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Direitos negados, patrimônios roubados: desafios para a proteção dos conhecimentos tradicionais, recursos genéticos e das expressões culturais tradicionais dos povos indígenas no cenário internacional
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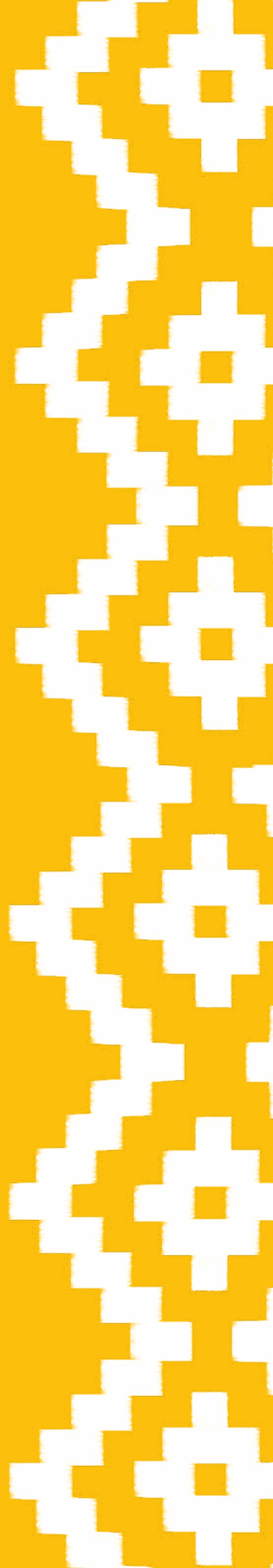
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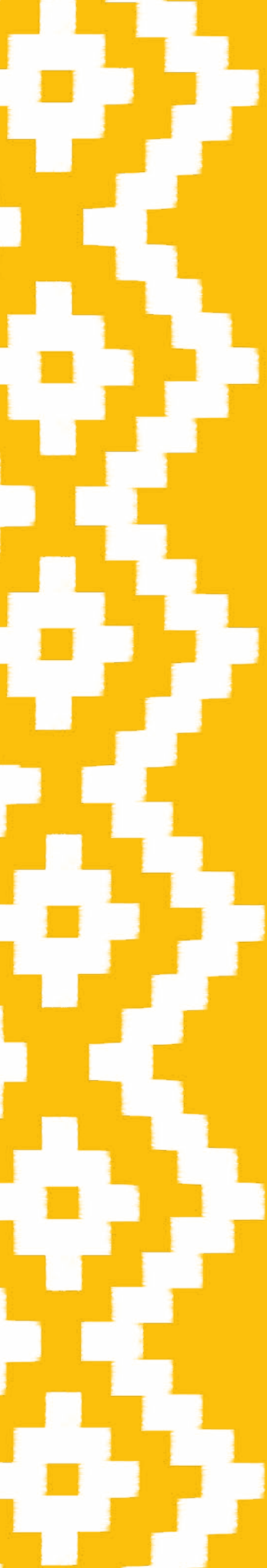
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Stellingen behorende bij het proefschrift *Direitos negados, patrimônios roubados* van Lucia Fernanda Inacio Belfort Sales (Leiden 2023)

1. Indigenous Peoples' rights to their traditional knowledge, genetic resources and traditional cultural expressions are imprescriptible, inalienable and unseizable, in a manner similar to moral rights in the context of copyright.
2. The protection of the cultural heritage of Indigenous Peoples is granted by intellectual property rights, whose holders are natural or legal persons, but not Indigenous Peoples as collectivities. The rights are declared "national heritage" or "heritage of humanity", or considered public heritage, without recognising specific and collective rights of the Indigenous People(s) to this heritage.
3. Applying the concept of "public domain" to the cultural heritage of Indigenous Peoples without considering the principles of (a) free, prior and informed consent and of (b) fair and equitable sharing of benefits in favour of the Indigenous People whose cultural heritage has been used, is misappropriation.
4. National States are legal figures without inventive capacity or creativity and cannot be considered beneficiaries of an international system of protection of traditional knowledge, genetic resources and traditional cultural expressions of Indigenous Peoples and local communities.
5. To conceptualise Indigenous Peoples as "holders," "custodians" or "possessors" is to deny them the right to ownership of cultural heritage. Possession is a right that ceases to exist for the possessor when possession is passed on to another. Sharing elements of one's cultures does not result in the loss of ownership of that heritage.
6. Traditional knowledge is intrinsic to genetic resources as a result of centuries of genetic improvement. The use of the term "culture traditional knowledge" leads to the erroneous impression that this knowledge might be dissociated from genetic resources to avoid payment for the use of this knowledge.



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- 7.** Brazilian law 13.123 of 2015 reduces Indigenous Peoples' rights to mere possession by removing from the text of Provisional Measure 2.186 of 2001 the right of Indigenous Peoples to decide on the use of their traditional knowledge concerning genetic resources and to deny access to that knowledge, an exclusive characteristic of property rights.
 - 8.** The expression "traditional peoples and communities," created by Decree 6040 of 2007, was not the outcome of consultations with the Indigenous Peoples of Brazil in good faith and in their own languages, so this terminology does not correspond to the concept 'Indigenous Peoples' internationally agreed upon in ILO Convention 169.
 - 9.** Brazil's environmental crimes law, 9.605 of 1998, violates ILO Convention 169 as it disregards Indigenous Peoples' right to free, prior and informed consent and criminalises the commercialisation and production of handicrafts with "animal parts" by Indigenous Peoples (whose lands are the most relevant areas of national biodiversity).
 - 10.** Concepts like that of *terra nullius*, which make Indigenous Peoples "invisible," have been – and sometimes are still – used to justify and cover the crimes of genocide committed against Indigenous Peoples. Similarly, the denial of their rights continues since the beginning of colonisation. The government and society disregard these peoples as subjects of rights in order not to admit actions and omissions that violate their social and cultural rights.
 - 11.** The uses, customs and traditions that guide the social organisation of each people and their own legal system must be considered in the resolution of conflicts involving traditional knowledge, genetic resources and traditional cultural expressions.
 - 12.** Biodiversity loss is directly associated with cultural erosion in the life sphere of Indigenous Peoples. Both are consequences of colonial mentalities and practices, so that states and society owe Indigenous Peoples a public confession of the perpetrated violations. And that public apology to Indigenous Peoples should go hand in hand with concrete environmental and cultural reparations.