “Vadios e ciganos, heréticos e bruxas: os degredados no Brasil-colônia” (part 3.2), by Gilberto Pieroni.



one is faced with a people of oral culture, and that there are no documents written by the Gypsy themselves, so the colonial legislation produced over time in Portugal, similar to other normative systems on the European continent, is the only source with systematic character available. It is noticeable that most of the “faults attributed to them are merely forms of expression of their culture and traditions, the perpetuation of which had nothing to do (as is still the case today) with the geographical area in which they were living” (Costa, 2005: 154).

By using *degredados* (convict exiles), it was possible to populate the colonies in a relatively controlled manner and, at the same time, make it clear to those who remained in Portugal what was expected of the Crown’s subjects in the early modern state. Within a century of the first official mention of Gypsies in Portugal, *degredos* became part of an attempt to expel them from the realm and discipline those categorized as Gypsies or as leading Gypsy-like lives. (Fotta, 2019: 9)

Pironi defends that “the exile allowed the old Metropolis to get rid of its population contingent considered useless and dangerous and at the same time it offered the sinful soul the possibility to cleanse itself from its sins” (1993: 127).

Although official Portuguese documents from the 16th century ordered Gypsy to leave the country, they had nowhere to run, as Portugal only has land borders with Spain, where they were also persecuted. For this reason, from 1649 onwards, it was intensified orders for the deportation of Gypsy to the overseas colonies, such as Brazil, however, it seems that these measures were ineffective, because, in 1694, another document issued by the king informs us “that the Gypsies born in this Kingdom continue in their uses and offences, without taking on any kind of life or craft to support themselves, living scratched up and together in gangs, bringing the same habits and costumes as the Gypsies, without having the right domicile” (Coelho, 1995: 215).

Bill M. Donovan affirms that “perhaps the most severe repression has occurred in Portugal, where the Crown has systematically tried to encircle and ban Gypsy families for foreign colonies in Africa and America” (1992: 33). This author argues that the social and economic conditions of colonial Brazil changed the Portuguese categorizations of Gypsies as social deviants, the social boundaries were fundamentally changed in the colony, as African slaves displaced the Gypsies as the most marginalized and most dangerous stratum of Luso-Brazilian society.

Fotta affirms that the sources reviewed so far deal “with the criminalization and disciplining of Gypsies as representatives of the unruly *povo* (a people), of undesirable lifestyles and strange customs, all of which could be eliminated with their assimilation, through employment, settlement, and breaking up the

communities” (2019: 14). On the other hand, this author defends that a closer look at Gypsies day-to-day interactions, during colonial times, however, reveals a more positive, although ambiguous, insertion into the Brazilian social fabric.

Despite their marginal status, Brazilian *ciganos* remained in a better situation than European gypsies who continued to face ethnic oppression. The social tension created by slavery created the social space for Brazilian *ciganos* to reach a permanent, albeit tenuous, accommodation with the rest of the white community by the time of independence. (Donovan, 1992: 47)

The legal and political construction of the Gypsy condition (status) in Brazil has obviously been and still is influenced by social representations built from colonial times. The delimitation of the identity of the coloniser, being civilised, sedentary, associated with the white condition, needed to be constructed in opposition to other identities, treated as naturally inferior, “the codification of the differences between conquerors and conquered in the idea of race, that is, a supposedly distinct biological structure that placed some in a natural situation of inferiority in relation to others” (Quijano, 2005: 117).

According to Quijano (2005), in America, the idea of race was a way of bestowing legitimacy to the relations of domination imposed by conquest. There has not always existed Europe or America. These are symbolic categories, created and adopted from the 15th century. A Europe's constitution as a new identity occurred after America and the expansion of the European colonialism which led to the Eurocentric perspective of the knowledge and with it the theoretical elaboration of the idea of *race* as naturalization of these colonial relations of domination between Europeans and non-Europeans. “In this way, the race has become the first fundamental criterion for the distribution of the world population in the levels, places and roles in the power structure of the new society. In other words, in the basic universal social classification of the world population” (Quijano, 2005).

The colonization of territories now known as America or Africa, from the 15th century, did not only mean the invasion of lands and their economic exploitation. For human history, Eurocentric colonialism represents the greatest process of torture, genocide and ethnocide that has occurred in the world; it has affected, in a different way, the most diverse territories and population groups subjugated and racially classified as inferior (Indigenous, Afro-descendants, Gypsies, etc.), as well as differently men and women. There are different laws produced, from the 16th century onwards, which provided for different punishments and treatment of Gypsy men and women.

(...) the “gypsies wife” of the “gypsies man” who are imprisoned in the galleys that are in the port of this city [Lisbon], or in any other of this Kingdom in which they are, will either come out of it within



the aforementioned four months, or will come to the Kingdom in the manner stated above, leaving the so-called habit and language of the gypsies: and by not doing so they will be publicly flogged with bark and preaching, and degenerated forever for the Brazil. (Simões, 1990)³⁵

The above quotation records that Gypsies women were specifically targeted in the Law of 28 August 1592, which provided for punishments for their husbands serving a prison sentence. In other words, they were punished simply for being women and for being Gypsy. In another normative document issued by Portugal in 1708, the then king once again ordered Gypsy men to be imprisoned in galleys and Gypsy women to be exiled to Brazil, both for ten years (Freitas, 1819).

The Colonial Laws did not only punish Gypsy people who did not correct their way of life, a direct object of criminalisation, but also covered “all those who did not join” the “Gypsies”, that is, “other men, and women of bad life, who join them, faction with them scandalous life” (Costa, 2005: 156). According to Elisa Costa, the aggravation of the sentences, which was happening from the 16th century onwards, had a direct relationship with their condition of unsubdued.

If it is possible to state that there has always been hierarchy and gender relations as relations of power and unequal prestige, “with state colonial intervention and the imposition of order of coloniality / modernity, this oppressive distance worsens and amplifies. There is a mutation under the mantle of apparent continuity” (Segato, 2003: 25). A rigid gender normativity, focused on reproduction and domesticity and made as ideal civilization against the evils of a deviant interaction in terms of gender and sexuality, as was sought with colonial laws targeting Gypsy women, is part of the racist arsenal of coloniality and, once imposed as an ideal and parameter of relations, modifies the conformations of the forms of relations between the colonized, strengthening structures and gender hierarchies that had other dynamics.

Therefore, it is not possible to measure exactly to what extent the various Laws, Decrees, Royals Charters, specifically targeting the Gypsy population, norms enacted over the centuries, which targeted both men and women, have been effective. Laws provided for separate measures for Gypsy men and women. Although it was not explicit in the texts of Laws and Royals Charter, the aim of this intense legislative production was to separate the Gypsies families, as well as to criminalise, change and extinguish the behaviour associated with the Gypsies in Brazil, as well as in the other territories colonised by Portugal. Not only the Gypsy, but those people who united or manifested

³⁵ Maria Alzira Proença Simões (Ed.), *Catálogo dos impressos de tipografia portuguesa do século XVI*, (1990)

behavioural traits Gypsy were also targets of social control in the laws of the colonial period. Colonial policies on Gypsy populations were fundamental to settlement and, above all, have an effect on the ongoing process of (re)founding Brazil as a nation-state.

Fotta defends that “the colonial and post-colonial context underlies similarities and differences in treatment and is central to understanding the position of Gypsies in Brazil” (2019: 3), that is, allows us to reflect about the construction of the legal status of gypsies. The powers relations in Brazil are crossed by racism and antigypsyism, which, for being structural, do not need express laws, as occurred during the colonial period. “The end of Brazil’s colonial status did not mean the end of colonial relations” (Fotta, 2019: 3).

The concept of “coloniality” is an interpretive key in this article to reflect on how the permanence of discriminatory and racist practices against the Gypsy population, today, has motivated the attempt to include the *Statute of the Gypsy*, as an instrument for the affirmation of human rights in Brazil. Therefore, the “Gypsy question” has been appropriated by Brazilian public authorities, nowadays, being a way of updating the permanent process of founding Brazil, as a Nation-State, which is guided by the ideology of the harmonious mixture of races and ethnicity.

The role of the process of affirming of Gypsy rights in Brazil

It is important to take into account the role that antigypsyism and its relationship with colonial settlements play on the frontiers of human rights in the contemporary world. There is not only one standard of human rights subject. It is not possible to continue to assign responsibility to a single collective subject of social emancipation, as has been stated by the proletariat in orthodox Marxist doctrine. The struggles, being directed against different modes of exploitation, subordination and oppression, involve different collective subjects diverse identities that constitute the subjects exposed to relations of domination and exclusion, with different forms of control (Carballido, 2015), as the Gypsies.

The proposition of the *Statute of the Gypsy* in Brazil occurs because this ethnic minority has experienced episodes of violence that are not limited to the past. Racial discrimination and antigypsyism are manifest in the present. The Bill 248/2015 may represent another instrument at the service of Human Rights.

Human rights is not something that falls from the sky or comes at birth like other factors in a biological human nature (the genetic code, for example). Human rights are a socio-historical production: they are generated within the long process that leads to modern societies, they obtain, in a phase of consolidation of these societies, their philosophical/ideological and bourgeois political legitimization and they are subsequently extended, as a cultural



sensibility, as a vindictive struggle to social groups and peoples/ethnicities diversely discriminated against by the capitalist forms of modern societies. (Gallardo, 2010: 39)

Faced with the continuities in colonial forms of domination, such as the concept of coloniality proposes, it is posed the following question: is it possible that the positivation of the human rights reverse the consequences of years of colonial proceedings? Or, in Segato's words, "after the long process of European colonisation, the establishment of the pattern of coloniality and the further deepening of the modern order under the leadership of the republics - many of them as cruel or crueler than the overseas coloniser himself could now suddenly withdraw?" (Segato, 2011: 9). The proposal of a *Statute of the Gypsy* involves a dialectic that is decisive in the field of human rights, its existence deriving from a situation of violation. There would be no human rights if it were not violated. Just as policies for the promotion of racial equality exist because racism operates in the contemporary world, it did not end with the overcoming of colonialism, with the affirmation of human rights treaties or with the emergence of the Welfare State.

The creation of the *Statute of the Gypsy*, as proposed by Bill 248/2015, presents an opposite perspective to the set of laws produced in the period colonial. This parliamentary proposal, as well as other normative provisions inserted in the Brazilian legal system, since 2002, seek to encourage, organize and implement pro-Gypsy public policies for humanitarian purposes. Is possible than a normative instrument, by itself, changing a reality? In other words, can only the process of affirming human rights reverse the social exclusion of Gypsies people in Brazil, after centuries persecutions and discrimination, which have not ceased? Can the people in society, in general, erase the social imagery representations built and reframed over time with the Gypsies?

The tools of law and the system of justice are not effective to end the racism; it is have to admit that even the justice system solidifies and hidden the discrimination. It is for this reason that Woodiwiss (2006) argues that the pursuit purely legalistic cannot be sufficient to guarantee global respect for human rights, because the laws are social constructions and the subaltern groups themselves (such as gypsies) face structural impediments to become participants in their construction.

The Bill 248/2015, as a bill of rights, as well as other legal devices, was mobilized, as instruments of *moral correction*, *historical reparation* and, at the same time, *government intervention* in the face of the diverse realities that Gypsies people endure, in different degrees and forms of exclusion, such as the high rate of illiteracy, families living in precarious conditions of housing or difficulty accessing the public health system. *Moral correction*, in this case, consists of combating racial discrimination and antigypsyism through of the process of

affirming rights. *Historical reparation* because it is believed that, by means of Human Rights, is possible to reverse the effects of centuries of anti-Gypsy colonial policies. And, for finally, *government intervention* as it is established with the need for actions, policies public of all federative entities to promote the social inclusion of the Gypsies.

Regarding the reality of Gypsy people, Nidhi Trehan proposes the following reflection: “can human rights discourses and organizations still be empowering and transformative to the Gypsies?” (2009: 227). The Nidhi Trehan's thesis provides conclusive evidence on the status quo of die hailed neoliberal approaches and triumphs in “Roma rights” as being complicit in the reproduction of power asymmetries.

As explained in the previous topic, from the 16th century onwards, a series of laws were prepared by the Kingdom of Portugal, as well as in other countries of the continent European level in order to control, punish and modify the forms of existence of the people identified as Gypsies. Norms, as instruments of external social coercion, which, basically criminalized the culture, behaviours and practices associated with Gypsies, also in the territory now known as Brazil, because, for more than 300 years, Portuguese colony. These laws were part of the colonization project in Brazil, especially, in the aspect of its settlement, taking into account the imposition of exile. However, the intensification of anti-Gypsy policies coincides with the context of profound transformations in the world, in terms of customs, in politics, in the globalization of economic rationality and cultural standards.

According to Nobert Elias (1994: 21), it was in the 16th century onwards that developed the concept of civilization, civility, within the perspective of man civilized as opposed to uncivilized, a context that is also related to an increase in “the pressure that people exert on each other”, social control becomes more imperative.

Although Nobert Elias traces the history of a term civilization and the senses that surround it, its theorizing about the civilizing process demands other contextualizations. It is important to remember that the “idea of race, in its modern sense, does not has a known history before America” (Quijano, 1999: 117), whose colonization was intensifying, in fact, from the 16th century. Race and racial identity were established instruments of basic social classification of the population, whether from America (and then Asia, Africa and Oceania), but also within Europe, where, for example, different peoples came to be reduced to a single identity: “Gitanos” (Spain), “Ciganos” (Portugal), “Gypsies” (England) etc.

In this sense, antigypsyism, being a Gypsy as *everything that we not must be*, the opposite of civilized, an idea that can still be perceived in Brazilian society, as well as in other parts of the world, is part of the civilizing process, which, for



long periods, especially between the 16th and 18th centuries, needed to mobilize instruments of social regulation, through external coercion, as the law, to combat the relations of powers, behaviours and knowledge associated with Gypsy people. The majoritarian society sought not only to criminalize Gypsy existence, but also to naturalize in society habits and customs opposed to associates or practised by the Gypsies.

Is it possible to consider that the Law existed, in the modern sense (abstract norms and generics), during the colonial period, taking into account the set of anti-Gypsy norms that were produced? For Pachukanis, previously the liberal and bourgeois revolutions did not there was a border between law as an objective norm and law as a justification, “consequently the activity of the judge and the activity of the legislator end up being confused” (1998: 24).

In this sense, as was explained in the previous topic, the Portuguese king issued laws, between the 16th and 18th centuries, which same time, rated to Gypsy people of “slut people” and attributed practices as “theft, mistakes and many other crimes” as inherent in their nature, criminalized their culture, ordering penalties of “gáles” (forced labour), “whips” and / or “exile”³⁶. In other words, they were accused, judged, punished, contributing to crystallize social representations about Gypsies in the same normative instrument. The crime, therefore, was *being a Gypsy or live like a Gypsy*.

As it has been observed in the relations of Gypsies in the majority society and how it has been reported by the Gypsy informants themselves in the field research, when the present study refers to the term coloniality or colonial permanences, it is argued that the mental category *race*, which also classifies Gypsy, it is also used to define the patterns of power, subjectivity and knowledge.

Over time, the specific laws anti-Gypsy have become increasingly less necessary. The representations and values that began to be built in the 16th century, which attributed being a Gypsy a form of sociability and subjectivity deviant, errant, contrary to what is expected of civilized people, the man medium or the ideal type, these institutions become incorporated in the modern society.

Although the role of the police is recurrent in the statements above, violence in the face of Gypsy populations, for example, is not an exclusive practice of this institution and, also, it does not need to be legitimized based on specific laws. On the contrary, it stems from the very permanence and resignification of the mental category race that generates antigypsyism, as one of the expressions of racism, linked to other social markers, such as class and genre.

³⁶ See colonials laws, available at: <http://www.governodosoutros.ics.ul.pt/index.php?menu=inicio> (Accessed: 16 February 2020)

Valeriu Nicolae, Spanish Gypsy activist, understands “antigypsyism” as a specific type of racist ideology, an ideology of racial superiority, which is interconnected with other types of racism. Antigypsyism itself is a complex social phenomenon that manifests itself through violence, hate speech, exploitation and discrimination in its most visible form.

Prejudice against Gypsies clearly goes beyond the racist stereotypes that associate with negative traits and behaviours. Dehumanization is your point central. Gypsies are seen as less than human; that are less than human beings, are perceived as beings who have no moral right to enjoy human rights equal to those of the rest of the population (Nicolae, 2016: 79).

The racism, motivated by the ethnic factor, in the case of Gypsies people, transcends the scope of individual action, is inserted in the dimension of power as a constitutive element of race relations, “but not only the power of one individual of one race over another but from one group over another, something possible when there is direct or indirect control of certain groups on the institutional apparatus” (Almeida, 2018: 36).

The antigypsyism is an expression of racism, which is structural, since it is political relations, being neither a social pathology nor an institutional breakdown. What initially started as an obsession with kings, ruling classes in their respective territories, antigypsyism has spread across society, and became an assumption that structured and continues to guide social practices and relations powers, especially in the scope of the bodies and subjects that operate the monopoly of violence, state or not, by legal mechanisms or not.

It is possible to affirm that there is a difficulty in the applicability of the crime of racism³⁷, in the face of episodes involving antigypsyism, taking into consideration a scientific study that analyzed of four specific cases of complaints of racism against Gypsy people that were filed by the investigating institutions (Silva; Lima Filho, 2018: 526). Furthermore, betting exclusively on the punishment of racist people does not promote “real change, much more has to be done at the community level through self-empowerment of Gypsy, as opposed to a focus on changing the attitudes of “whites Europeans” which has been the approach thus far of many “multicultural-type” European programs”, as defends Nidhi Trehan (2009: 228).

The structuring and strengthening racism in Brazilian society did not demand formal and explicit institutions, like apartheid in South Africa, or as the system of racial segregation in United State of America.

The Brazilian racism operated almost always, after slavery, through impoverishment mechanisms. (...) In general, Brazilian racism,

³⁷ The Brazilian legal system provides for the crime of racism through Law No. 7,437/1985 (first article).



when publicly expressed, it is through a discourse on cultural inferiority (...) Thus, the major problem for combating racism in Brazil consists in the eminence of its invisibility, since it is repeatedly denied and confused with forms of class discrimination (Guimarães, 1999: 109).

The invisibility³⁸ of the Gypsy existence in Brazil makes it difficult recognition of antigypsyism as a social problem. There are particularities in the antigypsyism, in the same way as in relation to the racism faced by the population black, as well as the racism experienced by indigenous populations. However, the mechanism impoverishment is common to all these populations for structuring racism Brazilian.

In addition to the economic and social conditions of the populations experiencing the racism, other mechanisms were also mobilized as a way to strengthen the discourse “cultural inferiority” or the “low cultural level of their traditions”. It refers here to legal instruments, especially those of a criminal nature, which are extremely effective in the search for social control of ethnic and racial minorities.

It is following below the testimony given by another Gypsy leadership, Mr Wanderley da Rocha, to TV Senado, for the television program “Gypsy culture and the struggle for the recognition of rights”, published on April 23, 2018 on the Youtube platform:

(...) the society in general, because of racism and prejudice, does not give us an opportunity even when we work with our sales, our ladies, Gypsy women, don't can sell the dishcloth dressed typically we have no income. If she hides your culture and go out there selling it, it sells more, simply lack of interest state of recognizing a nation, of knowing that we are voters because we taxpayer, taxpayer.³⁹

Mr Wanderley (president of ANEC, the organization that proposed the creation of a *Statute of the Gypsy*) defends than, before the proposed of the Bill 248/2015, “everything for us was invisible and violated human rights in all as areas. We got very involved in the 21st century in the face of so many laws that ensure racial rights for the entire nation”⁴⁰.

Anyway, for the Gypsy representations that appear throughout the legislative procedure of Bill 248/2015, the state recognition of his status as a Gypsy, as the subject of human rights, is a permanent struggle, however it is

³⁸ It is important to note that during the public hearing on the *Statute of the Gypsy*, nineteen mentions were made to the words “invisibility” or “invisible” to refer to the condition of Gypsy in Brazil. Godoy defends that “invisibility” is the keyword to understand Gypsy in Brazilian society (2016: 9).

³⁹ See Mr Wanderley speech, available at: <https://www.youtube.com/watch?v=ePSoi40S5Gw&t=8s> (Accessed: 16 February 2020).

⁴⁰ *Ibid.*

not an end in itself. It is another necessary means for Gypsies access to land, health, housing, education, job, as they say, all the time, without fear of suffering persecution or violence for being Gypsy. Mr Wanderley affirms than “the rights of the Gypsy people are violated. We need more security, closer to politics. The National Congress is to tell the world that we were born for the state”⁴¹. In the face of these power relations, there is inevitably resistance. “It exists as much as it does be there where the power is; it is, therefore, like it, studying and integrating to strategies global” (Foucault, 2012: 244).

The demand for a specific legal framework is one of the tactics mobilised by the actors, Gypsy or not, in the processes of resistance and struggles for rights. Although the speeches, statements and dynamics of the legislative process (Bill 248/2015) activate the memory of suffering, many Gypsy maintain this strategy in order not to make it present. The Human Rights, which make the discourse of protection for Gypsy viable, are processes of struggle and resistance (Flores, 2009) The possibility of accessing other forms of life, being Gypsy as a political action, is a search for the construction and recognition of rights that is triggered by the Gypsy condition itself. What makes the resistance for Gypsiness is the construction of processes of struggle, and, among these battles is the processing of the *Statute of the Gypsy*.

Conclusion

The political and legal construction of the condition of the Gypsy in Brazil takes place in the midst of colonial permanences, renewed from new bases in social and also state practices - which re-update racism and antigypsyism. In the colonial context, anti-Gypsy laws and segregation policies have sought to criminalise a number of practices associated with Gypsies. The narratives of episodes of prejudice, persecution, violence and exclusion permeate the speeches and speeches manifested throughout the processing of the Bill 248/2015, in public hearings, as well as in TV Senado reports.

On the other hand, the presence of Gypsies families in almost all Brazilians states confirms that there was a permanent process of resistance, that the anti-Gypsy policies of the colonial period were not fully effective, but certainly produced determinant effects on the delimitation of identities and representations on Gypsies people.

After independence or with the advent of liberal-republican ideals in Brazil, have not ceased the anti-Gypsy policies, on the contrary, they have reinvented themselves, from new clothing, as perceived in journalistic records and scientific works about the Gypsies from 19th century onward.

⁴¹ See Mr. Wanderley’s speech in public hearing on bill 248/2015, available at:<https://www.youtube.com/watch?v=SCzeao1ZUn4&t=4337s> (Accessed: 16 February 2020)



Therefore, decolonial studies intertwined with research on the Gypsy question are fundamental to rethinking the boundaries of human rights, as well as the mechanisms of resistance led by the different subalternised peoples in contemporary society. The struggles of the Gypsies people for the right of existence cross centuries, take place in different parts of the world, like in Brazil, as highlighted in this study. It is important that these experiences of Gypsy resistance inspire other struggles, but also that they achieve resilience in line with the new challenges imposed by the capitalist system and neoliberalism, adding to other confrontations and agendas that seek social justice.

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