

Cultural environment: Legal Protection of Intangible Cultural Heritage in Amazonas and Popular Participation.

Maria Gláucia Barbosa Soares¹, Lourivaldo da Silva Santos², Leila Almeida de Sousa³, José Heder Benatti⁴, Heleny Ponciano Alves⁵, Elba Vieira Mustafa⁶

^{1,2,3,4} Federal University of Pará, BELÉM/PA, Brazil.

^{5,6} Institute of Technology and Education of the Amazon, MANAUS/AM, Brazil

Abstract— This article presents a critical approach on the legal instruments for the protection of Brazilian cultural heritage, intangible assets in Amazonas. It develops considerations about the importance of popular participation and awareness as a direct participant in this process of safeguarding the intangible assets (beliefs, identity, memory, forms of manifestation and culture of a people) for present and future generations. This theoretical discussion goes through the brief analysis of the normativity, of the actors involved in this process, of the effective search to ensure that intangible assets are perpetuated.

Keywords— cultural heritage, legal instruments, immaterial goods, popular participation.

I. INTRODUCTION

The historical memory of a people is revealed in a variety of ways, not only material but immaterial (or intangible), such as beliefs, dances, knowledge, stories and other, passed on from generation to generation that constitute the Cultural Historical Patrimony.

The research intends to analyze the legal instruments available for protection of intangible assets in the State of Amazonas and the importance of the accessibility of popular participation in policies aimed at ensuring that these intangible cultural assets have their perennial present and future generations.

This discussion is important because it refers us to the reflections that correlate with the theoretical roots of the environmental movements that do not have a historical framework, but in the early days they related environmental issues to the local, through the mystic (protection of forests), to observation and (empirical). On the other hand, already in an anthropocentric view advocated by Keith Thomas in his work, *Man and the Natural World: Changes in Attitude Regarding Plants and Animals*, reinforces that the relationships of humanity are intrinsically linked with the natural world. The unitary (holistic) and holistic view of the environment aggregates natural, sociocultural, and economic elements.

It analyzes the mechanisms available to safeguard registered intangible assets against the risk that the

present and future generations reached by the models of development and globalization may forget their roots, neglecting their own meanings that made up the essence of their ancestors. The way of life, the expressions, the identity, the memory of different groups, the manifestations of a people, which are references and are part of Brazilian and local society, must be perpetuated, in order to be lost.

Not so distant, immaterial or intangible assets in Brazil, began to have relevance and legal protection from the Federal Constitution of 1988, before focusing on the material assets to compose the Cultural Historical Patrimony. With the scope of legal protection for intangible goods, instruments provided for in legislation were essential to ensure the safeguarding of the cultural environment and the full exercise of citizenship.

The analysis will be developed from the bibliographical review under the bias of the critical reasoning of the researcher. In this way the research is of scientific, personal and social relevance.

II. CULTURAL ENVIRONMENT - JURIDICAL NATURE AND HOLISTIC VISION

The perception of the inseparability of the natural, artificial and cultural elements that compose the environment in the pursuit of the sound quality of sight finds shelter in the unitary (integrative) and holistic

(broad) conception. In this sense, Pellegrini Filho (1993, page 30) argues that the ecological and biological aspects must be conjugated with the historical patrimony "the human right to dispose of quality of life, with the right to land, decent housing, health, education, maintenance and preservation of their culture. "

From the prism of comprehensiveness and interrelationship of these elements indispensable to the dignity of the human person, thus carrying out "a more comprehensive environmental analysis the socio - cultural and economic factors of the environment, in fact it is difficult and undesirable to try to separate the physical and socio - economic components of the environment "(Lickorish and Jenkins, 2000, p.117).

One cannot forget that the conception of collective memory, aspects of history, the multiple cultural dimensions sedimented in the past is closely linked to what we call "cultural patrimony", recognized as a legal good that goes beyond, being elevated to the condition of interest.

The protection of cultural heritage as a legal asset is contextualized in the social cries and challenges imposed by the constant situation of existential risk of this patrimony that reflects the culture itself, past and memory of the people. In this way, the Right reestablishes the balance and security in the socio-cultural relations, contemplating the values and the principles of the Democratic State of Right.

In the lessons of Cecilia Londres:

"This extension of the notion of cultural heritage may therefore be considered as one of the effects of so-called" globalization ", insofar as having aspects of its culture, perhaps hitherto considered by external looks such as coarse, primitive or exotic, recognized as World Heritage, contributes to the insertion of a country or social group in the international community, with benefits, not only political but also economic. "

As we can see, the transformations and social changes resulting from historical and cultural dynamism served as intangible elements for the new definition of cultural heritage, its concept and its tutelage. In this sense, Funari and Pelegrini (2006, pp. 24-25):

[...] societies have increasingly been interpreted as composed of various social groups, themselves fluid and constantly changing, with possibly conflicting interests. Therefore, the concepts of environment and culture have changed. The environment and culture were often valued for their unique and exceptional character. With the awakening to the importance of diversity, it no longer makes sense to value only, and in isolation, the most beautiful, the most precious or the rarest. On the contrary,

the notion of preservation began to incorporate a set of goods that are repeated, which are in some sense common, but without which the exceptional can not exist. It is in this context that the notion of immateriality of the patrimony was developed.

Guided by the constitutional relevance, the Cultural Environment came to have legal protection established in article 216 of the Brazilian Federal Constitution of 1988, being considered material and immaterial assets, taken individually or together, bearers of reference to identity, action, to the memory of the different formative groups of Brazilian society, including forms of expression, ways of creating, doing and living; scientific, artistic and technological creations; the works, objects, documents, buildings and other spaces destined to the artistic-cultural manifestations; urban complexes and sites of historical, scenic, artistic, archaeological, paleontological, ecological and scientific value.

The Charter of 1988, when it attributed to the public power, to the society itself the promotion and protection of cultural heritage is inserting as "environmental good diffuse". Corroborating with this understanding, Marcos Paulo de Souza Miranda understands in his work Tutorship of the Brazilian cultural heritage:

"The protection of cultural heritage is undoubtedly part of the concept of a third generation fundamental right, and it is undisputed that the protection of this right satisfies humanity as a whole (diffuse right), insofar as it preserves its memory and its values, ensuring their transmission to future generations ". (MIRANDA 2006, p.16).

It is important to emphasize that the recognition of a cultural heritage and its preservation is not exclusive to the administrative function of the State and can also be exercised by the legislature, through appropriate laws and by the judiciary, ex officio or by provocation.

III. REGISTRY AS AN INSTRUMENT OF PROTECTION TO THE BRAZILIAN MATERIAL CULTURAL HERITAGE

The Brazilian Law evolved to contemplate other cultural goods, the immaterial ones, that dispensed with other legal tutelages to the popular cultures, to the knowledge and knowledge, practices and places. Folkloric movements, national and international articulations coexisted to emphasize this view of appreciation of the valorization of popular cultures, in that bias the Public Power was broadening its conception of cultural heritage, of the plural character of identities.

Still under the aegis of Decree Law no. 25/1937, even if the legislation did not change. There was a milestone in

this evolution of treatment of the legal concept of cultural heritage when in 1980, the Institute of National Historical and Artistic Heritage - IPHAN, by decision of its Consultative Council fell in Bahia, a terreiro of candomblé, in a more evolved view for translating the breadth of what constitutes Brazilian cultural heritage, decades later, of the aforementioned legislation, going against legal literality, but impressing upon that immovable property exceptional historical and artistic value.

Thus, a political decision representative of paradigm change in the IPHAN, which contributed to the evolution of the Law on the aggregate matter, the various demands of the different groups and movements experienced in the 1940s that defended the protection of the ways of creating, living and doing, forms of expression and celebrations, places, spaces, such as Intangible Cultural Heritage.

This new vision was wrapped up in the legal system, placing the Intangible Cultural Heritage at the same level as the Material Cultural Heritage, without hierarchical treatment, but with appropriate tutelage.

The Constitution of 1988 recognized the equality of legal protection of the Material and Intangible Cultural Patrimony, with the leveling of value of these categories and constitutional instruments for their effective protection.

Even so, the Registry that is an adequate instrument to protect the intangible or intangible assets, still remained dependent on the tipping, was relegated to oblivion. As we perceive the constitutional provision expressed in Article 216, which constitutes non-self-executable, norms of a programmatic nature, placing the Intangible Cultural Heritage without effective state protection by not regulating the legal instrument, important for adoption of public policies. However, more than a decade later, due to the pressures of traditional groups and intellectuals, Presidential Decree n. 3.551, published on August 4, 2000, regulating the constitutional provision.

Decree Law no. 3.551 / 2000 is an important norm that established the Register of Cultural Goods of Intangible Nature that constitute Brazilian cultural patrimony and created the National Program of Intangible Heritage.

The Registration of Cultural Goods of Intangible Nature that constitute Brazilian cultural heritage, will be done in one of the following books, as set forth in article 1. of the said Decree: I - Book of Knowledge Registry, where knowledge and ways of doing will be inscribed in the daily life of the communities; II - Book of Record of Celebrations, where they will be inscribed rituals and

celebrations that mark the collective experience of work, religiousness, entertainment and other practices of social life; III - Book of Record of Forms of Expression, where literary, musical, plastic, scenic and playful manifestations will be inscribed; IV - Book of Registration of Places, where markets, fairs, shrines, squares and other spaces where they are concentrated and reproduce collective cultural practices will be registered.

As a cultural and political phenomenon, Law translated the ideal that prevailed at the time among intellectuals recognizing for the first time from a Decree-Law, that the national historical and artistic patrimony is constituted by all movable and immovable property existing in the country and whose preservation is of public interest, or because of its connection with memorable events in the history of Brazil, or because of its exceptional archaeological or ethnographic, bibliographic or artistic value.

It was essential to safeguard the intangible or intangible cultural heritage, or rather, the creation of a national identity, could not be restricted to the protection of material cultural goods, whose legal instrument of tipping was foreseen for the protection of these goods.

Advances brought by Decree Law no. 3.551 / 2000, were experimented with the publicity of the instrument for protection of intangible cultural goods, creation of an affection department for the conduct of the processes, implementation of programs, with well defined objectives for policies of Inventory, Registration and Safeguarding cultural goods of an intangible nature, preservation of ethnic and cultural diversity, encouragement and support to preservation initiatives and practices, among others.

It is the responsibility of the National Historical and Artistic Heritage Institute (IPHAN) to execute the National Program of Intangible Heritage - PNPI. In accordance with paragraph 1. of Article 216 of the Federal Constitution, while promoting the participation of groups and communities, promotes social inclusion and improvement of the quality of life of the agents involved in supporting the material conditions indispensable for the reproduction of cultural expressions and greater access to benefits generated by this preservation.

IV. THE PROTECTION OF IMMERSIAL HERITAGE IN THE STATE OF AMAZONAS AND POPULAR PARTICIPATION

In the State of Amazonas, following the guidelines of Decree-Law no. 3.551 / 2000, ways of promoting, protecting and encouraging the intangible part of cultural heritage is being carried out through the Culture Secretariat. Develops studies, edict and projects in the

areas of popular culture and indigenous, characterizing the cultural experience of a community; Rescue of traditional urban toys: cloth doll (witch), top, wooden leg and the game of stone button of tucumã used in Largo de São Sebastião; Studies on the cultural and social use of tucumã; Studies on the Symbols of the Amazon; Announcement of research on saints and credences in Amazonas; Search "Memory of the Largo de São Sebastião"; Collection of postcards from the series "Intangible Cultural Heritage"; Collection of postcards of the series: "Memória do Amazonas"; Coordinates the "Map of the Arts" project; Promotes the mapping of the cultural assets of the State; Promotes the registration of the culture of the Boi Bumbá de Parintins as Brazilian cultural heritage; Projects to safeguard the traditional expressions: traditional ox of Manaus, Gambá de Maués; Produces documentaries that express the richness and cultural diversity of the state; Traditional Medicine Saterê; Japanese immigration in the Amazon and Tukano rituals; Coordinates the implementation of Culture Points in the State; Promotes academic seminars and discussion forums on the themes of popular and indigenous cultures; It disseminates in Brazil and abroad the traditional cultural manifestations of the Amazon; Promotes the appreciation of local masters and local knowledge; It supports state policies aimed at traditional cultures.

Among its state competencies: I - Promote actions for knowledge and valuation of intangible assets; II - To propose and promote studies of mapping and inventory of intangible cultural heritage of the State; III - Develop activities to safeguard and disclose intangible assets; VI - To carry out projects with a view to valuing the popular traditional culture (Indians, blacks and caboclos); VII - Stimulate actions with groups or communities, valuing cultural identities; VIII - Maintain interinstitutional relations and articulation with private and non-governmental organizations in order to carry out intersectoral projects; IX - Propose projects that promote cultural citizenship; X - Perform other activities that are determined in your area of competence.

Cultural heritage has to be considered a valuable tool of human experiences, but popular participation can no longer be ignored by the public power. To individuals who are excluded from this process, heritage education must be a practice of social participation. And these political practices that involve the experience of sociability, require of all those involved an understanding of the social use of the convivial space between the individuals that make up that community (CERTEAU, 2007).

Throughout history, cultural rights allow the defense of social and ethnic minorities, this recognition of cultural identity passes through diversity, with constitutional support for Indians, Afro-Brazilians and Quilombola communities. It brings a certain reflection to these origins of struggle and resistance, to talk about immaterial heritage is to give meaning, to refer to belonging, to be recognized by the community and to be included in its sociocultural dynamics.

The Public Power has the duty to protect, promote and value the cultural assets and values of the different ethnic segments of society, as set forth in article 215, paragraph 1. of CF / 88. On the other hand, the extension of the concept of cultural heritage broke with an elitist vision of considering as object of legal protection the manifestations of the historically dominant class and recognized the importance of the participation of other ethnic segments for the construction and cultural valorization of a truly democratic and inclusive.

V. CONCLUSION

The theme of protection of intangible heritage is still little explored. The objective of this work was to address the means of safeguarding Brazilian immaterial cultural heritage, and in Amazonas, besides the need for popular participation in this process. In Brazil, the concern and effective legal protection was not very far, starting from the aegis of the Federal Constitution of 1988. After, the decree law n. 3,551 of August 4, 2000, which established the Register of Cultural Goods of Intangible Nature that constitute Brazilian cultural patrimony, and created the National Program of Intangible Heritage. The great challenge is the perpetuation of intangible assets, which by their nature and intangible dimension require public policies that involve all, not only the Public Power, but society. In Amazonas, the Secretariat of Culture has this competence to preserve, promote and safeguard intangible cultural heritage. This understanding of the culture, the roots, the traditions, and everything that constitutes intangible heritage with its profound significance for the people and place, the heritage education itself must be constant.

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REFERENCES

- [1] BRASIL. **Constituição (1988)**. Constituição da República Federativa do Brasil. Disponível

- em http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm Visualizado em 26 de junho de 2019.
- [2] BRASIL. **Institui o Registro de Bens Culturais de Natureza Imaterial que constituem patrimônio cultural brasileiro, cria o Programa Nacional do Patrimônio Imaterial e dá outras providências.** Decreto Federal nº 3.551, de 04 de agosto de 2000. Disponível em http://www.planalto.gov.br/ccivil_03/decreto/D3551.htm Visualizado em 27 de junho de 2019.
- [3] BRASIL. **Organiza a proteção do patrimônio histórico e artístico nacional. Decreto-Lei Nº 25, de 30 de novembro de 1937.** Disponível em http://www.planalto.gov.br/ccivil_03/decreto-lei/Del0025.htm Acesso em 27 de junho de 2019.
- [4] CERTEAU, Michel de. **A invenção do Cotidiano 2 (morar, cozinhar).** Rio de Janeiro: Editora Vozes, 2009.
- [5] DIAS, M. L. **Fundamentos do direito urbanístico: o direito à sociedade sustentável.** Fórum de direito urbano e ambiental, Belo Horizonte, n. 4, n. 22, p. 2615-2620, jul/ago, 2005.
- [6] FIORILLO, C. A. P. **Curso de Direito Ambiental Brasileiro.** São Paulo: Saraiva, 2005.
- [7] FREITAS, V. P. A. **A Contribuição da Lei dos Crimes Ambientais na Defesa do Meio Ambiente.** Revista CEJ, Brasília, n. 33, p. 5-15, abr/jun, 2006.
- [8] FUNARI, P. P. A. **Patrimônio Histórico e Cultural.** Rio de Janeiro: Jorge Zahar Ed., 2009.
- [9] GRANZIEIRA, M. L. M. **Direito Ambiental.** São Paulo: Atlas, 2014.
- [10] INSTITUTO DO PATRIMÔNIO HISTÓRICO E ARTÍSTICO NACIONAL (IPHAN). **Bibliografia Geral do Patrimônio.** n.d. Disponível em <http://portal.iphan.gov.br/pagina/detalhes/11> Acesso em 26 de junho de 2019.
- [11] LECEY, Eládio. **A proteção do meio ambiente e a responsabilidade penal da pessoa jurídica.** In: FREITAS, Vladimir Passos de (Org.). **Direito Ambiental em evolução.** Curitiba: Juruá, 1998.
- [12] LICKORISH, Leonard J., JENKINS, Carson L. **Introdução ao Turismo.** Rio de Janeiro: Elsevier, 2000.
- [13] LONDRES, Cecília. **Patrimônio e Performance; uma relação interessante.** In: *Patrimônio imaterial, performance e re)tradicionalização.* Brasília/DF: Ed. UNB, 2004. *Apud*, PARDAL, Paulo José. *A proteção do patrimônio imaterial.* In *Revista do IHGB* 164, 2003, abr./jun.
- [14] MEZZAROBBA, O., MONTEIRO, C. S. **Manual de metodologia de pesquisa no direito.** São Paulo: Saraiva, 2014.
- [15] MILARÉ, E. **Direito do Ambiente.** São Paulo: Revista dos Tribunais, 2014.
- [16] MIRANDA, Marcos Paulo de Souza. **Tutela do patrimônio cultural brasileiro.** Belo Horizonte: Del Rey, 2006.
- [17] PAIVA, Carlos Magno de Souza. **Direito do Patrimônio Cultural: autonomia e efetividade,** Curitiba: Juruá, 2015.
- [18] PELLEGRINI FILHO, Américo. **Ecologia, Cultura e Turismo.** 7 ed, Campinas: Papirus, 1993.
- [19] PINTO, V. C. A. **A ordem urbanística.** Fórum de direito urbano e ambiental, Belo Horizonte, a. 1, n. 3, p. 235-243, mai/jun. 2002.
- [20] ROCHA, J. C. de S. **Função ambiental da cidade: direito ao meio ambiente urbano ecologicamente equilibrado.** São Paulo: Juarez de Oliveira, 1999.
- [21] SAMPAIO, J. A. L., WOLD, C., NARDY, A. J. F. **Princípios de direito ambiental.** Belo Horizonte: Del Rey, 2003.
- [22] SILVA, A. L. M. **Direito do meio ambiente e dos recursos naturais.** São Paulo: Revista dos Tribunais, 2006.
- [23] SILVA, E. A. A. **A tutela do meio ambiente artificial: as cidades sustentáveis.** 2009. Disponível em <http://www.unibrasil.com.br/arquivos/direito/20092/eliane-alves-da-silva.pdf> Visualizado em 05 de março de 2016.
- [24] SILVA, J. A. **Direito Urbanístico Brasileiro.** São Paulo: Malheiros Editores, 2015.
- [25] SIMIONI, R. L. **Direito ambiental e sustentabilidade: o problema e as possibilidades de comunicação intersistêmica e seus impactos jurídicos: o planejamento jurídico da sustentabilidade.** Curitiba: Juruá, 2006.
- [26] THOMAS, Keith. **O homem e o mundo natural: mudanças de atitude em relação às plantas e aos animais (1500 – 1800).** Tradução João Roberto Martins Filho. São Paulo: Companhia das Letras, 2010.