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EDITORIAL

SOCIO-ENVIRONMENTAL CONFLICTS: OBSTACLES TO POSTPONING THE END OF THE WORLD

Activists, researchers, and holders of traditional knowledge come together, at this historic moment, to devise strategies for postponing the end of the world, following the paradigm and praxis proposed by Ailton Krenak. In his most recent writings, he offers reflections on how to confront the notions of “progress” and “development” that increasingly drive humanity toward collapse.

This editorial invite reflection on the outcomes produced by socio-environmental conflicts in Brazil and on how their deeply harmful consequences hinder efforts to postpone the end of the world.

Socio-environmental conflicts in Brazil are widely understood to reflect the country’s historical structure of inequality, in which land has become the central element in struggles for power. The complexity of these conflicts lies in the clash between two opposing conceptions of land: one that understands it as essential to life, and another that treats it as a commodity in the service of capital.

From this divergence in perspectives on land and territory emerges tension between distinct territorialities and, consequently, the intersection of agrarian, social, and environmental conflicts. Within this context, land grabbing, land concentration, the expansion of agribusiness, predatory mining activities, and other extractive models advance over traditional and rural territories.

In Torto Arado (2019, p. 262), a narrative that illustrates how art mirrors life, there is a passage borrowed here: “On the land, the strongest will always survive.” This statement gains renewed meaning when we observe that, despite the unchecked advance of capital, there is persistent resistance from those who understand that the relationship with land and territory is far more about “involvement” than about “development,” as demonstrated by the struggles and resistance of Nego Bispo and Maria Sueli.

For collective rural subjects—including Indigenous peoples, quilombola communities, traditional communities, and peasants—land is more than a means of production; it is the foundation of



identity, culture, and subsistence. It is on the land that communities are formed, customs are sustained, and livelihoods are secured, forging a profound sense of belonging.

In contrast to this perspective, Brazilian history has consolidated land as a commodity of capital. The process of individualizing land and transforming it into private property was formally legalized through the Land Law of 1850. By conditioning ownership rights on purchasing power, this law restricted access to land and institutionalized land concentration.

How could rural populations, whose identities are deeply intertwined with land, compete with those who wield economic power? Capitalism, by continuously reinforcing purchasing power, transforms this situation into a self-perpetuating cycle in which those with greater capital invariably acquire more land. For this reason, land concentration remains one of the most significant impacts of agribusiness expansion.

Data from the 2017 Agricultural Census conducted by the Brazilian Institute of Geography and Statistics (IBGE) illustrate the severity of this land crisis: large agricultural establishments (those exceeding 1,000 hectares) now control 47.5% of rural land, despite representing only 1% of all rural properties. By contrast, small establishments account for 50.2% of properties but occupy just 2.3% of the country's total land area.

The logic of land acquisition and concentration extends beyond social inequality, producing profound disruptions to ecosystems. The allocation of vast areas to the production of profitable commodities disregards the ecological and social functions of land. Environmental indicators are alarming: deforestation has already reached nearly 20% of the original Amazon rainforest. In the Atlantic Forest, only 12% remains, while biomes such as the Cerrado (51%) and the Pampa (46%) are also undergoing rapid conversion. Most recent deforestation has been concentrated in the Cerrado and the Amazon, driven by a production model that depends on forest clearing to expand.

The dispute over this essential resource, combined with the imposition of capitalist logic, generates persistent structural violence. The Pastoral Land Commission (CPT) recorded a total of 50,950 instances of rural conflict in Brazil between 1985 and 2023.

The majority of these conflicts (80.8%, or 41,109 cases) involve disputes over land. Importantly, 79.4% of rural conflicts stemmed from actions taken by hegemonic actors—both public and private—while most of the violence (60.9% of all recorded cases) targeted the occupation and possession of land by traditional peoples.



In addition to land-related violence, significant labor conflicts are documented (10.09% of the total), with slave labor accounting for 4,332 cases and affecting more than 191,000 workers subjected to conditions analogous to slavery. Historical data reveal a marked escalation of rural conflicts, which increased by 444% between 1985 and 2023, with over half of Brazil's municipalities reporting at least one such conflict.

The agrarian issue in Brazil extends beyond the redistribution of land. A more fundamental question must be addressed: how can this essential resource—intrinsically linked to the identities of Indigenous peoples, traditional communities, and peasants—be removed from subordination to the concentration-driven logic of capital? What strategies can be employed to curb the advance of capital, prevent the invasion of traditional territories, and postpone the end of the world?

Accordingly, the recognition of land rights for peasants, Indigenous peoples, and traditional communities emerges as a central demand and a key strategy for restraining capital expansion and ensuring territorial and environmental protection. Land tenure regularization constitutes the formal legal process through which the constitutional right to land and territory is recognized. However, securing this right has proven to be a persistent challenge, resulting in recurring socio-environmental conflicts that expose these communities and their territories to ongoing legal insecurity and threats to physical integrity.

It can therefore be asserted that territorial protection is inseparable from the guarantee of the rights to land, identity, and culture of peoples who have, over centuries, developed ancestral technologies of territorial management and conservation.

Ensuring territorial rights through land tenure regularization is not merely a matter of social justice; it is also a strategic pathway to sustainability and to the reduction of socio-environmental conflicts. Given that traditional peoples and communities are historically recognized as the foremost stewards of nature, the demarcation and titling of their lands constitute an essential action for the future of humanity, serving as a means of postponing the “end of the world.”

It is urgent that Brazil advance in both understanding and guaranteeing socio-environmental and territorial justice. This requires the effective recognition and protection of the life territories of rural peoples, the containment of agribusiness and predatory mining, and the reversal of the historical legacy of the 1850 Land Law, which legitimized violence and environmental destruction through



purchasing power. Only then will land cease to be a battlefield and once again become a source of life for all.

Goiânia, 12 dezembro de 2025.

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TERRITORY, ORGANIZATION AND POWER: NEW PARADIGMS ABOUT THE TERRITORIALIZATION PROCESS¹

TERRITÓRIO, ORGANIZAÇÃO E PODER: NOVOS PARADIGMAS ACERCA DO PROCESSO DE TERRITORIALIZAÇÃO

TERRITORIO, ORGANIZACIÓN Y PODER: NUEVOS PARADIGMAS SOBRE EL PROCESO DE TERRITORIALIZACIÓN

CAIO TÁCITO RODRIGUES PEREIRA²
LORENA VERAS MENDES³

ABSTRACT

This article analyzes the main theoretical currents in Anthropology concerning the territorial organization of indigenous peoples, articulating the debate between territoriality and territorialization with the realization of fundamental human rights. Starting from the contrast between culturalist approaches to territoriality - of a more static and ahistorical character - and processual perspectives of territorialization - which emphasize historical, political, and relational dimensions - the study demonstrates how this paradigmatic transition directly impacts the recognition of indigenous territorial rights. Through a bibliographic review spanning from classical contributions by Boas, Mauss, and Hall to contemporary debates by Oliveira, Ferreira, Barbosa da Silva, and Mura, it is argued that the adoption of the concept of territorialization not only provides a more suitable analytical framework for understanding indigenous territorial dynamics but also grounds the implementation of public policies aligned with ILO Convention 169 and the human

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rights of indigenous peoples. The article is structured around three main axes: the critique of culturalist determinism, the emergence of the processual paradigm, and the implications for the realization of human rights in the context of territorial struggles.

Keywords: Indigenous peoples' rights; Human rights; Territoriality; Territorialization.

RESUMO

Este artigo analisa as principais correntes teóricas da Antropologia sobre a organização territorial dos povos indígenas, articulando o debate entre territorialidade e territorialização com a efetivação de direitos humanos fundamentais. Partindo do contraste entre as abordagens culturalistas da territorialidade - de caráter mais estático e a-histórico - e as perspectivas processuais da territorialização - que enfatizam dimensões históricas, políticas e relacionais -, o trabalho demonstra como esta transição paradigmática impacta diretamente o reconhecimento de direitos territoriais indígenas. Através de revisão bibliográfica que abrange desde contribuições clássicas de Boas, Mauss e Hall até os debates contemporâneos de Oliveira, Ferreira, Barbosa da Silva e Mura, argumenta-se que a adoção do conceito de territorialização oferece não apenas um quadro analítico mais adequado para compreender as dinâmicas territoriais indígenas, mas também fundamenta a implementação de políticas públicas alinhadas com a Convenção 169 da OIT e com os direitos humanos dos povos originários. O artigo estrutura-se em três eixos principais: a crítica ao determinismo culturalista, a emergência do paradigma processual e os desdobramentos para a efetivação de direitos humanos no contexto das lutas por território.

Palavras-chave: Direito dos povos indígenas; Direitos Humanos; Territorialidade; Territorialização.

RESUMEN

Este artículo analiza las principales corrientes teóricas de la Antropología sobre la organización territorial de los pueblos indígenas, articulando el debate entre territorialidad y territorialización con la efectivización de los derechos humanos fundamentales. Partiendo del contraste entre los enfoques culturalistas de la territorialidad - de carácter más estático y ahistórico - y las perspectivas procesales de la territorialización - que enfatizan dimensiones históricas, políticas y relacionales -, el trabajo demuestra cómo esta transición paradigmática impacta directamente en el reconocimiento de los derechos territoriales indígenas. A través de una revisión bibliográfica que abarca desde los aportes clásicos de Boas, Mauss y Hall hasta los debates contemporáneos de Oliveira, Ferreira, Barbosa da Silva y Mura, se argumenta que la adopción del concepto de territorialización no solo ofrece un marco analítico más adecuado para comprender las dinámicas territoriales indígenas, sino que también fundamenta la implementación de políticas públicas alineadas con el Convenio 169 de la OIT y con los derechos humanos de los pueblos originarios. El artículo se estructura en tres ejes principales: la crítica al determinismo culturalista, el surgimiento del paradigma procesual y las implicaciones para la efectivización de los derechos humanos en el contexto de las luchas por el territorio.

Palabras-clave: Derechos de los pueblos; Derechos; Humanos; Territorialidad; Territorialización.

INTRODUCTION

The territorial organization of indigenous populations is a notoriously complex issue in the anthropological field, whose relevance transcends the academic sphere to reach the legal and political spheres of guaranteeing fundamental human rights. Guided by international instruments such as

Convention 169 of the International Labor Organization (ILO) - which recognizes indigenous peoples' right to the territories they traditionally occupy - this discussion reveals the deep interconnection between theoretical conceptions of space and the realization of collective rights.

Within the scope of anthropological theory, two main analytical perspectives stand out to address this issue: one based on the concept of “territoriality” and the other on the concept of “territorialization”. The first, of a culturalist and structuralist matrix, tends to analyze the territory as a projection of cultural and symbolic systems, often minimizing historical conflicts and forms of colonial domination. The second, which has gained strength in Brazilian anthropological studies, understands territorial formation as a historical, political, and socially constituted process, marked by power relations, cultural flows, and adaptations to specific contexts.

The current relevance of this debate is manifested in the evident dissonance between state legal categories - which often presuppose fixed and delimitable territorialities - and the empirical realities of indigenous territorial dynamics, notably fluid and processual, especially in postcolonial contexts such as the Brazilian Northeast and agricultural frontier areas. This disjunction creates serious obstacles to the full realization of the human rights of these populations, particularly with regard to the right to territory as a condition for physical and cultural reproduction. The main objective of this article is to critically analyze these two perspectives, demonstrating how the transition from the paradigm of territoriality to that of territorialization does not only represent a theoretical advance, but is an essential tool for the proper understanding and implementation of indigenous territorial rights as fundamental human rights. To develop this debate, the work is structured in three main sections: first, it explores the concept of *territoriality* from its culturalist roots in Boas and Hall and from Mauss's morphological perspective; then, it enters the paradigm of territorialization through the contributions of João Pacheco de Oliveira, Andrey Cordeiro Ferreira, Alexandra Barbosa da Silva and Fabio Mura; finally, In his final considerations, he reflects on the consequences of this debate for the policies of territorial recognition and the realization of human rights.

Through this path, it is argued that the adoption of a procedural and historical perspective of territorialization not only offers a more adequate analytical framework to understand the complex indigenous territorial dynamics, but also provides fundamental theoretical subsidies for the construction of legal and political frameworks that are more sensitive to the realities of these peoples and, therefore, more effective in guaranteeing their fundamental human rights.

1 THE CONCEPT OF TERRITORIALITY: CLASSICAL PERSPECTIVES AND THEIR LIMITS

1.1 The Culturalist Perspective and its Contradictions

The territoriality approach⁴ finds its main adhesion among anthropologists of culturalist or structuralist influence. This perspective analyzes how a group projects its cultural and symbolic system in the occupied space, tending to minimize the relevance of historical conflicts and forms of colonial domination. In this framework, territorial organization is understood as a direct derivative of how people think and behave in space, privileging cognitive and symbolic dimensions to the detriment of power relations and historical processes. According to Morin (2010), the territoriality approach emerged as a critique of the currents of environmental determinism, then popular in geography and biology in the nineteenth and twentieth centuries. Environmental determinism, defined by the author as an ideology of domination, attributed the intellectual and organizational capacity of a group to climatic factors, thus legitimizing racial hierarchies and colonial projects. It was from Franz Boas, considered the father of culturalism, that this logic began to be deconstructed. Boas postulated that it was the cultural decisions of individuals or groups that determined their organization, a perspective he called “historical possibilism” (Moran, 2010, p. 55), where the environment offered possibilities, but did not determine cultural choices. However, Morin (2010) points out that Boas himself incurred a type of cultural determinism, by denying the possibility of innovation and practical adaptation of a group to new environments, attributing the persistence of customs to “cultural inertia”. This conception implied a static view of cultures, where changes were seen as loss or contamination, rather than creative processes of adaptation:

Boas and his disciples emphasized that customs originating in a habitat could be perpetuated by 'cultural inertia' after a group moved to a new location where the custom no longer fit. As an example, he cites the expensive and complicated tents of the Chukechee, a legacy from the time when they permanently inhabited the coast (Moran, 2010, p. 56) (free translation).

This seems to be the central contradiction of Boasian thought: the tension between historical possibility and “cultural inertia.” For Boas and his disciples, such as Kroeber – who developed the theory of the superorganic (Moran, 2010, p. 57) – the formation of groups was of a fixed basis, reproducing actions based on a mental culture, which overlapped the relationship between man and

⁴ Boas and Marcel Mauss do not speak of territoriality directly, but they greatly influenced its formulation. We will try in the course of this topic to defend our point of view. We see anthropologists such as Edward Hall (1977) as a slightly different perspective from what we will list in this topic, their concept of territoriality is defined in forms of behavior and communication that result in specific social organizations: '(...) it is in the nature of animals, including man, to present the behavior we call territoriality. In doing so, they use their senses to distinguish between one space, or distance, and another. The specific distance chosen depends on the transaction; the relationship of the individuals in interaction, how they feel and what they are doing.' (p.115).

the environment. Culture was conceived as a supra-organic entity with its own dynamics, independent of the individuals who experienced it.

According to Edward Hall (1977, p. 115), the Boasian equation gains a new element: the influence of public behavior in the creation of cultural spaces of group differentiation. Hall defines territoriality as forms of behavior and communication that result in specific social organizations, introducing a proxemic dimension to the analysis:

(...) it is in the nature of animals, including man, to exhibit the behavior we call territoriality. In doing so, they use their senses to distinguish between one space, or distance, and another. The specific distance chosen depends on the transaction; the relationship of individuals in interaction, how they feel and what they are doing (Hall, 1977, p. 115) (free translation).

However, Hall applies the same ahistorical notion of Boas when classifying identities and nations as given and immutable realities, naturalizing cultural differences as if they were eternal essences:

(...) There are implicit obligations to treat strangers in certain prescribed ways. Consequently, we find four main categories of relationships (intimate, personal, social, and public) and the activities and spaces associated with them. In other parts of the world, relationships tend to follow other models, such as the family/non-family common in Spain and Portugal and their former colonies, or the caste and pariah system of India. Arabs and Jews also make radical distinctions between the people they are related to and others. My work with the Arabs leads me to believe that they employ a system for the organization of informal space that is very different from what I have observed in the United States (Hall, 1977, p. 117) (free translation).

It is postulated, therefore, that among the culturalists of the Boasian tradition, territoriality delimits the relationship between subject and habitat in an ahistorical way, conditioning it through 'culture' as a central element. It is also observed that the approach is of an endoculturalist nature, which makes it difficult to analyze the territorial organization that considers the influence of other ethnic groups in the same region, processes of miscegenation or interethnic relations. Culture is treated as a closed, self-contained, self-reproducing system, ignoring precisely the flows, borrowings, and transformations that characterize cultural dynamics.

1.2 Social Morphology and Seasonality

A contemporary of Boas, but with a different perspective, Marcel Mauss (2003) proposes a new analytical concept to study the interaction of human groups in the territory: the “social morphology”. In his *Essay on the Seasonal Variations of the Eskimos*, Mauss (2003, p. 425) advances

in relation to culturalism by seeking to understand the material bases of social life, defining social morphology as:

(...) the science that studies, not only to describe it, but also to explain it, the material substrate of societies, that is, the form they display when they settle on the soil, the volume and density of the population, the way in which it is distributed, as well as the set of things that serve as the basis for collective life (free translation).

In the study of the Eskimos, who shared the same ecological niche with the Athapascians and Algonquins, Mauss found that their forms of occupation and production in the territory were variable and seasonally determined. The territorial organization of the Eskimos was given by two fundamental notions: that of tribe and establishment, which operated on different scales and temporalities.

(...) They have linguistic unity along with the borders with different dialects that distinguish them (...) another criterion for distinguishing the tribe is the collective name used by all its members, whose nomenclature is, however, indeterminate. Wars between tribes are another way of existential affirmation and self-feeling – but there are few events like these known (p. 248-250) (...) The tribe does not constitute a territorial, solid, stable unit. The territorial unit is rather the establishment (a group of families clustered and united by special ties, which occupy a habitat through which they are unequally distributed according to the season of the year) (Mauss, 2010, p. 251) (free translation).

The establishment had a constant name, fixed borders, a defined space for hunting and fishing, as well as linguistic unity, religious ties and variable sizes. It was the concrete territorial unit, while the tribe represented a broader but less territorially stable unit of identification. Mauss's main thesis is that, during the winter, there was a concentration of Eskimo families, where the distinctions between tribe and settlement ceased to operate. This strategy of seasonal aggregation, an adaptation to environmental variations, demonstrated that the logic of occupation was not fixed, but responded pragmatically to ecological conditions. In this way, the Eskimos conceived their territorial organization through two distinct social structures (summer and winter), showing a remarkable organizational plasticity. Despite this important contribution on variability and adaptation, Mauss's analysis also has limitations in that it does not sufficiently incorporate historical and political dimensions into territorial transformations, treating variations as mainly ecological responses rather than the results of power relations and long-term historical processes

1.3 Limitations of the Territoriality Paradigm

Approaches based on the concept of territoriality, both in its culturalist and morphological versions, share important limitations for understanding contemporary indigenous territorial dynamics. In the first place, they tend to treat cultures as closed and self-contained systems, neglecting historical processes of contact, miscegenation and transformation. Second, they operate with an essentialist notion of ethnic identity, assuming that cultural groups are discrete and well-defined units. Finally, they underestimate the role of the State, power relations and broader economic processes in the configuration of territorialities.

These limitations become particularly problematic when applied to postcolonial contexts such as Brazil, where indigenous peoples have experienced centuries of contact, violence, forced displacement, and subaltern incorporation into regional economies. It is precisely to overcome these limitations that the paradigm of territorialization emerges in Brazilian anthropology.

2. THE PARADIGM OF TERRITORIALIZATION: HISTORICAL PROCESSES AND POWER RELATIONS

2.1 The Procedural Turn and the Critique of the Concept of Territoriality

João Pacheco de Oliveira (1998) represents a turning point in studies on indigenous territorial organization in Brazil. His work on the indigenous people of the Brazilian Northeast introduces the category of “colonial situation” as an analytical key to understanding territorial dynamics, breaking with essentialist perspectives that until then had predominated in anthropology and official indigenism. His work represented a paradigm shift in anthropological studies in Brazil, which tended to essentialize ethnic groups and their forms of occupation in time and space. The hegemonic currents described the indigenous people of the Northeast as “mestizos” or “acculturated”, but, through the notion of “historical situation” (Oliveira, 1998, p. 52), the anthropologist demonstrates that the ideological charge operated by the state agencies, by categorizing them as “mixed”, denied them access to land and ethnic recognition. Oliveira reveals how the category “mixed Indian” operated as a device of invisibilization and denial of rights, based on racializing criteria that required “cultural purity” for the recognition of indigenous identity.

While in the Amazon the indigenous populations maintained a continuous occupation and a cohesive mode of production, the Northeast was characterized by occupational flows, colonial territorial conflicts and population displacements, configuring a different type of territorial organization:

(...) Given the characteristics and chronology of the expansion of frontiers in the Amazon, indigenous peoples hold a significant part of their territories and ecological niches, while in the Northeast these areas were incorporated by previous colonizing flows, not differing much from their current possessions from the peasant pattern and being interspersed with the regional population (Oliveira, 1998, p. 53) (free translation).

These historical implications have generated diversified actions and interests in the original groups, demanding different indigenous strategies according to the regional context: If, in the Amazon, the most serious threat is the invasion of indigenous territories and the degradation of their environmental resources, in the case of the Northeast, the challenge to indigenous action is to reestablish indigenous territories, promoting the removal of non-Indians from indigenous areas, denaturalizing “mixture” as the only way of survival and citizenship (Oliveira, 1998, p. 53). Critical of the currents of ethnogenesis that postulated the indigenous identity of the Northeast as a rescue of lost “traditions”, Oliveira argues that this organization is a historical consequence of the forms of colonial action in the region, which led to the creation of new sociocultural identities. Based on this, it defines the territorialization process as a multidimensional analytical framework:

(...) a process of social reorganization that implies: 1) the creation of a new socio-cultural unit through the establishment of a differentiating ethnic identity; 2) the constitution of specialized political mechanisms; 3) the redefinition of social control over environmental resources; 4) the re-elaboration of culture and the relationship with the past (Oliveira, 1998, p. 55) (free translation).

For the author, territorialization is fundamentally a political act, rescuing conceptions of political community⁵ (Weber, 2002) and ethnic group⁶ (Barth, 2000), but expanding them to include the territorial dimension as constitutive of the identity process. His analysis encompasses the social organization of groups, the mediating powers of the State and the changes in the forms of territorial exploitation as vectors of distinction and individualization, as he states: “there I meet Barth again, but without restricting myself to the identity dimension, seeing distinction and individualization as vectors of social organization” (Oliveira, 1998, p. 56).

⁵ By political community we mean that whose **action** consists in the fact that the participants reserve for themselves the orderly domination of a “sphere” (not necessarily constant at all and fixed in delimitation, but delimitable in some way) and of the action of the men situated in it in a permanent or only provisional way, having physical force prepared for the case. usually armed. The existence of a “political” community in this sense is not something given once and for all. As a *special* community, it is absent on all those occasions in which defense against the enemy can be undertaken if necessary by the simple domestic community, by the association of neighbors (...) However, a specific “political” community exists only when the community is *not* merely “economic” and, therefore, when it has legal systems that regulate things other than the economic possession of goods and the provision of services (Weber, 2002, p. 661).

⁶ Ethnic group is defined as organizational type: ‘By focusing on what is socially effective, ethnic groups come to be seen as a form of social organization.’ (Barth, 2000, p. 31).

2.2 Mode of Production and Power Asymmetries

Following the conception of João Pacheco de Oliveira and incorporating the contributions of Eric Wolf (2009), Andrey Cordeiro Ferreira (2013) analyzes how the mode of production operates in the territorialization process, emphasizing the asymmetrical power relations between the State and indigenous peoples. In the work “Europe and the peoples without history” (Wolf, 2009), Wolf investigates how the capitalist mode of production was implanted in different colonial contexts, showing how the European demand for commodities integrated indigenous groups into a global economy, profoundly influencing their social and territorial organization. Ferreira (2013) interprets this relationship as a constant clash between local powers and state policies, the result of which defines specific territorial configurations:

To use Eric Wolf's (2009) terms, it is a matter of thinking about the different forms of power, an organizational power that comes from 'below' and a structural power that comes from 'above', and how these conflict and produce effects of territorial organization (Ferreira, 2013, p. 199) (free translation).

Through the case study of the construction of the Brazil-Bolivia gas pipeline in Terena territory, the author analyzes the social organization of this people in the face of a large development project imposed by the State. The government implemented the Indigenous Peoples Development Plan (PDPI), a proposal for reciprocity in exchange for the passage of the pipeline, which provided benefits such as cooperatives and community projects. However, Ferreira highlights the processes of fusion and fission of the Terena domestic groups, which did not adapt to the “community-collective” projects idealized by the State, demonstrating the resistance of indigenous organizational logics in the face of external models. An emblematic example was the fate of a cold chamber acquired through the PDPI:

(...) 'cooperative' that should crystallize the organizational process in the economy did not develop. He was interrupted by various difficulties. The cold chamber was acquired and placed, symbolically, in the center of the village. However, a few years later it was soon after sold. As an object, it is representative, as it allowed the 'centralization' of fish production for commercialization. But it was replaced by another storage instrument, the horizontal freezer with a smaller capacity, but located inside the houses of macro-family units. The storage of the product of fishing is no longer like this in the 'collective community' space to be carried out in the space of the domestic group and extended families (...) The example of the cold chamber of Lalima shows how there is a tendency of the domestic group to seek its autonomy and to structure itself independently in the control of strategic resources for the extended family or neighborhood group, both in the production and circulation of agricultural items, as well as in hunting and fishing. In this case, the cold chamber that existed in the Lalima village and which was intended to store the fish collectively was resold, as it fell into disuse as the families acquired the freezers (Ferreira, 2013, pp. 187-188) (free translation).

This would be just one of the examples pointed out by the anthropologist of the group's adaptation to an external logic (of the State) in its organization. Throughout their postulation, the heads of extended families, leaders of the macro villages and village chiefs operate by the logic of reciprocity before their group, that is, the occupation of certain positions has the obligation to meet the needs of their group that varies according to the scale of power it occupies. In our reading, the ethnologist reinforces that even in an asymmetrical logic of power, the logic of reciprocity does not juxtapose or overcome logics of social organization both past and present, but reproduces it through a paradigm of interpretation that are derived from “its” categories of social organization. We believe that despite the emphasis given by the author to asymmetry in the power relation, the collation of asymmetric logics results in a separate interpretation between “logic”/state action and “logic”/ethnic group action, in such a way that the elements of social organization of the group seem like a “static interpretative filter”. In the next topic we will see an approach that tries to dynamize the interpretations and actions of the groups.

2.3 Cultural Flows and Domestic Ecology

Alexandra Barbosa da Silva and Fabio Mura (2011) represent a significant advance in the paradigm of territorialization by arguing that the concept of social organization is insufficient to understand the complexity of territorial processes. His approach incorporates symbolic and cosmological dimensions and cultural flows as constitutive elements of territorial dynamics, overcoming dichotomies between materialism and culturalism. The authors are concerned with demonstrating how the occupations of two indigenous groups in radically different contexts – the Guarani-Kaiowá in Mato Grosso do Sul and the Tabajara in Paraíba – have convergences and confluences derived from the way in which domestic groups store and operate with their knowledge and practices. To do so, they use Barth's (2005) concept that culture flows freely among individuals, but social organization imposes barriers and channels certain knowledge, which can generate contestation of established paradigms: “In fact, the acts promoted by people and the events that result from them are continuously interpreted, reaching, through these processes, not only the transmission of knowledge and cultural schemes, but also their contestation” (Barth, 2005, p.104).

Among the Guarani-Kaiowá, who suffered less state intrusion until the nineteenth century, a strong shamanic cosmology reinforced exclusive ethnic boundaries and a moral framework that defines activities “proper” to the “Guarani way of being.” Cattle raising, for example, is seen as an activity of the whites, and its expansion comes up against the logic of reciprocity that obliges

distribution, making it unprofitable from the capitalist economic point of view, but consistent with the Kaiowá moral economy:

(...) As the renowned shaman Atanásio Teixeira observes, the Indians can raise a few heads of cattle to obtain meat and milk, but they fail when they try to increase the number of these animals immeasurably, since it would not be in their nature to be large cattle breeders (...)the logic of reciprocity that obliges individuals to share with their relatives and allies the advantages arising from their material experiences. In these terms, raising a lot of cattle would imply having to slaughter many heads to distribute the meat among their relatives, making the enterprise unprofitable in economic terms, which is why the indigenous people, after trying, end up giving up on the company (Mura; Barbosa da Silva, 2011, pp. 107-108) (free translation).

Thus, the Kaiowá tradition of knowledge is compared on two main dimensions: the activities of domestic life and ethnic identity, producing a territorialization marked by relatively rigid ethnic boundaries. Among the Tabajara, on the other hand, a historical process of greater colonial repression, aggregation in villages, interethnic marriages and an intense flow of settlers and slaves generated a diversified cultural flow and a distinct territorial configuration. The result was the formation of a local political community that includes, in addition to the indigenous people, “quilombolas”, “settlers” and “squatters”, all sharing the same tradition of knowledge (Mura; Barbosa da Silva, 2011, p. 105). This tradition includes, for example, a moral framework that relates success in activities such as fishing and gathering to the state of “closed body” (sexual abstinence and ritual purity), showing how symbolic categories organize relations with the territory:

(...)A man goes to collect honey and has an open body, that is, if he has had sexual relations for a short time or, worse, if he has been with prostitutes, or even if he has committed adultery, the bees can sting and even kill him. On the contrary, if the body is “closed”, the individual, with a clear conscience, will not suffer anything. The same logic is valid in fishing, agriculture and hunting activities, during which, in order to be successful, certain times must be respected, to allow that, once the body is opened, it can close (Mura; Barbosa da Silva, 2011, p. 108) (free translation).

The importance of the work of these two anthropologists lies in demonstrating that: (1) a political community and traditions of knowledge can be constituted without rigid ethnic boundaries or the formation of discrete ethnic groups; and (2) studies of territorial dynamics must relate the historical process of occupation to the adaptation of groups to their socio-historical-territorial context (Mura; Barbosa da Silva, 2011, p. 105). It is also noteworthy that the way the “historical situation” is treated as a theoretical approach is not determined solely by the social organization of the groups that occupy the territory or by the public administration’s interpretation of power, but rather by the way cultural flows operate and organize the domestic life of these groups. Responses to events are entangled in multiple factors (socio-historical-territorial), generating a continuum in which it is

difficult to portray them as a mere social reorganization or as an interpretation equivalent to the values of the existing social organization in a linear and atemporal manner—an approach that will become clearer in the next section.

2.4 Kaiowá Domestic Ecology: Historical Depth and Contemporary Transformations

In a later work, “Territory and Domestic Ecology among the Kaiowá of Mato Grosso do Sul” (Mura and Barbosa da Silva, 2022), the authors deepen this analysis, showing how the Kaiowá domestic groups articulate state policies that have modified their economic activities of productive acquisition. They analyze native categories that are fundamental to understanding Kaiowá territorialization: *jeheka* (the idea of looking for something, considering the weather conditions), *tekoha* and *tendápe*.

Mura and Barbosa da Silva (2022) argue that the meaning of *tekoha* – today understood as “the place where we realize our way of being and living” – was significantly altered by the colonial imposition of settlements and fixed borders. Through research in historical sources, they demonstrate that originally the expression was always associated with *yvy* (earth) – “*yvy ore rekoha*” – suggesting that it would not be a noun or concept, but an action that would occur on earth:

These sources consist of letters drawn up by indigenous people in the Jesuit missions shortly after the Treaty of Madrid (which divided the spaces of the Portuguese and Spanish colonies), putting at risk the occupation of the lands by the Guarani at the time. (...) It happens, however, that in these letters the expression *ore rekoha* does not appear in isolation, but is always related to the term *yvy* (earth); The expression is “*Yvy Ore Rekoha*”. Therefore, *tekoha* (in its oscillating form *rekoha*), would not be a noun, a concept in itself, as it is understood today, indicating a political-territorial ordering; He would express an action that would take place on earth (YVY), the latter being the main subject. (Mura; Barbosa da Silva, 2022, p. 97) (free translation).

With the imposition of Western forms of territoriality by the colonial and national State, the meaning was transformed until the current conception: “*teko*” = ‘way, way’, and “there is”, a suffix that indicates, in this case, place, we have: “place where we realize our way of being and living” (Barbosa da Silva; Mura, 2022, p. 97), thus aggregating several *extended families under the same political-territorial unit*. *Tendápe*, on the other hand, refer to the specific places where extended families are located in the occupied space. In conclusion, anthropologists report that the action of occupation of the indigenous people over the *tekoha* distances itself from a rigid and fixed demarcation logic:

Tendápe, when autonomous can be considered a *tekoha*, since, as said, this is a place where the indigenous people realize their way of being and living. However, it is more common for

the tekoha to be configured by the relationship between several te'yi, thus forming a territory that would be the sum of a plurality of tendape. In this sense, the territory of a tekoha would be constituted by the exclusive spaces of the te'yi, combined with inclusive places (usually forests and fields), of common use. Being formed by the relationship between several tendape, the tekoha constitutes a local political community, whose configuration, as we have seen, can vary according to alliances and enmities between the extended families involved. Therefore, it can be seen that, contrary to an alleged rigidity, over time the space of coverage of a tekoha may also vary. The lands claimed as former occupation will have such a scope from the memories of their occupation (...) (Mura; Barbosa da Silva, 2022, p. 103) (free translation).

The authors also conclude that the Maussian social morphology is insufficient to describe the territorial dynamics, and that the “socio-ecological-cultural context” should be analyzed, considering how the social institution of the domestic group ⁷ influences the territorial dynamics of political communities that act according to the socio-territorial context, incorporating elements of different forms of organization, whether coercively or voluntarily.

2.5 The Meeting of Anthropological Categories with Human Rights

The notion of territorialization, as elaborated by authors such as João Pacheco de Oliveira (1998), refers to the process by which the nation-state imposes its spatial order, delimiting, categorizing and administering portions of the territory under its jurisdiction. In the Brazilian indigenous context, this process historically took place through the creation of reserves, settlements and, later, Indigenous Lands (TIs), spaces with fixed boundaries defined by bureaucratic-administrative criteria.

As pointed out in the memorial of the Brazilian Association of Anthropology (Mura, Moreira, Barbosa da Silva, 2020) - Memorial *Amicus Curiae* (Special Appeal 1017365, 2020) - this state action often produced enclaves of spaces cut out within effective territories of traditional use and occupation, disregarding the scale and dynamics of indigenous social organization. State territorialization operates from an impersonal logic, based on depersonalized relations and property as an alienable good, inherited from Roman agrarian law and consolidated in Brazil with the Land Law of 1850.

In contrast to this logic, anthropology contributes to the understanding of territory as a relational and dynamic category. It is not reduced to a delimited physical space, but is constituted by the social, kinship, cosmological and economic relations that a collectivity establishes with its

⁷ The domestic group can be understood as a social group whose activities are centered on the housing complex, which performs a set of tasks and which is the primary unit within which resources are gathered and allocated. Such housing complexes do not need to be geographically close, however the sharing of resource management and functions among members is what determines their constitution and morphology (See Wilk *et al.*, 1984).

environment. As the ABA memorial (2020) highlights, the indigenous territory is a corollary of the relationships that develop within it, and its occupation is marked by seasonality, mobility, and multiple and overlapping uses (housing, productive activities, environmental preservation, cultural reproduction). Indigenous “possession”, in this perspective, is fluid and expresses the exercise of a way of life, not to be confused with the owner-possession of civil law. Traditionality, therefore, does not refer to an immemorial or static time, but to a sedimentation of knowledge and experiences that gives continuity to this specific way of occupying and giving meaning to space. It is at this point that ILO Convention 169 (1989) plays a central role, by providing an international legal framework that legitimizes and protects this anthropological conception of territory. Ratified by Brazil and with constitutional status, the Convention goes on to recognize, in its Article 13, that:

1. In applying the provisions of this part of the Convention, governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship to the lands or territories, or to both, as the case may be, which they occupy or use in some way, and in particular the collective aspects of that relationship.

2. The use of the term “lands” in Articles 15 and 16 shall include the concept of territories, which covers the entire habitat of the regions occupied or otherwise used by the peoples concerned

(...)

Article 15

1. The rights of the peoples concerned to the natural resources on their lands shall be particularly protected. These rights include the right of these peoples to participate in the use, administration and conservation of the resources mentioned.

2. In the event that the State owns the minerals or subsoil resources, or has rights to other resources existing on the land, governments shall establish or maintain procedures for consulting the peoples concerned in order to determine whether and to what extent the interests of those peoples would be harmed. before undertaking or authorizing any program of prospecting or exploitation of the resources existing on their lands. The peoples concerned shall participate as far as possible in the benefits which these activities produce, and shall receive equitable compensation for any harm they may suffer as a result of these activities.

Article 16

1. Subject to the provisions of the following paragraphs of this Article, the peoples concerned shall not be transferred from the lands they occupy.

2. When, exceptionally, the transfer and resettlement of these peoples are considered necessary, they may only be carried out with their consent, granted freely and with full knowledge of the facts. Where it is not possible to obtain their consent, transfer and resettlement may be carried out only after the completion of appropriate procedures established by national legislation, including public surveys, where appropriate, in which the peoples concerned have the possibility of being effectively represented.

3. Whenever possible, these peoples should have the right to return to their traditional lands as soon as the causes that motivated their relocation and resettlement cease to exist.

4. When repossession is not possible, as determined by agreement or, in the absence of such agreements, through an appropriate procedure, these peoples shall receive, in all cases where possible, lands whose quality and legal status are at least equal to those of the lands they previously occupied, and which enable them to cover their needs and ensure their future development. When the peoples concerned prefer to receive compensation in money or goods, such compensation shall be granted with appropriate guarantees.

5. Persons transferred and resettled shall be fully compensated for any loss or damage they have suffered as a result of their displacement. (free translation).

Thus, understanding the concept of “lands” as the totality of the habitat of the regions that the interested peoples occupy or use in some other way. This broad and functional definition breaks with the static and land view of the land, aligning itself with the notion of territory as a space for life and cultural reproduction. The Convention is anchored in the principle of self-definition and respect for the “ways of creating, doing and living” of peoples, protecting precisely the territorial dynamics that the state action of territorialization often ignores or restricts.

Therefore, the realization of indigenous territorial rights demands a critical dialogue between Law and Anthropology. It is necessary to transcend the mere logic of state territorialization, which frames and limits, to embrace the conception of territory as a lived and dynamically constructed space. ILO Convention 169 provides the fundamental legal bridge for this transposition, by imposing on the State the duty to recognize and protect the integrality of indigenous habitat, as defined by its uses, customs and traditions. In this sense, guaranteeing traditionally occupied land is more than demarcating a polygon on the map; it is to ensure the conditions for the physical and cultural reproduction of a people, which implies respecting the complex, fluid and essentially dynamic relationship that it maintains with its living space.

3 FINAL CONSIDERATIONS

Almeida (2012) brings a pertinent reflection on constitutional pluralism and its application in the demarcation of traditional territories, highlighting that article 231 of the Federal Constitution (Brasil, 1988) values “permanent occupation” to characterize the “traditional” character, separating it from the notion of “immemoriality”. The reflections of Mura and Barbosa da Silva (2011; 2022), however, demonstrate that occupation can follow logics that are consistent with the growth of extended families and seasonal mobility, and not with a notion of fixed and permanently occupied territory in the strict sense that the law usually operates. Legal paradigms tend to naturalize fixed territories delimited by a memory of ancestral occupation, failing to conceive territorial dynamics of a “processual” order, where cosmological paradigms profoundly influence the types of occupation. This disjunction between the legal categories and the effective territorial dynamics of indigenous peoples generates serious obstacles to the recognition of their rights, especially in contexts such as the Brazilian Northeast or areas of former colonization.

A second aspect to note is that, while Wolf (2009) states that there was the dissolution of ethnic groups in the Canadian fur trade, Mura and Barbosa da Silva (2011) present the Tabajara case, where ethnic identity was supplanted by colonial violence, but this did not prevent the creation of a local political community with strong cultural specificities. Unlike Ferreira (2013) and Wolf (2009),

whose analyses tend to privilege the relationship between ethnic group and mode of production, the approach of Barbosa da Silva and Mura (2011; 2022) opens space for the analysis of the flow of knowledge/culture as a fundamental element of dynamics and communication of social institutions, thus establishing new socio-political configurations that transcend conventional ethnic categories. This suggests that territorialization processes can occur even in contexts of apparent ethnic “dissolution,” through the maintenance of traditions of knowledge, specific moral frameworks, and forms of domestic organization that recreate political community on not necessarily ethnic bases.

Finally, one of the hypotheses that we bring through the reading of this theoretical retrospective is that the regions of Brazil have a variable in the application of administrative law, either as a result of projects of economic interest/land or in their demographic density, this significantly impacts the way that political communities are structured in the territory. Finally, it remains to be discovered whether reflections on the territorial dynamics of ethnic minorities will be able to impact the generalist spirit of the constitutions and laws of nation-states.

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THE LEGAL FRAMEWORK FOR LITHIUM AND STRATEGIC MINERALS IN BRAZIL: BETWEEN THE IMPOSITIONS OF THE ENERGY MARKET AND POPULAR CONTROL

O MARCO LEGAL DO LÍTIO E DOS MINERAIS ESTRATÉGICOS NO BRASIL: ENTRE AS IMPOSIÇÕES DO MERCADO ENERGÉTICO E O CONTROLE POPULAR

EL MARCO LEGAL DEL LITIO Y DE LOS MINERALES ESTRATEGICOS EN BRASIL: ENTRE LAS IMPOSICIONES DEL MERCADO ENERGÉTICO Y EL CONTROL POPULAR

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ABSTRACT

The objective of this research is to analyze the institutional initiatives of Brazilian political representatives - including presidents, federal deputies and senators - regarding lithium mining in Brazil. We seek to understand how these authorities have influenced the extraction and management of this mineral resource. The research also investigates the possible gaps and challenges in the implementation of proposed federal public policies, seeking to understand the obstacles that can compromise the effectiveness of the measures adopted, as well as the guarantee of the preservation of natural assets, the distribution of generated resources and the democratization of decision-making. For this, the present research adopts a mixed qualitative approach, combining elements of documentary and descriptive research. The data collection is carried out on official bases, such as the Official Gazette of the Union and the website of the Chamber of Deputies. The analysis of data is done through documentary analysis techniques, in order to identify patterns and trends in policies, guided by criteria of thematic emphasis related to strategic minerals, focusing on lithium. We conclude that most

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initiatives act as an incentive and facilitator of lithium extraction, without effective social control and robust mechanisms for environmental and social protection. In general, the measures adopted prioritize market action in lithium extraction, centralizing decision-making power in mining companies.

Keywords: Lithium. Mining. Legal Framework. Energy Transition.

RESUMO

O objetivo desta pesquisa é analisar as iniciativas institucionais de representantes políticos brasileiros – incluindo Presidentes da República, deputados federais, estaduais e senadores – no que se refere à mineração de lítio no Brasil. Busca-se compreender como essas autoridades têm influenciado a extração e a gestão desse recurso mineral. A pesquisa investiga também as possíveis lacunas e os desafios na implementação das políticas públicas federais propostas, procurando entender os obstáculos que podem comprometer a eficácia das medidas adotadas, bem como a garantia da preservação dos bens naturais, da distribuição dos recursos gerados e da democratização do processo decisório. Para tanto, a presente pesquisa adota uma abordagem qualitativa mista, combinando elementos de pesquisa documental e descritiva. O levantamento de dados é realizado em bases oficiais, como o Diário Oficial da União e o site da Câmara dos Deputados e Senado. A análise dos dados se dá por meio de técnicas de análise documental, com o intuito de identificar padrões e tendências nas políticas, guiada por critérios de ênfase temática relacionados aos minerais estratégicos, com foco no lítio. Concluímos que a maioria das iniciativas funciona como incentivo e facilitadora da extração de lítio, sem um controle social efetivo e mecanismos robustos de proteção ambiental e social. Em geral, as medidas adotadas priorizam a atuação do mercado na extração de lítio, centralizando o poder de decisão nas empresas mineradoras.

Palavras-chave: Lítio. Mineração. Marco Legal. Transição Energética.

RESUMEN

El objetivo de esta investigación es analizar las iniciativas institucionales de representantes políticos brasileños - incluyendo presidentes de la república, diputados federales y senadores - en lo que se refiere a la minería de litio en Brasil. Se busca comprender cómo estas autoridades han influido en la extracción y gestión de este recurso mineral. La investigación investiga también las posibles lagunas y los desafíos en la implementación de las políticas públicas federales propuestas, tratando de entender los obstáculos que pueden comprometer la eficacia de las medidas adoptadas, así como la garantía de la preservación de los bienes naturales, la distribución de los recursos generados y la democratización del proceso decisorio. Para ello, la presente investigación adopta un enfoque cualitativo mixto, combinando elementos de investigación documental y descriptiva. La recogida de datos se realiza en bases oficiales, como el Diario Oficial de la Unión y el sitio de la Cámara de Diputados. El análisis de los datos se realiza mediante técnicas de análisis documental, con el fin de identificar patrones y tendencias en las políticas, guiada por criterios de énfasis temático relacionados con los minerales estratégicos, con enfoque en el litio. Concluimos que la mayoría de las iniciativas funcionan como un incentivo y facilitador de la extracción de litio, sin un control social efectivo y mecanismos robustos de protección ambiental y social. En general, las medidas adoptadas priorizan la actuación del mercado en la extracción de litio, centralizando el poder de decisión en las empresas mineras.

Palabras clave: Litio. Minería. Marco Legal. Transición Energética.

INTRODUCTION

In light of the growing debate on the climate crisis and the urgent need to reduce greenhouse gas emissions, governments, companies, and society have placed the transformation of the energy matrix at the center of public discussion. This transformation is viewed as an essential and innovative solution for renewing energy systems. More than a response to current environmental problems, the energy transition has been associated with a discourse of sustainability and economic development. However, although the shift toward so-called “green” energy sources is often seen as a promising solution to address the climate crisis, it is essential to recognize that these changes are not free from criticism and challenges. The infrastructure associated with the energy transition, as well as the dependence on strategic minerals such as lithium and rare earth elements, has raised concerns about impacts on local communities and the unequal distribution of energy benefits and environmental burdens. The mineral extractive sector, identified as essential to the energy transition, has increasingly proven to exacerbate violence and inequalities.

A study by the Global Environmental Justice Atlas identified 3,479 cases of environmental conflict (as of July 2021), of which at least 323 were related to the extraction of strategic minerals for the energy transition (Grego, 2023). Among these minerals, lithium stands out due to its importance in the manufacture of lithium-ion batteries, which are essential for energy storage and the production of electric vehicles. However, lithium mining can intensify socio-environmental conflicts, cause environmental degradation, and lead to the displacement of local communities, thereby deepening tensions and negative impacts in these regions.

The Brazilian State plays a fundamental role in driving demand and structuring production to consolidate the new “green” market, being responsible for creating legislation, incentive policies, limits, and regulatory frameworks. However, this role often unfolds in partnership with the private sector and under pressure from transnational capitalism, which may reflect a dynamic of facilitating corporate interests (Packer, 2012). At the same time, the State is expected to act as a protector of territory and people. In this context, it is essential to analyze government policies related to the energy transition, particularly with regard to lithium mining, in order to understand how political authorities at the federal level have dealt with the exploitation of this mineral in Brazil, as well as the challenges associated with it.

The main objective of this research is to analyze the institutional stance of Brazilian political authorities—including Presidents of the Republic, state and federal deputies, and senators—regarding lithium mining in Brazil. The study seeks to understand how these authorities have influenced the exploitation and management of this mineral resource. It investigates potential gaps and challenges

in the implementation of proposed federal public policies, aiming to identify obstacles that may compromise the effectiveness of adopted measures, as well as the preservation of resources and the fair distribution of generated benefits.

This research adopts a mixed qualitative approach, incorporating elements of documentary and descriptive research, with the aim of understanding the dynamics of lithium mining in Brazil and the relationship between federal political authorities and this activity. This methodological choice allows for an analysis that combines data collection, description, and critical interpretation of relevant documents. Data collection was conducted through the selection of materials from official databases, such as the Federal Official Gazette (*Diário Oficial da União*) and the websites of the Chamber of Deputies and the Federal Senate. The analysis employed documentary analysis techniques to identify patterns and trends in the formulated policies, guided by criteria emphasizing thematic relevance to strategic minerals, with a specific focus on lithium.

1 ENERGY TRANSITION

The energy transition (ET) is a process of transformation of the current energy system aimed at reducing dependence on highly polluting fossil fuels and lowering carbon dioxide (CO₂) emissions. The energy transition therefore seeks to promote a change in the energy matrix by replacing non-renewable fossil fuels—such as coal, oil, and natural gas, mainly associated with industry and transport—with renewable and low-carbon energy sources (such as solar and wind power). In addition, it sustains the discourse of a more sustainable economy, a concept that many authors now consider empty or outdated. As pointed out by Alonso (2018), sustainability within the energy transition lies in the mitigation of negative externalities (Alonso, 2018).

The energy transition should be more than a simple change in energy sources; it should be a collectively driven process in which the role of society outweighs that of corporations. This approach recognizes and takes into account the specific characteristics of productive and social systems in each region, their needs, and the particular capacities of each community (Alonso, 2022). As emphasized by Alonso (2022), it is essential to adapt energy strategies to each reality and context in order to ensure a just transition.

From the political and economic perspective of wealthier and more developed countries, the vision of the energy transition is generally guided by a corporate approach, such as the “Green New Deal” (packages of reforms aimed at decarbonization and job creation, with the goal of achieving net-zero carbon emissions by 2050). In this context, energy is reduced to a market dimension, giving rise to what has been termed “green capitalism.” Under this view, the energy transition is not seen as a

response to the climate crisis, but rather as an opportunity for the expansion of capitalism and its inequalities, in which environmental concern is monetized. For this reason, researchers have denounced this approach as “greenwashing,” especially with regard to mining, which has used the energy transition and sustainability discourse to regain credibility lost due to numerous disasters associated with the sector (Campello et al., 2024).

The production of essential technologies used in the energy transition—such as lithium-ion batteries, solar panels, and wind turbines, among others—requires the use of minerals known as strategic (or critical) minerals. These minerals play a fundamental role in enabling the energy systems that drive the energy transition. However, the growing demand for these minerals—such as lithium, cobalt, rare earth elements, and copper—raises serious concerns regarding the environmental and social impacts associated with this transformation.

These concerns become even more evident when considering that, in order to meet the goals of the Paris Agreement, demand over the next two decades is expected to increase by more than 40% for copper and rare earth elements, 60% for nickel, 70% for cobalt, and 90% for lithium (IEA, 2021; Santos, 2022). If the transition is completed by 2050, lithium demand could reach 280% of current global reserves (Aronoff et al., 2020). This sharp increase in lithium demand highlights the strategic importance of this mineral in the process of transitioning energy matrices.

Among more than fifteen strategic elements, lithium stands out as one of the most important minerals for the energy transition due to its potential for energy storage, particularly in lithium-ion batteries. Its application in electric vehicle propulsion has also been crucial in reducing dependence on fossil fuels and, consequently, greenhouse gas emissions in the transport sector. In addition, lithium enables energy storage in households, businesses, and electricity grids (solar and wind).

Lithium is a metal known for its high specific heat, which makes it efficient in heat transfer. It also has high electrochemical potential and high energy density, characteristics that make it especially useful in the manufacture of electric batteries (Borges, 2019). This mineral is not found in its elemental form in nature and generally occurs in chemical compounds. Its main occurrences are in evaporites (sedimentary rocks) and pegmatites (igneous rocks). These two types of deposits account for most available lithium sources, representing 62% and 26%, respectively (Borges, 2019). The lithium-bearing minerals with economic extraction potential include spodumene ($\text{LiAlSi}_2\text{O}_6$), with a lithium content of approximately 3.7%, and petalite ($\text{LiAlSi}_4\text{O}_{10}$), with lithium content ranging from 1.6% to 2.27% (British Geological Survey, 2016).

2 CRITERIA FOR THE ANALYSIS OF LEGISLATION

As previously discussed, lithium mining in Brazil is an activity of growing economic and strategic importance, particularly in the context of the energy transition. To assess how Brazilian political authorities have addressed this issue, it is essential to define a set of analytical criteria. In this regard, drawing on the Projeto Brasil Popular (2023), the following criteria are presented for the evaluation of legislative initiatives.

2.1 Common goods

The concept of common goods is central and refers to the guarantee of sovereignty over assets controlled by the population, particularly by traditional communities. These resources and values are assessed according to the benefits they generate for the collective, including air, nature, culture, and language, as well as their preservation. As they are not conditioned by financial returns, they must be used in ways that ensure their collective and long-term use, which requires avoiding intensive exploitation. Common goods must be accessible to all, enabling everyone to enjoy their resources and benefits. Inclusion and equity are therefore essential to ensure that no one is excluded and that all can democratically participate in decisions concerning these goods.

In the mining sector, it is fundamental to establish mechanisms for direct, free, and informed consultation with affected populations prior to the implementation of large-scale mining projects, especially those that significantly interfere with local social structures. As has already occurred in some countries, communities should have the right to say “no.” Brazilian legislation currently lacks legal mechanisms specifically aimed at institutionalizing Mining-Free Territories (Territórios Livres de Mineração – TLM), although there are similar legal categories that impose restrictions—often disregarded in practice—on mining activities, such as Indigenous Lands, National Parks, Extractive Reserves, and Border Areas. Mining-Free Areas would therefore constitute a new legal category.

2.2 Equality and diversity

In Brazil, inequality is historical and structural, manifesting itself in multiple forms of exclusion and discrimination. Equality serves as a guiding principle for policy formulation, particularly because it contributes to combating exclusion by promoting social inclusion and fair distribution. The objective is to overcome conditions of oppression and to establish new relationships among individuals and peoples.

The promotion of equality must be central to the formulation of public policies, creating conditions that ensure access to opportunities and resources for all, while guaranteeing respect for diversity. In this sense, mineral extraction policies should seek to address and reduce economic, regional, racial, and gender inequalities.

2.3 Democracy, participation, and autonomy

These concepts are fundamental to the construction of a State that goes beyond the role of a mere service provider. The State should primarily act as a guarantor of rights, committed to the self-determination of peoples and to the construction of an egalitarian society.

Democracy is understood as a process of popular participation in which citizens have an active voice in decisions that affect their lives and communities. To this end, in addition to civil society participation, mechanisms of transparency and social control are required. Autonomy, in turn, refers to the capacity of individuals and communities to exercise decision-making power. This implies the decentralization of power and the strengthening of local governance structures, while respecting cultural and social diversity.

3 REGULATORY MEASURES

Government regulation should responsibly guide mining activities, especially at this moment of intense strategic mineral exploration. Decrees, bills, and other regulatory measures shape the scenario, directly affecting the socioeconomic and environmental contexts of the involved regions. Therefore, this section will examine the main decrees, legislations, and other measures adopted by political authorities at the federal level related to lithium mining in Brazil. We will analyze their scope, efficiency, and potential implications for the energy transition, as well as their effects on local populations and communities, according to the presented criteria.

For the analysis of regulatory measures related to lithium mining in Brazil, it is essential to classify the measures adopted. This process aims to categorize the different regulatory approaches regarding sector development, providing a foundation to better understand the authorities' actions. By classifying and identifying these measures, it will be possible to evaluate their effectiveness in regulating lithium mining, in accordance with the criteria and principles of the Projeto Brasil Popular.

3.1 Legislative proposal no. 1,992/2020

This legislative proposal is under consideration in the Legislative Assembly of the State of Minas Gerais. However, because it directly addresses lithium mining, it has been included in the present analysis. Drafted by State Deputy Jean Freire (PT–MG) and currently awaiting committee review, the proposal calls for the creation of a Lithium Mining and Industrial Hub in the Jequitinhonha and Mucuri Valleys, encompassing the municipalities of Araçuaí, Capelinha, Coronel Murta, Itaobim, Itinga, Malacacheta, Medina, Minas Novas, Pedra Azul, Rubelita, Salinas, Virgem da Lapa, Teófilo Otoni, and Turmalina.

The proposed Hub aims to: strengthen the lithium mining and industrial production chain; encourage the extraction, processing, and commercialization of lithium-derived products; promote the development and dissemination of technologies for the lithium mining and industrial sector; contribute to job creation and income growth (in accordance with the principles of sustainable development); and create infrastructure for the extraction, processing, and industrialization of lithium-based products. One of the measures established is the requirement that any legal entity engaged in lithium extraction activities in the municipalities of the Jequitinhonha and Mucuri Valleys carry out processing and production within the same regional municipalities, with the objective of fostering regional development.

Regarding governmental actions, the proposal provides for the promotion of research, development, and dissemination of new techniques related to lithium-based products; the allocation of specific resources for research and development aimed at establishing local manufacturing facilities; the development of professional training initiatives in the fields of geology, mineralogy, chemistry, and physics, as well as in management and commercialization; and the implementation of a market information system linking public entities, companies, cooperatives, and producers' associations, in order to support decision-making processes by stakeholders involved in the sector. The proposal also suggests the creation of credit lines in official banking institutions to finance industrial activities.

Actions related to the implementation of the Hub are to be carried out with the participation of representatives from municipalities, mining companies, business actors, small-scale miners, and private entities linked to the extraction, processing, production, and commercialization of products manufactured within the municipalities that comprise the Hub.

The proposal seeks to strengthen national industry by encouraging lithium extraction and processing within Brazilian territory. By requiring that lithium production and beneficiation take place in the municipalities where extraction occurs, the proposal attempts to ensure that a significant

portion of mineral revenue remains within the region. Nevertheless, in light of past experiences with productive chaining and vertical integration in Brazilian mining, it is essential to ensure that these processes are conducted responsibly, so as to avoid socio-environmental harm in mining regions. The literature highlights environmentally and socially damaging effects associated with mining-related productive chains, such as those observed in the Carajás Railway and pig iron production hubs (Coelho, 2016), as well as in the Companhia Siderúrgica Nacional (CSN) (Lopes, 2006).

The proposal also incorporates a more inclusive approach by involving a range of representatives, including municipal authorities, mining actors, business representatives, and private entities. Such inclusion is essential to promote greater democratization in decision-making related to the mining hub. However, it is crucial to ensure that local communities and vulnerable groups are effectively represented, so as to prevent corporate interests from prevailing. Effective community participation may be achieved through public consultations, hearings, and ongoing accountability and advisory mechanisms.

The proposal mentions the creation of a market information system interconnected with public entities, companies, cooperatives, and associations. This initiative may enhance transparency in operations, enabling improved monitoring and oversight by civil society and public authorities. However, for the system to be effective, it must be accessible, provide information in a clear and comprehensible manner, and ensure that data production is carried out by independent agents.

Finally, the allocation of resources for the economic diversification of these municipalities is fundamental to avoiding the trap of mineral dependency (Coelho, 2018). Initiatives that support sectors such as family farming, tourism, and other activities strengthen the local economy and generate employment and income beyond mining.

In summary, the proposal contains important elements when assessed against the adopted evaluation criteria. Nevertheless, it prioritizes productive chaining of lithium and the addition of value to raw materials, while overlooking documented experiences of environmental degradation and social harm caused by mining-related productive verticalization.

3.2 Decree 11,120/2022

The decree promulgated by Jair Messias Bolsonaro allows foreign trade operations of strategic minerals, including lithium, as well as organic and inorganic lithium-based chemical products and derivatives. It authorizes export and import operations without imposing criteria,

restrictions, limits, or conditions of any kind, except those provided by law or acts issued by the Foreign Trade Chamber (Camex).

This decree meets the demands of the private lithium extractive sector and other strategic minerals, facilitating the export of minerals extracted by multinational mining companies. Allowing foreign trade operations of lithium minerals and ores without criteria or conditions may compromise the country's control over its mineral resources. The lack of specific regulation could result in uncontrolled exploitation of these resources without adequately considering the population's long-term interests. Moreover, it limits civil society participation and involvement.

The absence of criteria and conditions could contribute to concentrating economic benefits in certain sectors or groups, to the detriment of others, worsening socioeconomic inequalities. Exploitation of natural resources should be conducted so that benefits are fairly distributed, promoting regional and national development rather than serving only specific economic interests.

The lack of public consultation and transparency in decision-making can undermine democratic governance principles. Policies related to the exploitation and commercialization of natural resources must include public participation mechanisms, ensuring affected communities and society in general have a voice in decisions that directly impact their lives and territories, including the possibility to reject mining projects in their territories through prior, free, and informed consultation processes.

Finally, regulatory gaps could result in significant environmental impacts without appropriate mitigation and compensation measures to restore degraded areas. Without these measures, the country risks severely compromising its environmental heritage, affecting not only current but also future generations, and increasingly contributing to the climate crisis that the energy transition supposedly seeks to address.

The decree reduces control over lithium exports without social or environmental conditions, favoring the private sector and diminishing the State's role in the process.

3.3 Legislative proposal No. 2,809/2023

The proposal introduced by federal deputies Adriana Ventura (NOVO-SP), Evair de Melo (PP-ES), Coronel Chrisóstomo (PL-RO), Kim Kataguirí (UNIÃO-SP), Flávia Morais (PDT-GO), Dagoberto Nogueira (PSDB-MS), Lebrão (UNIÃO-RO), and José Medeiros (PL-MT)—currently awaiting referral by the plenary of the Federal Senate and processed under an urgent legislative procedure—addresses the voluntary certification of “Green Lithium.” Its stated objective is to

promote and enhance Brazil's potential in producing lithium with lower carbon intensity. The proposal initially sets out definitions for the terms “Green Lithium,” “Certification,” and “Carbon Intensity.” It establishes that projects and enterprises certified as voluntary producers of Green Lithium may use the certification in their commercial, marketing, and communication strategies to promote and add value to lithium produced with lower carbon intensity.

The proposal sets forth the conditions and procedures for Green Lithium certification. It defines specific criteria, including: the adoption of measures to compensate for, mitigate, or neutralize greenhouse gas emissions; the predominant use of renewable energy sources in the lithium production process; the implementation of best practices in lithium mining and processing; and the adoption of procedures and technologies to increase energy efficiency in mining and processing activities.

The term “Green Lithium” refers to the production and extraction of lithium under a purportedly sustainable approach, aimed at reducing the environmental impacts associated with its exploitation. This implies, throughout the lithium life cycle — from extraction to the final product — the adoption of practices intended to minimize environmental damage, preserve sensitive ecosystems, reduce water and energy consumption, and ensure proper waste management.

Despite its “green” promise, the term has been the target of criticism due to its association with so-called *greenwashing*. Greenwashing — also referred to as “green makeup” or “green laundering” — describes practices whereby companies, industries, NGOs, and even governments promote their products and actions as sustainable in order to attract investment and construct an environmentally responsible public image. Similarly, criticism of the concept of “Green Lithium” focuses primarily on its practical application and its effectiveness in delivering on what is promised. Frequently, the “green” label is used as a marketing strategy to convey a positive image of mining companies without corresponding substantive changes in operational practices. In this sense, voluntary Green Lithium certification may serve as a strategic discourse deployed in affected communities to secure social legitimacy and access to territories.

The environmental impacts of mining as currently organized in Brazil are substantial, and lithium extraction is no exception. Because it is carried out under the same set of practices, social relations, institutional arrangements, and technological choices, lithium mining can produce impacts like those associated with other minerals, such as contamination of drinking water sources, degradation of natural landscapes, and biodiversity loss. Moreover, as a key component of rechargeable batteries, lithium raises additional concerns regarding its life cycle — not only at the extraction stage, but also in relation to improper disposal, which poses serious environmental and public health risks.

The proposal further provides that certification may be issued either per project or per productive enterprise of Green Lithium, indicating the carbon intensity of the lithium produced. The regulation may establish different indicative ranges of carbon intensity for Green Lithium production. In addition, certified companies would be required to keep data related to certification and certified lithium production publicly available and regularly updated online, as defined by the regulation.

Finally, the proposal authorizes the Executive Branch to extend the voluntary certification provided for in the law to the exploration and processing of other minerals used in the manufacture of electrical energy storage systems. However, permitting foreign trade operations involving lithium minerals and ores without the imposition of criteria or conditions may undermine national control over natural assets. This lack of control may lead to the rapid depletion of lithium reserves, compromising the country's capacity to use these strategic resources in the future. Furthermore, the absence of criteria and restrictions on exports and imports limits civil society participation and engagement. The lack of public consultation and transparency in decision-making processes undermines democratic and participatory standards.

Overall, the proposal reflects a discourse aimed at minimizing State intervention in the economy, manifested in the absence of specific regulation and in the prioritization of private sector interests in lithium exploitation and commercialization. This approach employs a sustainability narrative while allowing certification to function primarily as a market instrument, without ensuring effective mechanisms of public oversight or social control.

3.4 Legislative proposal No. 4,367/2023

The initiative, authored by federal deputy Dandara (PT-MG), currently awaits the opinion of the Mining and Energy Committee rapporteur, after the five-session period for submitting amendments expired with none presented. This bill amends Law No. 8,001 of March 13, 1990, which defines the CFEM (Financial Compensation for the Exploitation of Mineral Resources) for lithium. It increases the CFEM rate for lithium exploitation to 4% and authorizes the creation of the Lithium Social Fund. Additionally, it stipulates that a decree issued by the President, within ninety days of the law's enactment, will define criteria for the regulatory entity of the mining sector to reduce the iron CFEM from 3.5% to 2% for deposits with low performance and profitability due to low iron content. Expenses related to installing industrial plants that produce high-value industrial goods may be deducted from the CFEM for lithium, up to a limit of 25% of the amount owed by the legal entity.

A critical observation concerns the proposed CFEM rate compared to international standards of mineral taxation. Since CFEM is Brazil's closest equivalent to mining royalties, in many countries, royalty rates for this mineral are considerably higher than those proposed in the bill (COELHO, 2016). For example, in Ontario, Canada, mining royalties can reach 15% of gross revenue, whereas in Brazil, CFEM is limited to 3.5% of net revenue (applied after taxes on commercialization).

Thus, the proposed 4% CFEM rate remains relatively low, raising questions about the fairness of lithium mineral revenue distribution. More problematic is the reduction of the iron CFEM for low-grade deposits, representing an undue advantage to mines that might otherwise be unviable.

The bill also establishes the Lithium Social Fund, intended to provide resources for social development in regions where lithium is mined, supporting projects in education, culture, sports, public health, science and technology, environment, climate change mitigation and adaptation, and actions benefiting traditional communities.

Fund sources include an additional 1% CFEM on lithium, financial returns on fund assets, and other legally allocated resources. At least 50% of the fund must be invested in education and 10% in research and scientific development.

The proposed CFEM increase and the creation of the fund reflect concern for more equitable distribution of mineral income to public entities, potentially benefiting local populations. However, the bill does not directly address democratization of decision-making in the mining sector. Mineral revenue allocation would still largely disregard society's demands, particularly those of affected communities. Fund criteria and sources are established but not detailed; it is essential that resources are equitably distributed and that local communities have an active voice in defining priorities and implementing actions, ensuring local needs are addressed.

PL 4,367/2023 reflects a developmentalist approach, seeking greater State presence in controlling mineral revenue, which could generate economic and social mechanisms benefiting affected communities. Nevertheless, additional instruments are needed to ensure that communities can manage these resources and determine the use of mineral revenue themselves.

3.5 Lithium Valley Project

In May 2023, the Governor of Minas Gerais, Romeu Zema, launched the "Lithium Valley Brazil" project at the Nasdaq stock exchange in New York. The project aims to transform the northern and northeastern regions of Minas Gerais — specifically the Jequitinhonha and Mucuri Valleys — into lithium extraction hubs, attracting multinational corporations (Cáritas MG, 2023). The initiative

is a joint effort between the Government of the State of Minas Gerais and the Ministry of Mines and Energy (MME).

During the launch and subsequent missions, project representatives promoted Minas Gerais' competitive advantages to foreign investors, including: the largest lithium reserves in Brazil; allegedly low-impact extraction (supposedly without the use of polluting chemicals); and the possibility, advocated by the Governor of Minas Gerais, of altering state regulations to attract investment. In November 2023, during an official mission to China, the project was presented to representatives of Ganfeng Lithium, China's largest producer of lithium salts and the third largest globally (SEDE-MG, 2023).

The approach adopted by Governor Zema aligns closely with the interests of mining companies and shareholders. This strong linkage with foreign capital raises concerns regarding control over the mineral, limiting Brazil's capacity to decide on the use of lithium and to ensure that potential benefits are retained within the country. Moreover, the absence of public consultation and of effective community participation in decisions related to the project violates fundamental principles of justice and human rights.

The concentration of decision-making at the state — and especially international — level, coupled with the lack of effective cooperation with municipalities, indicates that the primary interests served by this proposal are those of mining corporations and financial markets. The lack of transparency and access to information prevents civil society from monitoring and influencing decision-making processes.

The initiative promoted by Governor Romeu Zema does not take the form of a formal decree or legislative bill; however, it has played a significant role in mobilizing and attracting investments for lithium extraction. Although it lacks the legal force of official legislation, the project has created a favorable environment for private interests. By signaling governmental support, its influence on investment dynamics and on the promotion of lithium mining is undeniable.

3.6 Legislative proposal No. 2,780/2024

Authored by federal deputies Zé Silva (Solidariedade/MG), Keniston Braga (MDB/PA), Duda Ramos (MDB/PR), Laura Carneiro (PSD/RJ), Zé Vitor (PL/MG), and Raimundo Santos (PSD/PA), this bill seeks to establish the National Policy on Critical and Strategic Minerals (PNMCE) and the Critical and Strategic Minerals Committee (CMCE), among other initiatives. In September 2025, its urgency regime was approved.

The bill defines critical minerals as those whose availability is at risk due to supply chain limitations and that are essential for the economy, energy transition (ET), and national security. Strategic minerals are those of high importance due to their comparative advantage and essential role in the economy. The PNMCE principles are based on the valorization and sustainable use of critical and strategic minerals, preservation of national interests, sustainable development, recognition of their relevance to ET, increasing their availability for associated technologies, and promotion of investment and competitiveness.

The Critical and Strategic Minerals Committee (CMCE), linked to the National Council of Mineral Policy, will be responsible for defining and biennially reviewing the classification of minerals as critical or strategic in Brazil. The committee will also establish priorities for the PNMCE, create working groups, conduct studies on dependency, supply risk, and the country's potential in research, extraction, and processing of these minerals, and analyze demand, with a review every three years. Other activities include developing monitoring programs for local mining development, supporting environmental licensing of PNMCE projects, and promoting partnerships to ensure supply of these resources.

The Ministry of Mines and Energy (MME) and the National Mining Agency (ANM), together with other federal public administration bodies, will prioritize analyzing projects classified under the Strategic Minerals Policy or by the CMCE. The Executive Branch will encourage credit lines for research and technological development in mineral exploration.

Large companies must allocate at least 0.40% of their gross revenue to research and technological development initiatives. Additionally, no income tax will be levied on revenues paid or credited to foreign-based companies for the use of trademarks, patents, or technology licenses applied in the transformation of these strategic minerals in Brazil.

The bill amends Law No. 11,196/2005³, extending the tax benefits of Articles 17–21 to legal entities involved in research and extraction projects of critical and strategic minerals. The Special Incentives Regime for Infrastructure Development (Reidi) will also be applied to the mineral sector, incentivizing extraction, processing, and the production chain. Law No. 11,488/2007⁴ will be amended to include Reidi beneficiaries as legal entities with approved projects for infrastructure

³ Signed by President Luiz Inácio, establishing the Special Taxation Regime for the Export Platform of Information Technology Services, the Special Regime for the Acquisition of Capital Goods by Exporting Companies, the Digital Inclusion Program, and providing tax incentives for technological innovation, as well as amending certain decrees.

⁴ Signed by President Luiz Inácio, establishing the Special Incentive Regime for Infrastructure Development (REIDI), and reducing the minimum period for the use of credits from the Contribution to PIS/Pasep and the Contribution for the Financing of Social Security.

works in specific sectors. The bill establishes a special customs regime for exporting and importing goods destined for research, extraction, and processing of these minerals. The Executive Branch will have 90 days to regulate the law's provisions after its publication.

Bill 2780/2024 states that the valorization and rational use of critical and strategic minerals should maximize their social, environmental, and economic benefits. However, it does not provide specific measures to ensure equitable distribution of benefits among regions and communities, nor how such maximization will occur. The absence of clear policies to combat inequality could perpetuate existing exclusions and prevent society and territories from receiving the promised benefits.

Although the bill mentions sustainability, it does not specify how it intends to ensure that mineral extraction is conducted responsibly with proper prior consultation. The bill states that critical minerals are important for food security, but this relationship is controversial. Mining generally involves clearing large land areas, which may destroy or expropriate farmland, in addition to vegetation removal for mines and dams, potentially altering local climate (water availability and temperature). Soil and water contamination often occurs due to chemicals and pollutants from extraction and processing or from waste piles and tailings dams. Economically, regions solely dependent on mining often neglect investment and support for agriculture. This demonstrates that mining, regardless of whether it involves critical minerals, can compromise food security.

3.7 Provisional Measure No. 1,308 of 2025

This Provisional Measure establishes the possibility of a special environmental licensing regime aimed at enabling projects deemed strategic by the federal government.

Projects shall be classified as strategic based on a biennial proposal by the Council of Government, which will designate a technical team permanently assigned to this function. The licensing authority, as well as public entities and agencies at all levels of the federation, shall give priority to these projects.

The procedures required to obtain the Environmental Installation License (EIL) follow a sequence of regulatory steps. Initially, the licensing authority is responsible for defining the scope and preparing the respective Terms of Reference (item I). Subsequently, the project proponent must submit the license application, accompanied by the relevant documentation, technical designs, implementation schedule, and required environmental studies, in addition to any other applicable licenses, authorizations, and concessions (item II).

Thereafter, opinions from the authorities involved in the process are issued, according to the nature and scope of the project (item III). The licensing authority then conducts a technical review of the submitted documents and studies and may hold a public hearing and, if necessary, request additional or supplementary information, noting that such a request may be made only once (item IV). Upon completion of these stages, a conclusive technical opinion is prepared (item V), which will inform the final administrative decision, resulting in either the granting or denial of the Environmental Installation License – EIL (item VI). The special environmental licensing process must observe a maximum period of twelve months for review and final decision.

Considering the standard licensing framework under Brazilian law, it becomes evident that there are no substantial changes. The main differences are the establishment of a maximum one-year deadline for the conclusion of the process and the prioritization of special licensing by the competent authorities. As such, the Provisional Measure reproduces all the shortcomings of the existing licensing system, including the near-total inability of affected stakeholders and groups to influence decision-making, limited transparency, and the absence of effective public oversight in the deliberative process, while further restricting the timeframe for its completion. Consequently, projects licensed under the special regime are likely to override the interests of traditional communities and affected groups even more rapidly, resulting in increased environmental harm.

3.8 Legislative proposal No. 3,699/2025

Legislative Proposal No. 3,699/2025, authored by Patrus Ananias (PT/MG), establishes guidelines for the policy on research and utilization of minerals considered critical or strategic. The minerals classified as critical or strategic include lithium, niobium, rare earth elements, copper, manganese, cobalt, and graphite, which are deemed to be of significant collective interest to Brazilian society and, therefore, subject to national priorities and the guidelines of a mineral sovereignty policy.

The proposal establishes, as a condition for the approval of projects related to the aforementioned minerals, prior authorization by the National Council for Mineral Policy. This Council must include, at a minimum, one representative from the states and the Federal District, one representative from producing and affected municipalities, three representatives from civil society, and one representative from higher education institutions, all of whom must be unaffiliated with mining companies.

The proposal introduces an important innovation related to the agenda of Mining-Free Territories by conditioning the approval of mining projects on the consent of potentially affected

traditional communities, which must be consulted in a free, prior, and informed manner, under penalty of nullity of the authorization procedure.

It is also noteworthy that the participation of foreign companies, or companies under foreign control, is expressly prohibited in activities related to research, extraction, processing, exploitation, or utilization of critical or strategic minerals.

In summary, the proposal presents significant advances in the democratization and control of mineral resources. However, it relies on vague notions such as national priorities, collective interest, and mineral sovereignty, which may be easily manipulated by the interests of mining companies and their political representatives within public authorities. As such, the precise meaning and scope of these notions—frequently invoked to justify projects driven by the private interests of large corporations and their shareholders—remain to be clearly defined.

Finally, a table has been prepared summarizing each legislative initiative and the respective analytical assessments.

Table 1. Summary of Legislative Initiatives

LEGAL FRAMEWORK	AUTHORSHIP	MAIN POINTS	CRITICISMS
Bill No. 1,992/2020	State Deputy Jean Freire	Proposes the creation of the Lithium Mining and Industrial Hub in the Jequitinhonha and Mucuri Valleys. Aims to strengthen the lithium value chain, promote technological development, and generate employment in the region. Establishes measures for local lithium processing, investments in research and development, the creation of credit lines, and the participation of local representatives in the hub's implementation. Pending before the Legislative Assembly of Minas Gerais.	The bill's main objective is the development of the lithium value chain and the addition of value to the raw material, while disregarding prior experiences of environmental violations and impacts on local populations caused by vertical integration in mining. Furthermore, it is unclear whether the allocation of resources for economic diversification in these municipalities will benefit sectors such as family farming, tourism, or others that strengthen the local economy and provide jobs and income beyond mining.
Decree No. 11,120/2022, of July 5, 2022	President Jair Messias Bolsonaro	Allows foreign trade operations involving lithium minerals and ores without imposing specific criteria, limits, or conditions, except as provided by law.	This decree facilitates the export of minerals extracted by multinational mining companies without imposing specific criteria or conditions. The lack of regulation may lead to uncontrolled exploitation of these resources, without adequately considering the long-term interests of the population. Additionally, it restricts public participation and civil society engagement, due to the absence of

			public consultation and transparency in decision-making processes.
Bill No. 2,809/2023	Federal Deputies: Adriana Ventura (NOVO-SP), Evair de Melo (PP-ES), Coronel Chrisóstomo (PL-RO), Kim Kataguirí (UNIÃO-SP), Flávia Moraes (PDT-GO), Dagoberto Nogueira (PSDB-MS), Lebrão (UNIÃO-RO), and José Medeiros (PL-MT)	Promotes the voluntary certification of “Green Lithium.” Proposes the creation of a Lithium Mining and Industrial Hub in the Jequitinhonha and Mucuri Valleys to strengthen the mining and industrial lithium value chain and foster regional development; establishes criteria for “Green Lithium” certification. Ready for Plenary agenda and under an urgent legislative procedure.	Allowing foreign trade operations involving lithium minerals and ores without criteria or conditions may undermine the country’s control over its own natural resources. This lack of oversight could lead to the rapid depletion of lithium reserves, jeopardizing the country’s ability to use these strategic resources in the future. Moreover, the absence of export and import restrictions further limits public participation and civil society involvement.
Bill No. 4,367/2023	Federal Deputy Dandara (PT-MG)	Proposes increasing the CFEM royalty rate on lithium extraction to 4.0% and creating a Lithium Social Fund aimed at promoting social development in regions affected by lithium mining. Establishes criteria for fund use and prioritizes allocation to education, research and scientific development, poverty reduction, and socioeconomic development in mined areas. Awaiting the rapporteur’s opinion in the Committee on Mines and Energy.	The proposal to increase the CFEM royalty rate on lithium extraction and create the Lithium Social Fund suggests concern for ensuring that mineral revenues are more equitably distributed among public entities, which could theoretically benefit the population. However, the bill does not directly address issues related to democratizing decision-making in the mining sector. As such, the allocation of mineral revenues would continue to have little influence from societal demands, particularly those of affected communities.
Lithium Valley Project	Governor Romeu Zema	Aims to transform northern and northeastern Minas Gerais into lithium extraction hubs by attracting companies with international capital.	Lack of public consultation, effective community participation in project-related decisions, and insufficient cooperation with municipalities.
Bill No. 2,780/2024	Federal Deputies: Zé Silva (Solidariedade/MG), Keniston Braga (MDB/PA), Duda Ramos (MDB/PR), Laura Carneiro (PSD/RJ), Zé Vitor (PL/MG), and Raimundo Santos (PSD/PA)	Seeks to establish the National Policy on Critical and Strategic Minerals (PNMCE), the Committee on Critical and Strategic Minerals (CMCE), and other initiatives for strategic and ecological industrial development. Under urgent legislative procedure.	No specific measures are included to ensure equitable distribution of benefits among different regions and communities.
Provisional Measure No. 1,308/2025	President Luiz Inácio Lula da Silva	Creates the possibility of a special environmental licensing regime for	The main changes compared to standard licensing are the maximum one-year timeframe for process

		projects deemed strategic by the federal government.	completion and the prioritization of special licensing within competent authorities. Therefore, the Provisional Measure carries all the existing challenges of the current licensing system, such as the near-impossibility of affected groups influencing decision-making, low transparency, and lack of public oversight, while further shortening the time allowed for completion. Consequently, projects licensed under special procedures are likely to proceed even more quickly, overriding the interests of traditional communities and affected groups and causing greater environmental damage.
Bill No. 3,699/2025	Patrus Ananias (PT-MG)	Establishes the policy for research and exploitation of minerals considered critical or strategic.	It brings important advances in democratization, control over mineral resources, and recognition of Mining-Free Territories. However, it deals with vague notions of national priorities, collective interest, and mineral sovereignty, which can easily be manipulated by mining companies and their political representatives. Therefore, it remains unclear what these notions entail, as they are often used to justify projects serving private interests of large corporations and their shareholders.

Source: Authors (2025).

Despite the creation of several legislative initiatives in recent years, the Brazilian regulatory framework appears to lag the urgency of regulating strategic minerals, imposed by growing global demand. In general, the measures adopted prioritize market-driven extraction of lithium, centralizing decision-making power in mining companies. The four evaluative pillars—democratization, popular participation, transparency, and socio-environmental justice—receive little or no attention in these initiatives, evidencing the limited possibility for affected communities to participate in the proposed decisions and measures. Democratization, popular participation, and transparency are notably undermined both in the current legal framework and in proposals for its revision.

Among the proposed measures, advances in mineral rent capture (through an increase in the CFEM for lithium), the creation of a Social Fund, and productive chaining stand out. However, each of these points presents specific limitations and contradictions. Increasing the CFEM rate is necessary because, in comparative international terms, the rate remains low even after the adjustment (Coelho et al., 2023). Nevertheless, raising the rate does not ensure that resources will be directed toward

improving the population's quality of life, especially that of affected communities (Oliveira et al., 2024).

From the perspective developed in this article, the Social Fund is a positive measure. However, in the absence of clearer specifications, there remains uncertainty as to whether the Fund will function as a mechanism of popular control or whether it will reproduce the tendency of Funds and Councils controlled by corporate interests in the sector (Oliveira; Zucarelli, 2020).

Finally, productive chaining — aimed at retaining a larger share of resources in the country where extraction occurs — also appears to be a promising measure. However, if there are no mechanisms for democratization and popular control over this productive structure, it tends to become rights-violating and environmentally predatory, as indicated by Brazilian experiences with productive chaining involving Companhia Siderúrgica Nacional (CSN) and the Carajás Railway (EFC) (Coelho, 2016).

Although some progress has been observed regarding the mineral rent appropriated by the State and the creation of councils, sectoral governance remains focused on serving the interests of mining companies. Most initiatives operate as incentives and facilitators for lithium extraction, without effective social control or robust mechanisms for environmental and social protection. The result is a scenario in which the effects generated by the current mining structure tend to be reproduced in the extraction of strategic minerals, with the additional risk that these effects may be exacerbated by the irresponsible incentives embedded in the prevailing mining model.

4 FINAL CONSIDERATIONS

This study analyzed institutional initiatives by Brazilian political representatives related to lithium mining in Brazil, seeking to understand how these authorities have influenced the extraction and management of this mineral resource. The relevance of this debate is evidenced by the significant number of proposals submitted in the last three years. Given the uncertainty surrounding the approval of these measures, it is difficult to precisely define the characteristics of the future regulatory framework.

As highlighted in this article, democratization, popular participation, transparency, and socio-environmental justice are little or not addressed by these initiatives. Consequently, there is a tendency to reproduce the current mining model, which perpetuates and intensifies socioeconomic inequalities, harms local communities, and generates significant environmental impacts.

As a final consideration, it is worth noting that the progressive field is essentially divided into two major positions, which are not necessarily opposed. The first position opposes mining a priori, regardless of how the activity is regulated. The second position favors mining that is regulated according to the principles of this progressive approach. This is not an analysis that we aim to deepen at this stage, but rather a highlight of the need for dialogue between the two positions on certain points and the identification of areas where convergence is not possible. The observation is noted.

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NEW PESTICIDE LAW AND ABUSIVE ENVIRONMENTAL CONSTITUTIONALISM IN BRAZIL: FROM SOCIO- ENVIRONMENTAL REGRESSION TO AN ECOLOGICAL CONSTITUTIONALISM

**NOVA LEI DE AGROTÓXICOS E O
CONSTITUCIONALISMO AMBIENTAL ABUSIVO
NO BRASIL: DO RETROCESSO SOCIOAMBIENTAL
AO CONSTITUCIONALISMO ECOLÓGICO**

**NUEVA LEY DE AGROTÓXICOS Y EL
CONSTITUCIONALISMO AMBIENTAL ABUSIVO
EN BRASIL: DEL RETROCESO SOCIOAMBIENTAL
AL CONSTITUCIONALISMO ECOLÓGICO**

EDUARDO WALLAN BATISTA MOURA¹

ABSTRACT

The article critically analyzes Law No. 14,785/2023 (the new Pesticides Law) in light of the 1988 Constitution and the paradigm of ecological constitutionalism. It starts from the hypothesis that the law promotes a socio-environmental setback, made possible through what we call abusive environmental constitutionalism, which consists of the instrumentalization of constitutional legality to chronically violate the state's duty of environmental protection. The main objective of the research is to demonstrate that by breaking with the tripartite model and concentrating regulatory powers over pesticides in the Ministry of Agriculture and Livestock, the new law violates fundamental constitutional principles such as precaution, prevention, and prohibition of socio-environmental regression. The methodology adopts a qualitative approach, based on documentary analysis and bibliographic review. In conclusion, it is found that the new legislation consolidates a

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model of governance that constitutes a socio-environmental setback, in which the state acts as an agent of legitimization of the interests of agribusiness. In response, ecological constitutionalism is proposed as a path for normative, hermeneutic, institutional, and political-social reconstruction, based on the interdependence between the protection of nature and fundamental rights.

Keywords: Pesticides Law. Abusive Environmental Constitutionalism. Socio-environmental Regression. Ecological Constitutionalism.

RESUMO

O artigo analisa criticamente a Lei nº 14.785/2023 (nova Lei de Agrotóxicos) à luz da Constituição de 1988 e do paradigma do constitucionalismo ecológico. Parte-se da hipótese de que a referida lei promove um retrocesso socioambiental, viabilizado através do que chamamos de constitucionalismo ambiental abusivo, que consiste na instrumentalização da legalidade constitucional para violar cronicamente o dever estatal de proteção ambiental. A pesquisa tem como objetivo central demonstrar que ao romper com o modelo tripartite e concentrar competências regulatórias dos agrotóxicos no Ministério da Agricultura e Pecuária, a nova lei viola princípios constitucionais fundamentais como a precaução, prevenção e vedação ao retrocesso socioambiental. A metodologia adota abordagem qualitativa, com base em análise documental e revisão bibliográfica. Ao final, conclui-se que a nova legislação consolida um modelo de governança que configura um retrocesso socioambiental, no qual o Estado atua como agente de legitimação dos interesses da agroindústria. Como resposta, propõe-se o constitucionalismo ecológico como caminho de reconstrução normativa, hermenêutica, institucional e político-social, fundado na interdependência entre a proteção da natureza e os direitos fundamentais.

Palavras-chave: Lei de Agrotóxicos. Constitucionalismo Ambiental Abusivo. Retrocesso Socioambiental. Constitucionalismo Ecológico.

RESUMEN

El artículo analiza críticamente la Ley n.º 14.785/2023 (nueva Ley de Agrotóxicos) a la luz de la Constitución de 1988 y del paradigma del constitucionalismo ecológico. Se parte de la hipótesis de que dicha ley promueve un retroceso socioambiental, posibilitado a través de lo que denominamos constitucionalismo ambiental abusivo, que consiste en la instrumentalización de la legalidad constitucional para violar crónicamente el deber estatal de protección ambiental. El objetivo central de la investigación es demostrar que, al romper con el modelo tripartito y concentrar las competencias reguladoras de los plaguicidas en el Ministerio de Agricultura y Ganadería, la nueva ley viola principios constitucionales fundamentales como la precaución, la prevención y la prohibición del retroceso socioambiental. La metodología adopta un enfoque cualitativo, basado en el análisis documental y la revisión bibliográfica. Al final, se concluye que la nueva legislación consolida un modelo de gobernanza que configura un retroceso socioambiental, en el que el Estado actúa como agente de legitimación de los intereses de la agroindustria. Como respuesta, se propone el constitucionalismo ecológico como vía de reconstrucción normativa, hermenéutica, institucional y político-social, basada en la interdependencia entre la protección de la naturaleza y los derechos fundamentales.

Palabras clave: Ley de Agrotóxicos. Constitucionalismo Ambiental Abusivo. Retroceso Socioambiental. Constitucionalismo Ecológico

INTRODUCTION

Since the 1960s, with the publication of the book *Silent Spring* by biologist Rachel Carson in 1962, concern about the harmful effects of pesticides gained more concrete contours. However, even with Carson's warnings about the risks and dangers of these products to the environment and the advancement of national and international environmental protection laws, the use of chemical inputs in agriculture has only increased in recent decades. This process is part of the so-called "evolution" of the agricultural sector, which since the mid-20th century has incorporated more and more biochemical technology into its production process.

In this context of technological advancement in agro-industrial production, Brazil historically established itself as one of the largest consumers of pesticides in the world, mainly due to the expansion of the intensive agriculture model focused on commodity exports over the last 50 years (Terra, 2008). This process gained even more strength in the 1970s, when the crisis of the Import Substitution Industrialization economic model shifted the focus of Brazil's macroeconomic policy from industry to export agriculture (Morceiro, 2012).

As a result, the so-called "Green Revolution"², occurred, which was the process of agricultural modernization driven by policies that prioritized large-scale agricultural productivity and stimulated the use of agrochemical inputs, such as the National Agricultural Defensive Program (PNDA) of 1975.³ Since then, the national agricultural sector has grown and exponentially increased its productivity, with this growth becoming increasingly dependent on chemical substances, many of which are already banned in other countries due to their high-risk toxicological profile for the environment and human health.

Year after year, Brazil increasingly isolates itself at the top of the ranking as the world's largest consumer of pesticides. According to data from the United Nations Food and Agriculture Organization (FAO)⁴, Brazil used 800 million kg of pesticides in 2022. The United States, which occupies second place in the world ranking, used 467 million, a percentage 41.6% less than Brazil; while Indonesia, third in the world ranking, used 294 million kg, a percentage 63.2% less than Brazil (FAOSTAT, 2024).

² The term was adopted during the Cold War to indicate the possibility of revolutionizing humanity's living conditions, overcoming the problem of hunger through the intensive use of chemicals and technology in agriculture. The allusion to "green" had, therefore, a double connotation: the first, more obvious, was related to agriculture; the second alluded to an alternative to the Red (socialist) Revolution as a solution to ending misery. (Bombardi, 2023, p. 44).

³ On the context of the PNDA and its relationship with the Brazilian military dictatorship, see: Lignani; Brandão (2022).

⁴ FAOSTAT. **Production – FAOSTAT**. Available at: <https://www.fao.org/faostat/en/#data/RP/visualize>. Accessed on: 14 Aug. 2025.

When placed in historical perspective, the pesticide consumption numbers in Brazil are even more alarming and show the abrupt escalation in the use of these substances. In 2002, the country used 146 million kg of pesticides in its territory. This represents an 81.75% increase in annual pesticide consumption in the country over the last 20 years (Faostat, 2024).⁵ This implies that in 2022, Brazil consumed about 4kg of pesticides per inhabitant, considering the 203 million inhabitants recorded by the IBGE⁶ 2022 Census.

In this scenario of exponential increase in pesticide use in Brazilian territory, the legal frameworks regulating the registration, commercialization, and inspection of these substances play a fundamental role in ensuring that the State fulfills its constitutional duty to protect against the negative externalities associated with these products. This guarantees the people the effectiveness of the fundamental rights to health, life, human dignity, and an ecologically balanced environment, as provided for in the 1988 Constitution.

Since 1989, pesticide regulation was governed by Law No. 7,802/89, which was only regulated in 2002 by Decree No. 4,074/02. Together, these norms regulated the control of registrations, re-evaluations, inspection, use, and commercialization of pesticides in Brazil based on a tripartite model, with equal participation from federal environmental, health, and agriculture agencies. This was to ensure that environmental, human health, and agricultural efficiency aspects were considered in the regulatory decision-making process for pesticides.

However, this tripartite regulatory system was recently superseded by the enactment of Law No. 14,785/23, the new pesticide law, which governs the use, registration, production, commercialization, packaging, and inaugurates the new legal framework for pesticides in Brazil. The new law derives from a bill that had been moving through the national congress for over twenty years and was nicknamed the "Poison Bill" due to its more permissive and flexible nature regarding pesticides, under the justification of the need to modernize national regulatory parameters on the matter.⁷

The new law was sanctioned by the President of the Republic with 17 veto messages, focusing on provisions that broke with the tripartite model and gave the federal agriculture agency a leading role in the pesticide regulatory process, especially in registrations, post-registration changes,

⁵ FAOSTAT. **Production** – FAOSTAT. Available at: <https://www.fao.org/faostat/en/#data/RP/visualize>. Accessed on: 14 Aug. 2025.

⁶ IBGE. **2022 Census Overview**. Available at: <https://censo2022.ibge.gov.br/panorama/>. Accessed on: 14 Aug. 2025.

⁷ The project is presented by the ruralist sector as a modernization, a flexibilization, and a debureaucratization of an "outdated" law that impedes the sector's growth. However, the benefits of the project for civil society are hardly apparent, since the "flexibilization" would lead to an even less environmentally and socially responsible use of pesticides in a country that already holds the record for pesticide consumption. (Leonel Jr.; Helmold, 2018, p. 2009).

and risk reanalysis. Of the 17 vetoes imposed by the President, 14 were overturned by Congress⁸, which allowed the maintenance of the more permissive and flexible profile of the new norm, with the centralization of powers in the federal agriculture agency.

Now, in November 2025, almost two years after the new pesticide law came into force, many doubts and uncertainties remain regarding the regulation of the matter at the national level, which has been left in a kind of "regulatory limbo." This is because, although pesticide regulation is an extremely complex process, a specific regulatory decree detailing the general guidelines of Law No. 14,785/23 has not yet been issued. As a result, provisions of Decree No. 4,074/02 that are incompatible with the new law remain in force, creating gaps and legal uncertainty in the regulatory governance of pesticides in Brazil.

Given this conflictual context surrounding⁹ the new pesticide law in Brazil, this article seeks to investigate the socio-environmental setbacks promoted by Law No. 14,785/23 and understand the main problems of the current governance model proposed by the new legislation. The scope, therefore, is to analyze the change in the normative paradigm in order to identify unconstitutional aspects and the most sensitive points of the new law, with the general objective of investigating how this new legal framework impacts fundamental rights and the possible solutions that a perspective of ecological constitutionalism can offer to the problem of the abusive use of pesticides in Brazil.

To achieve this aim, we will examine in greater depth the innovations brought by Law No. 14,785/23 to the institutes of registration and risk reanalysis, with the intention of identifying the most sensitive points and unconstitutional aspects in the normative reconfiguration promoted in these institutes. Then, we will address the new general pesticide law from the perspective of abusive environmental constitutionalism (Landau, 2020), to understand how the abuse of pesticides contributes to socio-environmental regression and violates fundamental rights provided for in the 1988 Constitution. Finally, we will investigate how ecological constitutionalism can offer us tools to think about solutions to the pesticide problem (Iacovino, 2020).

To achieve the objectives, the research adopts a qualitative and descriptive-analytical methodological approach, based on a literature review and document analysis. In procedural terms, the research conducted a literature review on its two structuring themes: a) pesticide law; and b) ecological constitutionalism. Documental and normative analysis appears transversally in the article,

⁸ National Congress. **Veto No. 47/2023** (Flexibilization of pesticide registration). Available at: <https://www.congressonacional.leg.br/materias/vetos/-/veto/detalhe/16209>. Accessed on: 14 Aug. 2025.

⁹ The project is presented by the ruralist sector as a modernization, a flexibilization, and a debureaucratization of an "outdated" law that impedes the sector's growth. However, the benefits of the project for civil society are hardly apparent, since the "flexibilization" would lead to an even less environmentally and socially responsible use of pesticides in a country that already holds the record for pesticide consumption. (Leonel Jr.; Helmold, 2018, p. 2009).

using legislations and pesticide databases as primary sources. Finally, the socio-constitutional analysis of pesticides in Brazil from the perspective of ecological constitutionalism.¹⁰ will serve as the basis for constructing the article's central hypothesis: that the abuse of pesticides chronically and structurally violates fundamental rights.

The article is structured into three interdependent sections, which seek to articulate the legal-regulatory debate with constitutional and socio-environmental analysis regarding the new pesticide law in Brazil. The first section, titled "Law No. 14,785/23 and the End of the Tripartite Model," examines the main problems of the new regulatory framework that culminated in the end of the tripartite regulatory model. The second section, titled "The New Pesticide Law and Abusive Environmental Constitutionalism," investigates how the mechanisms of environmental constitutionalism were instrumentalized to promote socio-environmental regression. Finally, the third section, titled "Alternatives from Ecological Constitutionalism," is dedicated to investigating the potential of ecological constitutionalism for promoting state duties of socio-environmental protection.

1 LAW NO. 14,785/23 AND THE END OF THE TRIPARTITE MODEL: A CRITICAL ANALYSIS OF THE REGULATORY FLEXIBILIZATION OF PESTICIDES IN BRAZIL

The problems concerning the issue of pesticides in Brazil are numerous. Due to its world-record consumption of pesticides, the country has accumulated empirical evidence of the negative impacts of these substances on human health and the environment.¹¹ However, in this section, we do not intend to address these impacts empirically, but rather to expose some of the most sensitive points of the new regulatory framework for pesticides, which introduces unconstitutional aspects and legal uncertainty regarding the regulation of the matter.

¹⁰ The review was conducted in the Scielo database and the Capes Journal Portal, with articles selected based on impact criteria.

¹¹ Of the ten best-selling pesticides in the country, five are banned in Europe: mancozeb, atrazine, acephate, chlorothalonil, and chlorpyrifos. Among other effects caused by atrazine, which is a herbicide, the following stand out: stomach cancer, non-Hodgkin lymphoma, prostate cancer, thyroid cancer, ovarian cancer, Parkinson's disease, asthma, wheezing, infertility, low semen quality, congenital malformations, and damage to liver cells. The insecticide acephate, in turn, is cytotoxic and genotoxic to human spermatozoa and is associated with type 2 diabetes, hyperglycemia, lipid metabolism dysfunction, DNA damage, and cancer. (Bombardi, 2023, p. 58).

Thus, for the purposes of structuring the analysis and delimiting the scope, this section will emphasize the following aspects: i) Competence and independence in the registration process; and ii) Risk reassessment/reanalysis.¹²

The choice of these points is due to the greater sensitivity of these themes, which are crucial in pesticide regulation. This sensitivity is demonstrated by the fact that out of the 14 presidential vetoes to the new law that were overturned by the National Congress, more than half pertain to the registration process or risk reanalysis. This shows how the normative provisions on these topics are points of dissent.

1.1 Competence and Independence of the Environmental, Agricultural, and Health Agencies in Pesticide Registrations in Brazil

Even during the processing in the National Congress, one of the main points of tension between environmental movements and agribusiness sectors regarding the new legislation was the use of the term "agrotóxicos".¹³ Although the dispute over which term would be most appropriate extended throughout the long processing of the bill, the denomination "agrotóxico" (pesticide) ultimately prevailed over "defensivos agrícolas" (agricultural defensives), a terminology advocated by the ruralist caucus. However, even though it remained in the new legislation, the term came into force with a new definition.

In the old law, the term pesticide had a broader scope, encompassing products used in the productive sectors of agribusiness, pastures, forests (native or planted), and urban and aquatic environments.¹⁴ In the new law, however, there was a separation in the classification of products used by agribusiness and those used in forests, other ecosystems, and aquatic environments. This is the distinction between "pesticides" and "environmental control products." We will not enter into the

¹² "Reassessment" is the term used in the old legal framework for pesticides in Brazil, while "Reanalysis" is the term used starting from Law No. 14,785/2023.

¹³ Even during the processing of the bill in the National Congress, the term "Pesticide" was questioned by members of the "ruralist caucus." Defenders of agribusiness, these lawmakers worked to have the term "Pesticide" replaced by "Agricultural Defensives" in the new legislation, in a maneuver aimed at diminishing the symbolism of danger associated with these substances. To better understand this discussion, see: Grigori, Pedro. Pesticide, poison, agricultural defensive? Understand the dispute over the name of these agricultural products. Repórter Brasil, Jan. 24, 2019. Available at: <https://reporterbrasil.org.br/2019/01/agrotoxico-veneno-defensivo-entenda-a-disputa-pelo-nome-desses-produtos-agricolas/>. Accessed on: 08/20/2025.

¹⁴ Art. 2, I - pesticides and the like: a) the products and agents of physical, chemical, or biological processes, intended for use in the production sectors, in the storage and processing of agricultural products, in pastures, in the protection of forests, native or planted, and of other ecosystems and also in urban, aquatic, and industrial environments, whose purpose is to alter the composition of flora or fauna, in order to preserve them from the harmful action of living beings considered harmful; b) substances and products.

discussion about the merits of this terminological change here, as it falls outside the scope of this article.¹⁵ What is important for our analysis is to understand how this terminological innovation directly impacts the division of competences for pesticide registration.

The distinction introduced by the new law is not merely about differentiating terminology between products used in agricultural production and those used for forest and water management. By establishing a differentiation based on the product's intended use, the new law removed the binding regulatory competence of the federal environmental and health agencies over products used by agribusiness. In other words, the distinction between "pesticides" and "environmental control products" in the new law was used to formally centralize binding competence in the federal agriculture agency and weaken the participation of the environmental and health agencies in the regulatory process for pesticides intended for agricultural¹⁶ use.

Since the enactment of Law No. 7,802/89, Brazil operated under a tripartite regulatory model for the registration and control of pesticides, with binding participation from the federal environmental agency (Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis - IBAMA), the agriculture agency (Ministério da Agricultura e Pecuária - MAPA), and the health agency (Agência Nacional de Vigilância Sanitária - Anvisa). In this model, IBAMA, MAPA, and Anvisa shared binding competences throughout the entire process of registration, post-registration amendments, and reassessment, with the prerogative to establish the guidelines and requirements to be presented by applicants for registration and reassessment of pesticides commercialized in Brazil.

Thus, there was a multisectoral, synergistic, and more efficient governance structure. Although all agencies were on equal footing, IBAMA addressed environmental issues, MAPA handled agricultural matters, and Anvisa dealt with issues related to human health, leveraging the technical expertise of each agency in the regulatory governance of pesticides in Brazil. Even though the process was extremely complex, the authority to establish requirements was shared among the three agencies, favoring a logic of administrative cooperation for a systematic analysis of pesticides.

Each agency acted within its technical competence, exercising its functions with autonomy and on an equal basis with the others, thereby enabling a regulatory governance system that protected society from exposure to the dangers and risks associated with these substances.

However, the model introduced by Law 14,785/23 breaks with this system. The new law dismantles the tripartite model, and the agriculture agency is elevated to the role of coordinator of the

¹⁵ For a more in-depth understanding of the discussion on the term "pesticides," see: Paschoal (2019).

¹⁶ Art. 4 The federal agency responsible for the agriculture sector is established as the registering agency for pesticides, technical products, and the like, as well as the federal agency responsible for the environment sector as the registering agency for environmental control products, technical products, and the like (Brazil, 2023).

pesticide registration process. The implications of this for the registration process might not change immediately, considering that IBAMA and Anvisa still participate with a certain degree of autonomy. Nevertheless, regarding post-registration amendments, only the registration coordinator decides on the changes requested by the applicant. In other words, in post-registration amendments, IBAMA and Anvisa are demoted to mere supporting players.

In practical terms, based on Article 27, I, II, and III of the Law 14.785/23¹⁷, A pesticide can be registered with a lower toxicological profile, passing through the scrutiny of IBAMA, MAPA, and Anvisa. Then, after approval, the registrant can request a registration amendment to change the product's composition to a higher toxicological profile, with the amendment being analyzed solely by MAPA. Therefore, regardless of what the applicant changes (production process, product specifications, raw materials, other ingredients, or additives), only MAPA will decide on such changes, even if the alterations make the product more harmful to human health and the environment.

In practice, this could turn the registration process into a merely symbolic, façade procedure. After registration, the product's composition can be altered to a higher toxicological profile, and such amendments will be analyzed only by MAPA. In summary, there will be no tripartite analysis of the registration amendment process. The tripartite model is broken, reducing IBAMA and Anvisa to mere consultants without decision-making power. Even if they warn about unacceptable chemical risks to health and the environment, MAPA will not be obligated to follow their recommendations.

Thus, allowing changes to the content of these products without the required binding analysis by IBAMA and Anvisa—agencies that act to protect the diffuse and collective rights to the environment and health—directly violates the principles of prevention, precaution, and the prohibition of socio-environmental regression established in the 1988 Constitution. This dynamic is also repeated in the Risk Reanalysis process.

1.2 Risk Reanalysis

According to the new law, a reanalysis must occur when international organizations responsible for health, food, or the environment, of which Brazil is a member or with which it has signed agreements or conventions, issue warnings about risks or advise against the use of pesticides.¹⁸

¹⁷ Art. 27. The following registration amendments will be technically evaluated by the registering agency: I - production process; (Parts vetoed in the enactment) II - specifications of the technical and formulated product; (Parts vetoed in the enactment) III - change in raw materials, other ingredients, or additives; (Parts vetoed in the enactment) (Brazil, 2023).

¹⁸ Art. 3, § 9 When international organizations responsible for health, food, or the environment, of which Brazil is a member or with which it has signed agreements and conventions, issue warnings about risks or advise against the use of

Provisions on this theme were the subject of four presidential vetoes, all of which were overturned by the national congress.¹⁹ But even with the apparent maintenance of the parameters from the old norm, it is in the process of risk reanalysis that another structural problem brought by Law No. 14,785/2023 and the end of the tripartite model resides.

Still under the previous legal framework, the reanalysis process, previously called "reassessment," had the same starting point: an alert from the international community about the risks of a particular substance, since pesticide registrations in Brazil have no expiration date. The new law, which supposedly aimed to "modernize" pesticide regulation in Brazil, did not change this system that grants pesticide registrations *ad infinitum*, even though best regulatory practices and the precautionary principle itself indicate that substances with high hazard and risk to the environment and human health should not have an indefinite validity period.

In addition to not legally establishing a periodicity for risk reanalysis and advancing towards legislation more protective of human health and the environment, the new legislation also placed MAPA as the coordinator of the risk reanalysis process, relegating IBAMA and Anvisa to the role of issuing advisory opinions only when requested by the agriculture agency. Thus, just like in post-registration amendments, neither IBAMA nor Anvisa have binding power in the risk reanalysis process.

This rearrangement is particularly problematic because the risks related to pesticides can be of three natures: i) reduction of agronomic efficiency; ii) alteration of risks to human health; or iii) alteration of risks to the environment.

Under the previous legal framework, the coordination of the reassessment fell to the agency representing the aspect to be reassessed.²⁰ and depending on the result, the product could have its registration maintained, altered, suspended, or canceled. In the new law, however, the reanalysis is centralized within MAPA even in processes where the suspicion of risk alteration falls on aspects related to human health or the environment. Consequently, MAPA's position is sovereign regardless of its technical competence to evaluate the specific characteristics of the analyzed risk, representing yet another facet of the rupture with the tripartite model.

pesticides, environmental control products, and the like, the competent authority must take measures for risk reanalysis, considering economic and phytosanitary aspects and the possibility of using substitute products.

¹⁹ National Congress. **Veto No. 47/2023** (Flexibilization of pesticide registration). Available at: <https://www.congressonacional.leg.br/materias/vetos/-/veto/detalhe/16209>. Accessed on: 14 Aug. 2025.

²⁰ Brazil. **Joint Normative Instruction No. 2, of September 27, 2006**. Provides for the re-evaluation of pesticides, their components, and related products. *Official Gazette of the Union*: Brasília, DF, Sept. 29, 2006. Available at: <https://www.ibama.gov.br/component/legislacao/?view=legislacao&legislacao=138803>. Accessed on: 20 Aug. 2025.

In practice, Article 29 of Law No. 14,785/2023 subordinates the technical-scientific assessment of environmental and health risks to criteria of productive and economic efficiency. This is because the new law determines that the reanalysis process conducted by MAPA must consider economic aspects, phytosanitary issues, and the possibility of substitute products during the reanalysis. In other words, even when faced with products that are being rejected by the international community and are known to pose risks to human health and the environment, MAPA must still evaluate economic impacts before deciding whether the pesticide should continue to be used in Brazil.

Furthermore, the new law ties restrictive measures on the product to the existence of a phytosanitary plan for replacing the product with a similar one. The sole paragraph of Article 31 stipulates that the most restrictive measures²¹ can only be taken if there is a phytosanitary substitution plan for that product. In this way, the norm shifts the State away from its constitutional duty of environmental and human health protection towards a protection of the agricultural production process, subordinating the promotion of fundamental rights to the security of agribusiness economic interests.

Another sensitive point regarding the reanalysis is that although the active ingredient²² of the pesticide is under reanalysis due to indications of an increased risk from its use, the new law allows new products to be registered containing these components that are under reanalysis, maintaining their commercialization, production, and importation until the reanalysis is concluded. This means that, even in the face of uncertainties about the risks of the active ingredient under reanalysis, the entire production and commercial chain of this product remains unchanged until a conclusive opinion is issued by MAPA.

This logic of protecting the agricultural sector to the detriment of the fundamental rights to health and the environment violates the constitutional principle of precaution and reveals to us how the constitutional legislative process can be instrumentalized to weaken socio-environmental protection, which is a duty of the State guaranteed by the 1988 Constitution.

By shifting the decision-making axis of regulation towards a perspective of economic efficiency, Law No. 14,785/23 not only breaks the technical-administrative balance of the tripartite model but inaugurates a new regulatory paradigm with an authoritarian and centralized profile in decision-making, where formal legality is used to erode constitutional guarantees of environmental

²¹ Art. 31 [...] V - restrict commercialization; V - prohibit, suspend, or restrict production or import; VI - prohibit, suspend, or restrict use; VII - cancel or suspend registration.

²² Art. 1, XIV - active ingredient: isolated chemical agent or in a mixture with biologicals that confers efficacy to pesticides, environmental control products, and the like; (Brazil, 2023).

and collective health protection. This dynamic marks the transition point towards a paradigm of abusive environmental constitutionalism in the governance of pesticides in Brazil.

2 NEW PESTICIDE LAW AND ABUSIVE ENVIRONMENTAL CONSTITUTIONALISM

Under the enforcement of the new law, Brazil has set yet another national record for the approval of pesticides.²³ According to data from the Ministry of Agriculture, Livestock and Supply (MAPA), 663 new registrations were approved in 2024, the highest number in the historical series to date and an increase of 19.43% compared to the year 2023.²⁴

As of July 2025, the date of the latest MAPA registration report release, Brazil had already authorized the registration of 405 new pesticides. This means that in just seven months of 2025, the country approved a higher number than all registrations approved throughout the entire year of 2017.²⁵ However, what these numbers, although frightening, do not reveal is how pesticides are vectors of chronic and structural violations of fundamental rights.

By unbalancing the institutional power correlation of the tripartite model to facilitate the circulation of products with high hazard and risk to health and the environment, the new law transcends the environmental issue and stands as evidence of how the State can be instrumentalized through its own constitutional mechanisms to violate the Constitution in the name of private interests, promoting a clear example of abusive environmental constitutionalism.

Landau (2020) defines abusive constitutionalism as the use of democratic constitutional mechanisms to weaken democracy, through constitutional amendments or replacements that attack the constitutional order itself; that is, abusive constitutionalism would be "the use of mechanisms of constitutional change to make a state significantly less democratic than it was before" (Landau, 2020, p. 22). According to Landau (2020), abusive constitutionalism replaces the old practices of militarized coups d'état, which within the contemporary democratic paradigm have lost ground to hybrid coups that instrumentalize legitimate mechanisms of the constitutional order to subvert it from within.

²³ ROSA, João. **Pesticide approvals hit record in 2024**. *CNN Brasil*, Brasília, Jan. 28, 2025. Available at: <https://www.cnnbrasil.com.br/politica/liberacao-de-agrotoxicos-bate-recorde-em-2024/>. Accessed on: Sept. 8, 2025.

²⁴ BRAZIL. Ministry of Agriculture and Livestock. **Technical Information on Pesticides**. Published on Feb. 10, 2017; updated on Aug. 21, 2025. Available at: <https://www.gov.br/agricultura/pt-br/assuntos/insumos-agropecuarios/insumos-agricolas/agrotoxicos/informacoes-tecnicas>. Accessed on: Sept. 8, 2025.

²⁵ BRAZIL. Ministry of Agriculture and Livestock. **Technical Information on Pesticides**. Published on Feb. 10, 2017; updated on Aug. 21, 2025. Available at: <https://www.gov.br/agricultura/pt-br/assuntos/insumos-agropecuarios/insumos-agricolas/agrotoxicos/informacoes-tecnicas>. Accessed on: Sept. 8, 2025.

According to Barbosa and Filho (2018), abusive constitutionalism can also be seen as a broader interpretative lens "to describe the use of procedures, institutes, and measures proper to constitutional law to undermine or restrict constitutional democracy" (Barboza; Filho, 2018, p. 86). From this perspective, the case of the new pesticide law can be interpreted as a practice of abusive environmental constitutionalism to the extent that the new law is instrumentalized within Brazilian parliamentary constitutional legality to systematically weaken environmental democracy and the fundamental right to an ecologically balanced environment (Landau, 2020; Barboza; Filho, 2018).

Therefore, abusive environmental constitutionalism consists of the manipulation of constitutional and infra-constitutional mechanisms to give form and legal legitimacy to socio-environmental setbacks, subordinating the State's protective function in environmental matters to the defense of economic interests, violating fundamental rights, and weakening the project of ecological democracy foreseen in Article 225 of the 1988 Constitution (Landau, 2020; Barboza; Filho, 2018).

In Law No. 14,785/2023, normative legitimacy serves as a strategy to confer an appearance of constitutionality to the process of environmental degradation promoted by pesticide abuse. Following this line, it is possible to understand the abusive environmental constitutionalism promoted by the new pesticide law through three structural and interdependent dimensions: i) the constitutional; ii) the institutional; and iii) the social.

From a constitutional point of view, the administrative reconfiguration caused by the end of the tripartite model violates the constitution both formally and materially. Formally, because it legislates on matters that are the exclusive purview of the President of the Republic, as provided for in Articles 61, § 1º, II, "b" and 84, VI, "a" of the Constitution. Thus, by providing for the organization and functioning of the federal administration with the objective of privileging the role of the agriculture agency as the "manager" of the pesticide regulation process in Brazil and ending the tripartite model, the new law incurs formal unconstitutionality, in addition to violating the principle of separation of powers and administrative legality.

The Brazilian Federal Supreme Court (STF) has settled jurisprudence stating that laws of parliamentary initiative that modify the competence and functioning of executive branch administrative agencies are formally unconstitutional. An example is the understanding established in ADI 4288, in which Minister Alexandre de Moraes stated that the legislative process of parliamentary initiative that modifies the competence and functioning of administrative agencies is formally unconstitutional.

But beyond formal unconstitutionality, the end of the tripartite model is also materially unconstitutional because it weakens the environmental function of the Brazilian State and

compromises the legal regime of socio-environmental protection provided for in the 1988 Constitution, chronically violating the principles of prevention, precaution, and the prohibition of environmental regression.

The principle of prevention, one of the main foundations of contemporary environmental law, seeks to protect society by avoiding environmental damages that are already known and foreseeable according to available scientific knowledge.

According to Sarlet and Fensterseifer (2021, p. 617), "the principle of prevention operates with the objective of anticipating the occurrence of environmental damage at its source, thus preventing it from occurring." In other words, the principle of prevention dictates that norms must safeguard society from environmental risks that are already avoidable thanks to scientific advancement. However, although the dangers and risks associated with pesticides in Brazil are widely recognized by the scientific community.²⁶, a Lei nº 14.785/2023 and establishes a flexible and more permissive legal regulatory regime for these substances.

In addition to violating the principle of prevention, the new pesticide law also violates the constitutional principle of precaution. As Paulo Leme Machado points out (2008, p. 75): "In case of doubt or uncertainty, one must also act preventively. This is the great innovation of the precautionary principle [...] The precautionary principle applies even when uncertainty exists, without waiting for it to become certainty." This means that precaution and prevention go hand in hand to safeguard socio-environmental protection, even in the face of uncertainty about socio-environmental damage.

Sarlet and Fensterseifer (2021) define the precautionary principle as one of the most important pillars of the legal protection of the environment, insofar as it guides legal interpretation towards the responsibility and caution necessary for the protection of life, health, and the environment. The STF has recognized²⁷ the precautionary principle in the Brazilian legal system in Extraordinary Appeal No. 627.189/SP and defined that:

²⁶ Hess *et al.* (2021, p. 119) shows us the adverse effects caused by the main pesticides commercialized in Brazil. Glyphosate, for example, which is the most consumed pesticide in the country, has its exposure associated with health problems such as non-Hodgkin lymphoma, infertility, autism, chronic kidney problems, damage to embryonic and placental cells, programmed death and necrosis of placental, umbilical, and embryonic cells, endocrine disruption in liver cells, proliferation of breast cancer cells, and damage to liver cells.

²⁷ In a related context, in Theme 479, the Brazilian Supreme Federal Court (STF) ruled on the risks associated with exposure to electromagnetic fields generated by electric power transmission lines. Applying the precautionary principle, the Court decided that, given the scientific uncertainties regarding the harmful effects of such exposure, international safety standards should be adopted to prevent potential risks to public health. The thesis established holds that, at the current stage of scientific knowledge—which indicates uncertainty as to the existence of harmful effects resulting from occupational and general population exposure to electric, magnetic, and electromagnetic fields generated by electric power systems—there are no legal impediments to adopting the parameters proposed by the World Health Organization, as provided for in Law No. 11,934/2009. Available at: <<https://portal.stf.jus.br/jurisprudenciaRepercussao/verAndamentoProcesso.asp?incidente=3919438&numeroProcesso=627189&classeProcesso=RE&numeroTema=479>> Accessed on: Sept. 8, 2025.

o princípio da precaução é um critério de gestão de risco a ser aplicado sempre que existirem incertezas científicas sobre a possibilidade de um produto, evento ou serviço desequilibrar o meio ambiente ou atingir a saúde dos cidadãos, o que exige que o estado analise os riscos, avalie os custos das medidas de prevenção e, ao final, execute as ações necessárias, as quais serão decorrentes de decisões universais, não discriminatórias, motivadas, coerentes e proporcionais (STF, 2017).

However, the application of the precautionary principle does not occur in pesticide policy. With Law No. 14,785/2023, substances under reanalysis, suspected of causing unknown risks to human health or the environment, can continue to be used and commercialized normally without any restriction until MAPA issues an opinion, which directly violates the precautionary principle.

More broadly, the new pesticide law also violates the principle of prohibition of socio-environmental regression, which, according to the understanding of the STF in ADPF No. 748:

o princípio da vedação ao retrocesso ambiental afasta a possibilidade de que alterações legislativas ou regulamentares venham a eliminar a proteção ambiental sobre determinados ecossistemas ou a dispensar a fiscalização ambiental sobre determinados empreendimentos com potencial degradante, por configurar uma involução na proteção ao meio ambiente que não se justifica perante o ordenamento jurídico (STF, 2022).²⁸

According to the Supreme Court's jurisprudence, socio-environmental regression represents a regression in the legal regime for environmental protection. This regression is formalized through norms that are unconstitutional both formally and materially, but it is enabled through the institutional pathway. This is what is happening in the new legal framework for pesticides in Brazil.

From an institutional point of view, the new law promotes abusive environmental constitutionalism by ending the tripartite model, which marks an institutional shift in the state's function from environmental protection to the protection of the agro-industrial sector. That is, the new legal regime for pesticides ceases to promote the precautionary principle in order to guarantee the production of *commodities*²⁹ and facilitate the functioning of the logic of neo-extractivism implemented in Brazil, where the State acts as the guarantor of the institutional and normative structure capable of providing the legal security that lends a veneer of legality to the socially abusive economic practices of the agribusiness sectors, even if they represent socio-environmental setbacks that are constitutionally prohibited.

²⁸ This understanding is consistent with the Court's broader environmental jurisprudence, as reaffirmed in **ADPF 748/DF**, in which the STF emphasized the constitutional duty of the State to protect health and the environment in situations of scientific uncertainty. Available at: <<https://portal.stf.jus.br/processos/detalhe.asp?incidente=6018018>>. Accessed on: Sept. 8, 2025.

²⁹ With regard to agricultural use, soybeans, corn, and cotton together account for approximately 80% of all pesticides marketed in Brazil. Soybean cultivation alone absorbed 57% of pesticide sales in 2021. Overall, nearly 90% of the pesticides in circulation in the country are applied to only five crops: soybeans, corn, cotton, pasture, and sugarcane (Bombardi, 2023, p. 17).

In this sense, the concentration of institutional power over pesticides in MAPA evidences this distortion of the State's duty of environmental protection, breaking with the logic of tripartite management to promote management based on the protection of markets. This reveals the influence of agribusiness in state policy and shows how the constitutional legislative process can be captured to reconfigure and institutionalize the defense of private interests that contradict the Constitution and the principles of socio-environmental democracy.

The old law, for example, provided in its Article 5 the possibility of popular control over pesticides through the legal provision for requests for cancellation or impugnation of pesticides by class entities in the sector, political parties, and legally constituted entities for the defense of diffuse interests related to consumer protection, the environment, and natural resources. This was an important mechanism for controlling the adverse effects of these substances. However, in the new law, this important tool for participation that enabled social control over pesticides was discontinued.

Law No. 14,785/2023, even after a year of its enactment, still lacks a regulatory decree. The absence of a regulatory decree leaves various institutional gaps in the pesticide regulatory process. This administrative vacuum also constitutes an abuse to the extent that these gaps hinder inspection mechanisms, transparency, and control in the sector's regulation, in addition to generating legal uncertainty, since the new law largely contradicts the still-in-force Decree No. 4,074/02.

Given all this, it is necessary to critically understand this institutional rearrangement and perceive that it is not socially neutral, considering that its consequences are suffered differently depending on certain conditions of social vulnerability.

Bombardi (2023) warns us about how social inequalities further deepen exposure to the negative externalities of these products. In practice, the burden of abusive environmental constitutionalism in pesticide policy falls more severely on certain social groups, such as rural populations, family farmers, children, pregnant women, indigenous peoples, quilombolas, and other traditional communities, who suffer greater exposure and have less capacity to defend themselves against the interests of the agro-industrial complex.

This unequal distribution of socio-environmental damage constitutes a chronic and structural violation of fundamental rights and transforms the territories of traditional communities and family farming into sacrifice zones.³⁰ socio-environmental: spaces where life and territory are deconstitutionalized and do not hold the status of equals belonging to the constitutional national pact

³⁰ Sacrifice zones are characterized as localities where the thirst for economic development at any cost prevails to the detriment of high levels of social and ecological degradation. These extraction "zones" are subject to various forms of ecological destruction (water, air, land, fauna, and flora) and are usually implemented in places occupied by subalternized people (Black, Indigenous, poor people), who have their human rights "sacrificed" in the name of the supposed development brought by large-scale extractivist economic activity (Viégas, 2006).

before the Brazilian State, in order to enable a predatory economic development agenda (Viégas, 2006; Sousa, 2021).

An event that illustrates how chronic violations of fundamental rights occur through chemical violence and more severely affect traditional communities and their territories is the case of aerial spraying of pesticides, a method of dispersing these products that is increasingly advancing across the national territory and carries with it the marks of chemical risk and rural violence.

The "Zé Maria do Tomé" case, in the State of Ceará, is an emblematic example of how rural family farming communities are more exposed to direct chemical risk (acute and chronic intoxications resulting from direct and indirect exposure to pesticides) and to the social and environmental violence that accompanies it.

José Maria was a farmer and community leader from Ceará who fought against the aerial spraying of pesticides in the Chapada do Apodi region (CE), a practice José called the "rain of poison." The community leader played a fundamental role in the movement that resulted in the enactment of a municipal law prohibiting the aerial spraying of pesticides in the city of Limoeiro do Norte (CE). According to a report on the case of José Maria:

empresas do agronegócio tinham na pulverização aérea a forma mais viável de expurgar veneno em seus cultivos de banana, expondo o ambiente, os trabalhadores e os moradores aos riscos de contaminação. É nesse contexto que emerge a figura de Zé Maria do Tomé, um camponês que se voltou contra a prática da pulverização aérea e mobilizou as comunidades, entidades, movimentos populares e universidades na luta contra o uso de agrotóxicos" (Brasil de Fato, 2021, s/p).

Unfortunately, José Maria's fight for the preservation of the environment and rural ways of life came to a tragic end when he was assassinated on April 21, 2010, with 25 shots in an ambush motivated by his activism against the abusive use of pesticides in his region. According to the Public Ministry of Ceará, Zé Maria was killed with 25 gunshots on the orders of a local landowner who opposed José Maria's struggle³¹

Ten years after this tragic episode, in 2019, the State of Ceará enacted Law No. 16,820/2019, named the "Zé Maria do Tomé Law," which prohibited the aerial spraying of pesticides in agriculture in the State of Ceará. The law was promptly challenged before the STF and became the subject of ADI 6137, filed by the Confederation of Agriculture and Livestock of Brazil – CNA, on the grounds

³¹ G1 Ceará. **Zé Maria do Tomé Case:** the defendant accused of killing an environmental activist who fought against pesticides goes to trial 14 years later. *G1*, October 9, 2024. Available at: <https://g1.globo.com/ce/ceara/noticia/2024/10/09/caso-ze-maria-do-tome-acusado-de-matar-ambientalista-que-lutava-contra-agrotoxicos-vai-a-julgamento-14-anos-depois.ghtml>. Accessed on: August 24, 2025.

that the law would violate "Arts. 1, IV; 170, caput and IV; and 187, all of the Constitution of the Republic, which protect economic freedom, freedom of initiative, and agrarian activity" (STF, 2019).

However, according to Minister Carmen Lúcia, the rapporteur of the ADI at the STF, she recognized³² the constitutionality of the law because it is a norm that offers a more protective regime for human health and the environment, implementing the precautionary principle and reinforcing the need for the issue of pesticides to be treated systemically, taking into consideration not only economic aspects but also human health and the environment, as determined by the Constitution itself in its Article 170, which states that the economic order must develop in conjunction with environmental protection.

Thus, it is possible to see that the new Pesticide Law is not neutral in its social effects: it aggravates structural inequalities and legitimizes differential exposure to chemical risk, creating socio-environmental sacrifice zones that more violently affect certain bodies and territories. This is the structural dynamic of abusive environmental constitutionalism: a model of legality that promotes socio-environmental degradation within the legal form while the most vulnerable populations bear the socio-environmental costs of agribusiness.

In this way, it is concluded that the abusive environmental constitutionalism of Law No. 14,785/2023 operates simultaneously on three fronts: the constitutional, by formally and materially violating the 1988 Constitution; the institutional, by concentrating technical and political powers in MAPA, dismantling the tripartite model, and distancing social control from pesticide regulation; and the social, by deepening ecological inequalities and chronically exposing vulnerable groups to the dangers and chemical risks associated with these substances.

3 ALTERNATIVES FROM ECOLOGICAL CONSTITUTIONALISM

³² The prohibition of the aerial spraying of pesticides is a matter pertaining to health and the environment, listed among the common administrative competences and the concurrent legislative competences of the Union, the States, and the Municipalities (items II and VI of art. 23; items VI and XII of art. 24, all of the Constitution of the Republic). 3. Law No. 7,802/1989 is explicit in preserving the legislative competence of the States to regulate "the use, production, consumption, commerce, and storage of pesticides." There is no obstacle preventing States from enacting norms more protective of health and the environment regarding the use of pesticides. National regulation is limited to establishing general parameters on the matter, coordinating activities and integrated actions. Precedents: ADI n. 3470, DJe Feb. 1, 2019; RE n. 761.056, DJe Mar. 20, 2020; RE n. 286.789/RS, DJ Apr. 8, 2005. 4. Free initiative does not prevent the State from regulating economic activities, especially when such regulation proves indispensable for safeguarding other values esteemed by the Constitution, such as human dignity, the valorization of human labor, free competition, the social function of property, the defense of consumers and the environment, and the pursuit of full employment. 5. The challenged norm is not proven to be unreasonable nor does it escape the juridical proportionality between the right to free initiative and the right to health and an ecologically balanced environment, establishing a reasonable and proportional restriction on pesticide application techniques in the State of Ceará, following the scientific confirmation of the risks involved in the aerial spraying of pesticides (STF, 2023).

It is within this paradigm of abusive environmental constitutionalism that ecological constitutionalism inserts itself as a proposal for a theoretical-normative praxis capable of promoting a model of ecological democracy in the governance of the chemical risk promoted by pesticides in Brazil. Ecological constitutionalism offers not only a critical interpretative perspective on the pesticide problem but also a repertoire of institutional and normative solutions capable of redirecting pesticide regulation in Brazil towards the parameters established by the 1988 Constitution and minimizing the structural nature of the problem.

Undoubtedly, ecological constitutionalism has limitations in the face of the structural problem of the neo-extractivist development model, which increasingly punishes peripheral countries with the chemical colonialism promoted by the externalization of the risks of commodity production. This is especially true considering that Brazil is the main global destination for pesticides and that its economy is deepening increasingly into peripheral-dependent dynamics³³ over the years. (Marini, 2000; Lessenich, 2019; Bombardi, 2023).

Thus, although ecological constitutionalism cannot change the material conditions of Brazil's chemically dependent capitalism, it provides us with tools to understand the need for systemic protection of nature and to propose alternatives. There is, therefore, no way to speak of a fundamental right to an ecologically balanced environment for present and future generations without speaking of restrictions on economic practices that cause the death of people and ecosystems and expel the protectors of nature, fauna, and flora from their natural habitat (Sassen, 2016; 2020).

Sampaio (2016) reconstructs the evolutionary process of the constitutionalization of the environment, showing how the environmental issue evolved within constitutions across three cycles, moving from constitutionalism of the intention to protect the environment to an anthropocentric constitutionalism of the human right to the environment, and finally to ecological constitutionalism, which considers nature as a proper subject of rights within a broader perspective and embedded in the conception of all fundamental rights (Sampaio, 2016).

According to Sampaio (2016, p. 84), ecological constitutionalism "would define itself with the proclamation of 'post-human environmental rights' or 'environmental rights in the strict sense.'" This turn was directly influenced by the movement of the new Latin American constitutionalism,

³³ In Brazil, there is a broad predominance of multinational companies holding the registration for pesticides containing active ingredients not authorized for use in the European Union, which constitutes a violation of the human rights of the Brazilian population. This type of unequal treatment by these multinational companies is seen as discriminatory or even racist in terms of biosecurity, since they practice restrictive legislation in their countries of origin that is not adopted in the peripheral countries of their economy (Hess et al., 2024).

where, by the force of influence of the indigenous worldview of *buen vivir* (ou *sumak kawsay*)³⁴ occurred the recognition of the rights of nature in the Constitution of Ecuador, considered the fundamental paradigm of the ecocentric turn in constitutionalism.

Iacovino (2020) defines ecological constitutionalism as a system of constitutional protection that reflects a new way of thinking about the interaction between society and the environment, where the legal protection of nature is not transgressed due to economic interests in nature's exploitation. It is, therefore, an ecocentric perspective, which surpasses the anthropocentric paradigm, in which:

el ser humano deja de ser el centro del universo, modifica radicalmente sus relaciones con la naturaleza y transforma toda la estructura normativa de protección ambiental; esto también implica la adopción de una perspectiva holística de comprensión de la vida, humana y no humana, que supone desafíos y quiebra antiguos paradigmas filosóficos y jurídicos. Además, la incapacidad de ver el ambiente separado de los otros aspectos de la sociedad exige una acción global y conjunta capaz de concebirlo como un bien colectivo de goce al mismo tiempo individual y general, como un verdadero derecho “transindividual (Iacovino, 2020, p. 278).³⁵

In contrast to the mitigated anthropocentrism that still structures contemporary Western environmental law, ecological constitutionalism emerges as an alternative that recognizes the relationship of interdependence between nature, society, the economy, and fundamental rights. It repositions the ecological dimension at the center of constitutional normativity without subjecting it to the imperatives of capital accumulation interests.

From this perspective, ecological constitutionalism can operate at three complementary levels for reconstructing pesticide policy in Brazil: i) the hermeneutic-normative; ii) the institutional; and iii) the political-social.

From a hermeneutic-normative point of view, ecological constitutionalism presupposes that all constitutional interpretation concerning pesticides, even if it brings economic impacts, must be guided by an environment seen systemically. It should consider the values of socio-environmental democracy and the principles of prevention, precaution, and the prohibition of regression, insofar as the realization of all fundamental rights is not possible in a degraded environment.

³⁴ *Sumak Kawsay* (or *Suma Qamaña* – an Aymara term used in Bolivia) is inspired by the traditional Andean indigenous postulate on the social necessity to achieve a "good life," understood as being founded on harmonious relationships both between human beings and nature, as well as in harmonious relationships among the components of human societies themselves. It is assumed that both the human/environmental relationship (which is a part/whole relationship) and the human/human relationship are interconnected (Houtart, 2011, our translation).

³⁵ Free translation: "The human being ceases to be the center of the universe, radically modifies its relationship with nature, and transforms the entire normative structure of environmental protection; this also implies the adoption of a holistic perspective for understanding life, human and non-human, which supposes challenges and breaks with old philosophical and legal paradigms. Furthermore, the inability to see the environment as separate from other aspects of society requires a global and joint action capable of conceiving it as a collective good for individual and general use, as a true 'transindividual' right" (Iacovino, 2020, p. 278).

Based on this, the STF must advance the agenda of combating chemical risk already initiated in ADI No. 6137 and declare the unconstitutionality of Law No. 14,785/23 in ADI 7701. It should recognize that the new pesticide law promotes a socio-environmental regression that increases the chemical risk borne by Brazilian society and is incompatible with the 1988 Constitution

But beyond being a hermeneutic lens in the scope of constitutional review, this interpretative criterion must serve as a concrete limit to legislative activity in environmental matters. This would prevent new episodes of abusive environmental constitutionalism and ensure that future laws do not repeat the logic of socio-environmental regression found in Law No. 14,785/2023.

From an institutional aspect, ecological constitutionalism implies the reconfiguration of pesticide policy governance structures based on administrative cooperation, transparency, and social control. This necessarily means restoring the tripartite model and the binding participation of MAPA, IBAMA, and Anvisa in the entire pesticide regulatory process. Furthermore, it is essential to ensure that these substances undergo periodic reanalysis processes, with increasingly protective standards regarding the environment and human health, so that no pesticide in Brazil has infinite validity.

At the political-social level, ecological constitutionalism presupposes the democratization of pesticide policy through effective social participation in its control mechanisms. This includes creating deliberative bodies that allow popular participation in the pesticide regulation process, especially by communities directly affected by chemical risk.

Moreover, parallel to this democratic opening in the governance of agricultural chemical inputs, it is necessary to promote the effectiveness of the National Policy on Agroecology and Organic Production³⁶ and the National Program for Pesticide Reduction, with concrete measures to promote the agroecological transition through incentives for research in bio-inputs, sustainable agroforestry management, and technical-financial support for family farmers. All of this must be combined with the effective implementation of a popular agrarian reform policy that guarantees access to land and the effectiveness of the social function of property as provided for in the 1988 Constitution.

By articulating these three dimensions, it is possible to achieve a shift from an abusive environmental constitutionalism to an ecological constitutionalism that promotes the practical translation of the constitutional duty to protect ecological integrity and foster socio-environmental justice.

³⁶ BRAZIL. Decree No. 7,794, of October 11, 2012. Provides for the entry and activities of foreigners in the country, registration, residence, documentation, and the administrative process for the removal of foreigners. *Official Gazette of the Union (Diário Oficial da União)*: Section 1, October 12, 2012. Available at: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/decreto/d7794.htm. Accessed on: October 2, 2025.

4 FINAL CONSIDERATIONS

A The analysis developed throughout this article allows us to state that Law No. 14,785/2023 relaxes the pesticide regulatory process in Brazil and leverages the constitutional structure to promote an abusive environmental constitutionalism in the country's pesticide policy. Instead of perfecting the pesticide regulation system, the new law reconfigures the role of the State, transforming it into a protector of agribusiness interests.

Rife with unconstitutional aspects, the new law promotes socio-environmental regression, primarily through the rupture of the tripartite pesticide regulation model. This movement, by privileging sectoral economic interests to the detriment of the State's duties of environmental protection and the principles of precaution and prevention, promotes what we term here as abusive environmental constitutionalism. This consists of the manipulation of the structure of constitutional legality to weaken the very guarantees of the 1988 Constitution.

This abuse manifests in three interdependent dimensions: the constitutional, the institutional, and the social. On the constitutional plane, we observed the violation of the 1988 Constitution. On the institutional plane, we observed the weakening of regulation through the dismantling of the tripartite model. In the social dimension, we verified that the relaxation of controls intensifies socio-ecological injustices, increasing the exposure to chemical risk of the most vulnerable groups.

Given this reality, the article proposed ecological constitutionalism as a theoretical, hermeneutic-normative, institutional, and political-social horizon for the reconstruction of pesticide policy in Brazil.

From this perspective, confronting abusive environmental constitutionalism in pesticide policy through ecological constitutionalism requires concrete and interdependent measures, such as: i) the declaration of the unconstitutionality of Law No. 14,785/2023; ii) the restoration of the tripartite model, with technical decisions mandatorily shared among health, environment, and agriculture agencies; iii) the establishment of maximum validity periods and periodic reanalyses for all pesticide registrations; iv) the strengthening of social participation and transparency; and v) the promotion of the agroecological transition and popular agrarian reform, integrating credit policies, research, and the valorization of organic production.

Thus, more than a normative proposal, ecological constitutionalism constitutes an agenda for refunding not only pesticide policy but the very legitimacy of the State in promoting ecological justice, repositioning human, and non-human lives at the center of the 1988 constitutional project.

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**THE SCOPE OF THE RIGHTS OF
QUILOMBOLA COMMUNITIES IN BRAZIL:
AN ANALYSIS OF ADI 3239 AT THE
SUPREME FEDERAL COURT AND THE
ALCÂNTARA COMMUNITIES CASE
BEFORE THE INTER-AMERICAN COURT OF
HUMAN RIGHTS**

**O ALCANCE DOS DIREITOS DAS COMUNIDADES
QUILOMBOLAS NO BRASIL: UMA ANÁLISE DA
ADI 3239 PELO STF E DO CASO DAS
COMUNIDADES DE ALCÂNTARA NA CORTE
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**EL ALCANCE DE LOS DERECHOS DE LAS
COMUNIDADES QUILOMBOLAS EN BRASIL: UN
ANÁLISIS DE LA ADI 3239 EN EL SUPREMO
TRIBUNAL FEDERAL Y DEL CASO DE LAS
COMUNIDADES DE ALCÂNTARA ANTE LA CORTE
INTERAMERICANA DE DERECHOS HUMANOS**

**LEONARDO BORTOLOZZO ROSSI¹
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ABSTRACT

The pursuit of effectiveness in the rights of Quilombola Communities faces significant challenges due to the systemic failure of the state to protect, respect, and fulfill their human rights. On the international level, several documents provide special protection to these Communities,

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notably the International Labour Organization's Convention No. 169 of 1989 and the United Nations Declaration on the Rights of Indigenous Peoples of 2007. It was only with the return to democracy, the enactment of the 1988 Federal Constitution, and the subsequent Decree No. 4,887 of 2003 that a protective legal framework was established in Brazil. This article aims to analyze the scope of national and international human rights norms concerning Quilombola Communities. To this end, it adopts a dual methodological approach. First, it conducts a literature review to assess the state of the art of national and international norms regarding Quilombola Communities, along with an analysis of their socioeconomic characteristics. Then, it proceeds to a case law analysis of two landmark decisions: DAU 3239, ruled by the Brazilian Supreme Federal Court in 2018, and the case before the Inter-American Court of Human Rights regarding the Communities of Alcântara, in which the Brazilian State was held accountable in 2024. The article concludes that rights violations against Quilombola Communities persist, and the reach of protective norms remains limited.

Keywords: DAU 3239. Alcântara Communities. Quilombola Communities. ILO Convention No. 169.

RESUMO

A busca pela efetividade dos direitos das Comunidades Quilombolas perpassa por obstáculos significativos, diante da falha sistêmica estatal de proteger, respeitar e assegurar os seus direitos humanos. No plano internacional, há uma série de documentos internacionais que garantem uma proteção especial às Comunidades, em especial à Convenção 169 de 1989 da OIT e a Declaração dos Direitos dos Povos Indígenas, de 2007. Apenas com a redemocratização e o advento da Constituição Federal de 1988 e o consequente Decreto 4.887 de 2003, o arcabouço protetivo foi assegurado no Brasil. Assim, o objetivo deste trabalho é o de analisar o alcance das normas internacionais e nacionais de proteção aos direitos humanos das Comunidades Quilombolas. Para tanto, utiliza-se de uma abordagem metodológica dupla. Em um primeiro momento, procede-se à revisão bibliográfica para verificar o estado da arte das normas nacionais e internacionais sobre as Comunidades Quilombolas, além de analisar suas características socioeconômicas. Depois, procede-se à análise jurisprudencial de duas decisões paradigmáticas, a ADI 3239 julgada em 2018 pelo Supremo Tribunal Federal e o caso perante a Corte Interamericana de Direitos Humanos sobre as Comunidades de Alcântara, o qual responsabiliza o Estado brasileiro em 2024. O artigo conclui que há uma continuidade das violações aos direitos das Comunidades Quilombolas com um alcance limitado das normas protetivas

Palavras-chave: ADI 3239. Comunidades de Alcântara. Comunidades Quilombolas. Convenção 169 OIT.

RESUMEN

La búsqueda de la efectividad de los derechos de las Comunidades Quilombolas enfrenta obstáculos significativos debido a la falla sistémica del Estado en proteger, respetar y garantizar sus derechos humanos. En el ámbito internacional, diversos instrumentos jurídicos otorgan protección especial a estas comunidades, en particular el Convenio 169 de 1989 de la OIT y la Declaración de las Naciones Unidas sobre los Derechos de los Pueblos Indígenas de 2007. Solo con la redemocratización, la promulgación de la Constitución Federal de 1988 y el posterior Decreto 4.887 de 2003 se consolidó un marco legal de protección. El objetivo de este trabajo es analizar el alcance de las normas nacionales e internacionales de protección de los derechos humanos de las Comunidades Quilombolas. Para ello, se adopta una metodología dual. En un primer momento, se realiza una revisión bibliográfica para examinar el estado del arte de las normas nacionales e internacionales sobre las Comunidades Quilombolas, además de analizar sus características socioeconómicas. Luego,

se lleva a cabo un análisis jurisprudencial de dos decisiones paradigmáticas: la ADI 3239, juzgada por el Supremo Tribunal Federal en 2018, y el caso ante la Corte Interamericana de Derechos Humanos sobre las Comunidades de Alcântara, en el cual el Estado brasileño fue responsabilizado en 2024. El artículo concluye que persisten las violaciones a los derechos de las Comunidades Quilombolas y que el alcance de las normas protectoras sigue siendo limitado.

Palabras clave: ADI 3239. Comunidades de Alcântara. Comunidades Quilombolas. Convenio 169 de la OIT.

INTRODUCTION

In 2025, we celebrate the 80th anniversary of the adoption of the San Francisco Charter, the founding document of the United Nations. Among its various statements, one already stands out in the first article concerning the purposes of the United Nations: respect for the principle of self-determination of peoples (United Nations, 1945).

The centrality of the self-determination of peoples in this international instrument and in subsequent treaties and conventions, such as the 1966 Human Rights Covenants, is justified by the two Great Wars that occurred in the first half of the 20th century, which had in their genesis intra- and inter-state ethnic conflicts.

Alongside the decolonial processes developed in the 1950s and 1960s, indigenous peoples are undergoing a rearticulation of their rights at the international level, precisely based on the principle of self-determination. In 1989, the International Labour Organization (ILO) adopted Convention No. 169 concerning Indigenous and Tribal Peoples, which establishes a series of human rights. After twenty years of debates, in 2007, the UN General Assembly established another normative framework for the protection of the rights of indigenous peoples: the United Nations Declaration on the Rights of Indigenous Peoples.

In Brazil, the recognition of the rights of indigenous peoples also occurred belatedly. Only with the 1988 Federal Constitution was the right to land for indigenous peoples fully realized, even though such a right was already present in other national Constitutions. The protection of the rights of Quilombola Communities stems from the Transitory Constitutional Provisions Act (ADCT). The procedure for the identification, demarcation, and recognition of these lands was established through Decree 4,887 of 2003.

Although there is a chapter in the Constitution dedicated to the protection of indigenous peoples, the concern for respecting and ensuring the effectiveness of the rights of Quilombola Communities still requires its own agenda and greater theoretical development.

Similarly to the land struggle of indigenous peoples, the quest for the recognition of the rights of these Communities still faces intense resistance, generating social conflicts that negatively impact the formation of each of their identities. Only in 2018 did the Federal Supreme Court affirm the constitutionality of Decree 4,887/03 and the integration of ILO Convention No. 169 into the protection of their rights (Direct Action of Unconstitutionality 3239).

Even with such advances, the disrespect for the rights of the communities continues to occur repeatedly. In a recent ruling by the Inter-American Court of Human Rights, in the case of the Quilombola Communities of Alcântara vs. Brazil, the international responsibility of the Brazilian State was recognized in ensuring respect for the rights of these communities, including the right to free, prior, and informed consultation.

Thus, the objective of this article is to analyze the scope of ILO Convention 169 within the Brazilian legal system, particularly concerning respect for the rights of Quilombola Communities. The hypothesis put forward is that Brazil repeatedly fails to comply with its international obligations to protect, respect, and ensure the rights of Quilombola Communities.

The work adopts a dual methodological approach. The first, based on exploratory research, seeks to compile bibliographic and documentary data on the concepts involved in the formation of Quilombola identity and the rights guaranteed to this population. Then, through a case study analysis (Machado, 2017, p. 356-389) of two judicial decisions, one at the national level and one at the regional level, the aim is to assess the scope of ILO Convention 169 within the Brazilian legal system regarding Quilombola Communities. The cases selected for jurisprudential analysis were ADI 3239 adjudicated by the STF and the 2024 case of the Quilombola Communities of Alcântara vs. Brazil from the Inter-American human rights system.

To achieve this objective and the methodological path, the work presents three additional sections. The first, with theoretical characteristics, delineates the differentiating features of Quilombola Communities and Indigenous Peoples, with the aim of verifying whether ILO Convention No. 169 applies to the former population. This section adopts an approach with sociological and historical nuances. Then, in the second part, the judgment of ADI 3239 was analyzed qualitatively, through the examination of its summary (*ementa*) and all the issued votes. In the last part, based on the Inter-American Court ruling, the continuity of violations of the rights of Quilombola Communities by the Brazilian State was outlined. The conclusion attempts to construct pathways for greater effectiveness of the rights of quilombola communities.

2 THE LEGAL CONCEPTUALIZATION OF QUILOMBOS: BETWEEN HISTORY, DISCRIMINATION, AND RECOGNITION

La The genealogy of the concept of "people" in Law requires another research focused on this construction. However, the contemporary understanding of the right to self-determination of peoples refers to the drafting of the United Nations Charter in 1945 and the consequent International Bill of Human Rights, composed of the 1948 Universal Declaration and the 1966 Covenants, which encompass civil, political, economic, social, and cultural rights. The reconstruction of the international order, in a simplified way, results from the developments of the two World Wars in the first half of the 20th century. These events are, at their core, conflicts generated by inter- and intra-state tensions among peoples.

While the self-determination of peoples is one of the objectives of the United Nations (Art. 1.2 of the 1945 Charter), the 1966 International Covenant on Civil and Political Rights recognizes from its first article that "All peoples have the right of self-determination" (Brazil, 1992). This right includes their free economic and social development. This right is reaffirmed in the International Covenant on Economic, Social and Cultural Rights, in terms like the Covenant on Civil and Political Rights.

Nevertheless, the necessary protection of the right to self-determination in these documents faces conceptual problems, as there are no elements, from the point of view of International Law, for attributing the concept of "people" and the consequent exercise of self-determination.

There is, furthermore, a distinction between tribal and indigenous peoples. This distinction, as Xanthaki states (2007, p. 72), is merely theoretical, as both groups possess the same rights. Regarding the first group of peoples, Article 1 of said Convention explains that it applies to tribal peoples in independent countries whose social, cultural, and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations (International Labour Organization, 1989). Likewise, the same article also presents a subjective criterion for defining the applicability of the Convention, by establishing that self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of the international instrument apply (International Labour Organization, 1989). This latter criterion has been the object of concern and disrespect by States, as demonstrated by the case of the Uyghurs in China, who are not recognized by the Chinese State.

Convention 169 revised and replaced Convention 107 of 1957, which contained integrationist language, with the purpose of eliminating various forms of life to integrate them into the majority society (Xanthaki, 2007, p. 68-69). The 1989 Convention generates a paradigmatic shift in the protection of the rights of peoples, guaranteeing them a series of rights, such as: to life, physical integrity, culture, land, among others.

Thus, in a first normative approximation, Quilombola peoples are protected by the provisions of ILO Convention 169, as they fit the concept of tribal people. There is the fundamental criterion of self-identification, in addition to the fact that their social, cultural, and economic conditions are distinct from the majority Brazilian society. Furthermore, they have their own customs and traditions and are even governed by their own special legislation (Federal Decree No. 4887 of 2003).

In this sense, in 2002, around the same time that Federal Decree No. 4,887 was enacted, Brazil adhered to the ILO Convention 169, which, upon its incorporation into the Brazilian legal system, generates international obligations for the Brazilian State.

Silva (2023) points out that Brazil, by ratifying said Convention, recognized as holders of the rights provided therein indigenous peoples, as well as Quilombola communities and traditional peoples, such as riverine (*ribeirinhos*) and extractivist communities. This conception was reaffirmed by the legal descriptions of tribal and traditional peoples included in Decree No. 4,060/2007, which instituted the National Policy for the Sustainable Development of Traditional Peoples and Communities³, and by Decree No. 8,750/2016, which established the National Council of Traditional Peoples and Communities (CNPCT)⁴.

The central theme of the Convention is that there are groups bearing specific identities and that it is the role of Law to ensure them "the control of their own institutions and ways of life and their economic development, and to maintain and strengthen their identities, languages, and religions,

³ This description is found in Article 3, item I, of Decree No. 4,060/2007, which classifies "indigenous peoples and traditional communities" as: culturally differentiated groups that recognize themselves as such, which have their own forms of social organization, occupy and use territories and natural resources as a condition for their cultural, social, religious, ancestral, and economic reproduction, using knowledge, innovations, and practices generated and transmitted by tradition (Brazil, 2007).

⁴ This description is found in Article 4, §2, of Decree No. 8,750/2016, which describes indigenous and traditional peoples as: "indigenous peoples; quilombola communities; terreiros peoples and communities/African matrix peoples and communities; Roma people; artisanal fishers; extractivists; coastal and marine extractivists; *caçaras*; *faxinalenses*; prayers/healers (*benzedeiros*); islanders; herbalists (*raizeiros*); *gerazeiros*; *caatingueiros*; *vazanteiros*; *veredeiros*; everlasting flower gatherers; wetland dwellers (*pantaneros*); *morroquianos*; Pomeranian people; *mangaba* gatherers; *babaçu* coconut breakers; Araguaia riverbank dwellers (*retireiros do Araguaia*); commons and pasture closure communities (*fundos e fechados de pasto*); riverine communities (*ribeirinhos*); *cipozeiros* (vine gatherers); *andirobeiros* (*andiroba* gatherers); *caboclos*; and youth of traditional peoples and communities".

within the framework of the States in which they live" (International Labour Organization, 1989). The right to prior consultation of traditional peoples is found in Art. 6, 1, a, of the document, which states:

Ao aplicar as disposições desta Convenção, os governos deverão: consultar os povos interessados, por meio de procedimentos apropriados e, em especial, por meio de suas instituições representativas, sempre que estiverem sendo consideradas medidas legislativas ou administrativas que possam afetá-los diretamente (Organização Internacional do Trabalho, 1989).

The right to free, prior, and informed consultation and consent, recognized by ILO Convention No. 169, constitutes a strong expression and guarantee of the right to self-determination of traditional peoples, as it seeks to protect the ability of such communities to define their own priorities, control their development model, and participate in state decisions that affect them directly (Soares; Steckelberg; Weber, 2019). This right foresees that the consultation to be carried out must have broad effects, allowing the consulted community to veto a project that may affect it and determining that its objections be incorporated into the decision-making process (Duprat, 2015). The right in question must also be exercised regarding any legislative or administrative measure likely to affect traditional peoples (Lunelli; Silva, 2023).

Thus, as Miranda (2013) explains, this international legislation, having been incorporated into the national legal system in accordance with the parameters of Article 5, §2, of the Federal Constitution⁵, began to guide and support Article 68 of the Constitution and Decree No. 4,887/2003, contributing to reducing the bureaucracy of the Brazilian State, which paralyzed many recognition processes, postponing the rights of some Quilombola communities for years, as previously noted.

It is worth highlighting that, at the international level, the right to prior consultation is reinforced by the 2007 United Nations Declaration on the Rights of Indigenous Peoples; by the American Declaration on the Rights of Indigenous Peoples, from the Organization of American States (OAS), of 2016; and by the jurisprudence of the Inter-American Court of Human Rights.

Regarding the United Nations Declaration on Indigenous Peoples, the semantic alteration concerning the right to free, prior, and informed consultation is notable. While ILO Convention 169 references the state's obligation to conduct the consultation with its constitutive elements, the UN Declaration mentions that the consultation should have a bias towards consent.

⁵Article 5, §2, of the Federal Constitution establishes that: "The rights and guarantees expressed in this Constitution do not exclude others deriving from the regime and from the principles adopted by it, or from the international treaties in which the Federative Republic of Brazil is a party" (Brazil, 1988).

That is, the consultation must go further and actively seek the consent of the peoples concerned. Based on this change, some commentators (Lunelli; Silva, 2023) argue for the existence of a right to consent for traditional peoples regarding all measures that impact them. Consequently, the notion of consent carries with it the right to veto. In practical terms, in business projects, peoples would have the right to veto their development from the earliest phases.

It is observed, therefore, that the recognition of the rights of the Quilombola people integrated the formation of the principles and parameters of the contemporary Brazilian legal system, guided by the 1988 Federal Constitution. However, the realization of such rights remains conflictual today, marked by legal disputes and political interest conflicts, as will be addressed in the next section of this work.

3 THE RIGHT TO SELF-IDENTIFICATION AND SELF-DETERMINATION IN ADI NO. 3239

As stated, the process of recognizing the rights of Quilombola peoples was also marked by significant judicial decisions, standing out, in this sense, the Direct Action of Unconstitutionality No. 3239, whose judgment by the Federal Supreme Court was concluded in 2018.

ADI No. 3239 was filed in 2004 by the Liberal Front Party (PFL), currently the Democrats party (*Democratas*), with the aim of challenging the constitutionality of Decree No. 4,887/2003 due to alleged formal and material flaws.⁶ (Monteiro; Trecanni, 2019). Regarding formality, the main issue raised by the plaintiff was that the content regulated by the decree was a matter reserved for law because it dealt directly and immediately with a constitutional precept provided for in Article 68 of the ADCT (Brazil, 2018).

Regarding materiality, the plaintiff presented three main allegations: a) that the State should limit itself to issuing titles to Quilombola communities that had established residence on their

⁶The following acted as *amicus curiae* in ADI No. 3239: Pro Bono Institute; Conectas Human Rights; Brazilian Society of Public Law (SBDP); Centre on Housing Rights and Evictions (COHRE); Global Justice Center; Socio-Environmental Institute (ISA); Institute for Studies, Training and Advisory in Social Policies (POLIS); Terra de Direitos; Federation of Agricultural Workers of the State of Pará (FETAGRI-PARÁ); State of Pará; State of Santa Catarina; National Confederation of Agriculture and Livestock of Brazil (CNA); National Confederation of Industry; Brazilian Pulp and Paper Association (BRACELPA); Brazilian Rural Society; Mariana Criola Popular Legal Advisory Center; Koinonia Ecumenical Presence and Service; Association of the United Quilombos of Barro Preto and Indaiá; Association of Quilombola Residents of Santana (Quilombo de Santana); Coordination of Rural Black Quilombola Communities of Mato Grosso do Sul; National Institute of Colonization and Agrarian Reform (INCRA); State of Paraná; National Conference of Bishops of Brazil (CNBB); Institute of Racial and Environmental Law (IARA); Palmares Club of Volta Redonda (CPVR).

respective lands from the abolition of slavery until October 5, 1988, and that the hypothesis of expropriation provided for in Federal Decree No. 4,887/2003 would be unconstitutional; b) that the self-attribution criterion, provided for in Article 2, §1, of Federal Decree No. 4,887/2003, would allow recognition of the right to land for more people than those actually benefited by Article 68 of the ADCT; c) that it would be necessary to prove the "remnant" (*remanência*) and not the "descendance" (*descendência*) of Quilombola communities for the right to territorial demarcation to be recognized, and that this should be limited to lands essential for their physical, social, economic, and cultural reproduction (Brazil, 2018).

It is observed that, in addition to questioning the right to self-determination of Quilombola peoples, the filing of this ADI also led the STF to rule on the thesis of the "temporal framework of occupation," which would restrict the right to land of Quilombola communities to those who were in possession of their territory at the time of the promulgation of the 1988 Federal Constitution. The first time this thesis emerged within the Supreme Court was during the judgment of Petition No. 3,388-4, which debated the demarcation of the Raposa Serra do Sol Indigenous Land in the state of Roraima (Monteiro; Trecanni, 2019).

The trial of the ADI began in 2012, with the vote of the case's rapporteur, Minister Cezar Peluso. The rapporteur ruled in favor of the formal unconstitutionality of Decree No. 4,887/2003, considering that the regulatory route used violated the principles of legality and legislative reservation (*reserva de lei*); and in favor of material unconstitutionality, by accepting the plaintiff's theses regarding identity self-determination and the criteria for demarcating Quilombola lands (Chaves; Monteiro; Siqueira, 2020). Regarding the temporal framework thesis, the Minister proposed that lands whose possession was continuous, prolonged, centuries-old, and qualified until October 5, 1988 should be demarcated (Brazil, 2018).

The process was suspended due to a request for review (*pedido de vista*) by Minister Rosa Weber, who issued her vote in 2015, ruling in favor of the constitutionality of the decree and defending that Article 68 of the ADCT constituted a norm of full efficacy and immediate application, as it is a fundamental right of an ethnic-racial minority group (Brazil, 2018).

Minister Rosa Weber based her vote on recognition theories grounded in the theoretical production of Axel Honneth and Nancy Fraser. The recognition of land ownership holds importance for distributive justice and recognition itself. From this notion, the Minister constructed her vote as a mechanism of transformative justice.

As Karen Engle and Lucas Lixinski affirm (2021), her vote recognizes two types of injustices suffered by Quilombola communities: economic and cultural. Thus, two types of remedies are required: economic redistribution and cultural recognition.

However, the Minister's position presented a peculiarity: in the first version of her vote-review (*voto-vista*) in 2015, the Minister argued that demonstrating the effective possession of the Quilombola territory on October 5, 1988, was an essential requirement for the application of Article 68 of the ADCT; however, at the end of the trial, the Minister issued a new version of her vote, in which she did not directly address the need for possession at the time of the promulgation of the 1988 Constitution, but rejected the date of May 13, 1888, for defining the status of *quilombos* (Monteiro; Treccani, 2019).

A falta de deliberação do Plenário sobre um eventual marco temporal impede que eu faça considerações, ainda que em obiter dictum. Assinalo, porém, que a data de 13 de maio de 1888 não possui utilidade metodológica para a definição do status dos quilombos. Primeiro, porque o próprio conceito de remanescente de quilombo, nos dias atuais, exige a reprodução contínua de uma comunidade que, originada na resistência à escravidão, permaneceu coesa. Segundo, porque é impossível saber, hoje, em que momento do passado histórico a Lei Áurea — embora assinada naquela data — tornou-se de conhecimento público em localidades remotas do território brasileiro, bem como qual foi a efetiva disposição das autoridades locais para lhe dar cumprimento (Brasil, 2018, p. 130).⁷

The next Minister to express his opinion was Dias Toffoli, who voted for the partial granting of the action, arguing in favor of the constitutionality of Federal Decree No. 4,887/2003, but defending the demarcation of lands that were occupied by Quilombola remnants and were effectively used to guarantee their physical, social, economic, and cultural reproduction at the date of promulgation of the 1988 Federal Constitution (Brazil, 2018). Next, Minister Gilmar Mendes concurred with Minister Dias Toffoli's vote (Brazil, 2018).

It is observed that, in the first votes, the idea of conceptualizing Quilombola Communities through *remnantness* (*remanência*) rather than cultural and ethnic self-identification predominated. As Chaves, Monteiro, and Siqueira explain (2020, p.68), the adoption of this perspective directly jeopardizes the existence of Quilombola peoples, insofar as "the place (*quilombo*) and the person (*quilombola*) merge into a concept that is complete," making it impossible to restrict identity and community recognition to the continuous possession of a territory, especially considering that lands

⁷ The following excerpt was taken from the content of the decision rendered in 2018, in which the second version of the vote by Minister Rosa Weber was already included *acórdão* (court decision).

occupied by Quilombolas were constantly subject to persecution and illegal occupation by third parties over time.

However, the course of the trial changed in 2018, with the vote of Minister Edson Fachin. The Minister not only defended the formal constitutionality of Federal Decree No. 4,887/2003, affirming that the right provided for in Article 68 of the ADCT had maximum efficacy, even being stipulated in a transitional norm, but also rejected the thesis that the recognition of Quilombola lands should be based on the community's presence in the area until October 5, 1988 (Brazil, 2018). Fachin argued that the defining element of Quilombola identity should be the community's traditional relationship with the land, the "idea of resistance, of a community that, over the years, despite invisibility and difficulties in relation to its surroundings, survives and maintains its traditions" (Brazil, 2018).

Ministers Luís Roberto Barroso and Luiz Fux also positioned themselves against the adoption of the temporal framework thesis. Barroso argued that proof of the preservation of the link with the Quilombola area should not be given through possessory actions and that communities that were forcibly dispossessed "but whose behavior, in light of their culture, points to their unequivocal intention to return to the territory they occupied [and] to resume the permanence of the cultural and traditional link with the territory" would have the right to property (Brazil, 2018).

For his part, Minister Luiz Fux argued that the chronological restriction of the right to land would ultimately violate the constitutional purpose of the norm in Article 68 of the ADCT, that is, the protection of Quilombola communities, in addition to pointing out that the self-identification criterion had normative support both in the Brazilian legal system and in the provisions of ILO Convention No. 169, ratified by Brazil (Brazil, 2018). In the Minister's words:

A garantia inscrita no art. 68 do ADCT deve orientar-se para o futuro, não podendo o intérprete reduzi-la apenas às terras comprovadamente ocupadas pelas comunidades quilombolas durante a fase imperial da história do Brasil, na medida em que tal compreensão (i) subverte a finalidade subjacente ao dispositivo constitucional, transformando-o de instrumento protetivo em veículo discriminatório dos grupos remanescentes de quilombos; (ii) cria obstáculos intransponíveis para a efetivação do direito constitucionalmente reconhecido e (iii) ignora a dimensão territorial indispensável para a preservação e afirmação da cultura quilombola (Brasil, 2018, p. 312).

Finally, Minister Ricardo Lewandowski voted to dismiss the action (*não conhecimento da ação*), while Minister Marco Aurélio ruled for the dismissal of the request (*improcedência do pedido*) and Minister Celso de Mello concurred with the vote of Minister Rosa Weber, adopting, however, the observation of Minister Edson Fachin regarding the rejection of the temporal framework thesis (Brazil, 2018).

Thus, by an absolute majority, the Federal Supreme Court determined the dismissal (*improcedência*) of ADI No. 3239, rejecting the temporal framework thesis and confirming the constitutionality of self-identification as a criterion for demarcating Quilombola lands. The decision was, without a doubt, an advance in the protection of Quilombola communities in Brazil. However, despite the relevance of the formal and legal recognition of the right to land for Quilombolas, the realization of this right faces obstacles stemming from prejudice and land conflicts, which, in the harshness of factual reality, expose these peoples to persecution and marginalization, as was evident in the judgment of the case of the Quilombola Communities of Alcântara vs. Brazil.

4 THE PROTECTION OF THE RIGHTS OF QUILOMBOLA COMMUNITIES IN THE CASE OF THE QUILOMBOLA COMMUNITIES OF ALCÂNTARA VS. BRAZIL

The Inter-American system for the protection of human rights has consolidated jurisprudence on the rights of indigenous and tribal peoples, especially regarding the right to free, prior, and informed consultation. Among various cases, two of them deal with the issue paradigmatically. In *Pueblo Saramaka vs. Surinam*, in 2007, the Inter-American Court of Human Rights determined that the State's duty to consult must be carried out in accordance with indigenous customs and traditions. For large-scale business development projects, the consent of the affected populations must be sought, in accordance with the provisions of the Declaration on the Rights of Indigenous Peoples (Inter-American Court of Human Rights, 2007).

Subsequently, in 2012, in the case of *Pueblo Kichwa de Sarayaku vs. Ecuador*, the Court detailed the stages of the consultation procedure, which must occur in the initial phases of the project, to guarantee the prior nature of the consultation; be in good faith, i.e., in accordance with the culture of the potentially affected community; be informed, so that community members have access to all necessary documents for decision-making; and foresee the conduction of environmental impact studies (Inter-American Court of Human Rights, 2012).

The case of the Quilombola Communities of Alcântara vs. Brazil was paradigmatic for dealing, for the first time, specifically with the right to land of Quilombola peoples and highlighting the essentiality of the prior consultation process in the demarcation of their territories (Inter-American Court of Human Rights, 2024). The history of violations of the rights of Quilombola communities in the city of Alcântara, in the state of Maranhão, dates to the military dictatorship. The regime's economic and social development project attempted to integrate the Northern region due to the number of natural resources needed to supply the industrial expansion of the South and Southeast

(Joanoni Neto; Guimarães Neto, 2019). In this sense, various initiatives were adopted, such as incentives for population and business displacement.

Although the Legal Amazon (*Amazônia Legal*) was formally established in 1953, through Law 1,806, it was in 1966, with the creation of the Superintendency for the Development of the Amazon (SUDAM), through Law 5,173, that the region gained greater relevance on the national stage.

The municipality of Alcântara hosts a diverse number of Quilombola Communities. The Brazilian State was interested in building an area for the expansion of its aerospace activity in the city, as it was a region with low population density and far from major centers. In 1979, the government issued a statement expressing interest in creating a space launch center in Alcântara. In the following years, in cooperation with municipal and state public agencies, the resettlement of Quilombola communities residing in the areas of interest was carried out, through the expropriation and donation of these lands to the federal government.

In 1991, a new expropriation was carried out, this time without the relocation of the affected populations. From the 2000s onwards, the Brazilian government sought economic partnerships, through bilateral treaties, with the United States and Ukraine. Initially, only cooperation with the Ukrainian government was approved. Only in 2019 was a partnership signed with the US government (Technology Safeguards Agreement). It is observed, therefore, that there was, in addition to the violation by the State, the participation of companies in joint business projects.

The judgment in the case was published in 2025. It highlights the adoption of the concept of Quilombola Community as a tribal people, historically formed by people who escaped slavery or who were free, i.e., Afro-descendants (Inter-American Court of Human Rights, 2024). Among the human rights violations recognized by the Court – such as the right to communal property and the right to land – the right to consultation presents particularities of the national scenario. According to the Court's ruling:

A declaração de utilidade pública emitida originalmente em 1980 por decreto do governo militar então no poder serviu de base para a realocação compulsória de 31 comunidades quilombolas de Alcântara que habitavam a área onde posteriormente foi instalado o CLA. Diante do contexto de ausência do Estado de Direito, as Comunidades Quilombolas de Alcântara afetadas por essa declaração de utilidade pública não dispunham de recursos administrativos ou judiciais eficazes para impugnar as desapropriações ou reivindicar medidas de restituição ou compensação. Contudo, esses argumentos não prejudicam a ocupação histórica de seus territórios; ao contrário, reforçam as obrigações legais do Brasil de garantir a propriedade coletiva das comunidades (Corte Interamericana de Derechos Humanos, 2024, p. 47).

The Court also noted that the agreements signed between Brazil and Ukraine between 1999 and 006 for the construction of space launch sites in Alcântara had the potential to cause significant impacts on Quilombola communities, due to possible pressure on natural resources and environmental impacts; and that, having been signed without the consent of the affected peoples, their right to prior consultation was violated. Regarding this right, the Court ruled:

Os Estados devem garantir o direito à consulta e à participação em qualquer projeto ou medida que possa afetar o território de um povo indígena ou tribal, ou outros direitos essenciais para sua sobrevivência como povo, a fim de salvaguardar o direito à propriedade coletiva. (...) Nessa linha, o Estado deve garantir que os direitos dos povos indígenas e tribais não sejam ignorados em nenhuma outra atividade ou acordo realizado com terceiros, ou em decisões do poder público que afetem diretamente seus direitos e interesses. Portanto, quando for o caso, incumbe também ao Estado realizar tarefas de supervisão e controle e implementar, quando apropriado, formas de proteção efetiva desse direito por meio dos órgãos judiciais competentes (Corte Interamericana de Derechos Humanos, 2024, p. 53).

It is added that, through Resolution 11 of March 2020, issued by the Brazilian Space Program Development Committee under the direction of the then Minister of the Institutional Security Cabinet, Augusto Heleno, guidelines were approved for the elaboration of a consultation plan for Quilombola communities. The consultation was to be carried out by the Ministry of Defense, an agency with little or no experience in human rights issues. In the same resolution, the resettlement of the populations of the communities was determined. That is, the same body responsible for the consultation would also be responsible for resettlement. The resolution was incompatible with ILO Convention 169 and was the subject of legal actions by the Public Ministry, which suspended its effectiveness until its complete revocation in 2021.

In this scenario, autonomous consultation protocols developed by the affected communities themselves gain strength. In the case of the Alcântara communities, a foundational document from 2019 establishes that all involved communities, through their participatory associations, must be consulted (Observatório de Protocolos Autônomos, 2019). There are still two perspectives that must be considered: that of the elders and that of women (gender perspective). The consultation must be conducted exclusively by the State and cannot be delegated to non-state entities. Its form must be in accordance with Convention 169, prior to any administrative or legislative decision.

In its final decision on restitution measures, it is mentioned that the Inter-American Commission emphasized that consultation aimed at consent must be conducted in accordance with the very Consultation Protocol presented by the Communities. A few months before the judgment, Brazil and the Quilombola Communities signed, in September 2024, the *Termo de Conciliação, Compromissos e Reconhecimentos Recíprocos* (Brazil, 2024). In it, the Brazilian State committed to

identifying and delimiting 78,105 hectares as Quilombola territory, whose titling must be carried out within a maximum period of twelve months by INCRA.

Finally, any eventual modifications to this agreement must also be subject to consultation processes with the Quilombola Communities. Although Brazil, in the agreement signed in 2024, acknowledges its responsibility for the lack of delimitation and titling of Quilombola lands, the Court granted a three-year period for it to adopt the pertinent actions to guarantee the right to land (Inter-American Court of Human Rights, 2024, p. 317).

5 FINAL CONSIDERATIONS

Quilombola Communities, although mentioned in studies on the protection of Indigenous Peoples' rights, deserve a detailed analysis of their protection framework, both in relation to the Brazilian legal system and International Human Rights Law. The socio-historical formation of these Communities is a particular characteristic of the Brazilian State, which demands an interdisciplinary reading of various fields of knowledge. This work precisely sought to offer that small contribution.

The persistence of violations of the rights of Quilombola Communities by the Brazilian State reveals a low reach of international norms for the protection of tribal peoples, especially ILO Convention 169.

From a normative point of view, this research demonstrated, initially, that the protective provisions of ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples must be applied to Quilombola Communities. Therefore, there is a state duty to protect the rights enshrined in the most diverse international human rights treaties concerning these Communities.

The delay in affirming the rights of Quilombola Communities, which were provided for in the 1988 Federal Constitution but only in 2003 were properly implemented and regulated by infraconstitutional legislation, evidences state slowness. Decree 4,887/03, by providing for the right to land and the State's duty of demarcation, highlights the continuity of violations through unjustified delays. The data shows an increase in socio-environmental conflicts in the last two decades, a result of the inertia of state action.

It was only in 2018 that the STF determined the constitutionality of Decree 4,887/03. The judgment, especially the vote of Minister Rosa Weber, incorporated the perspective of redistribution and recognition of these constitutionally and internationally recognized rights. Added to this is the rejection of the temporal framework thesis (*marco temporal*), reaffirmed in Theme 1,031 of 2023 adjudicated by the STF regarding Indigenous Peoples.

This continuum of exploitation is verified in the recent paradigmatic case of the Inter-American Court of Human Rights in which Brazil was held responsible for the lack of demarcation of Quilombola Communities' lands and the absence of free, prior, and informed consultation. The case dates to the national dictatorial period, perpetuating over time for more than four decades without a resolution that respected the Communities' position.

One of the possible articulations for a research agenda on the rights of Quilombola Communities is their connection with the Sustainable Development Goals, which must be interpreted interdependently, particularly the promotion of food security, environmental preservation, and gender equality, thereby seeking the reduction of inequalities.

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**ENVIRONMENTAL EDUCATION AND
SOCIAL REPRESENTATIONS ABOUT
WATER: WHAT DO STUDENTS AT
ELEMENTARY SCHOOLS IN THE
MUNICIPALITY OF VARGEM ALTA – ES
SAY?**

**EDUCAÇÃO AMBIENTAL E REPRESENTAÇÕES
SOCIAIS SOBRE A ÁGUA: QUE DIZEM OS
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ESTUDIANTES DE LAS ESCUELAS PRIMARIAS
DEL MUNICIPIO DE VARGEM ALTA – ES?**

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ABSTRACT

This study aimed to analyze the social representations of water among elementary school students from urban and rural public schools in Vargem Alta, Espírito Santo, Brazil, by connecting the Theory of Social Representations (TSR) with Environmental Education. This qualitative research, with an exploratory and descriptive character, used two data collection instruments: a questionnaire applied to 74 students and semi-structured interviews conducted with 20 participants from one rural and one urban school. Questionnaire data were tabulated in Excel, and the interviews were processed using the IRaMuTeQ software. Students' interpretations of environmental degradation and water resource management revealed that urban students associate pollution with the lack of sanitation and improper waste disposal, while rural students emphasize predatory agricultural practices and deforestation. This division reinforces that social representations are not homogeneous but are shaped by the territorial and social context of the participants.

Keywords: Environmental Education. Social Representations. Water.

RESUMO

Objetivou-se analisar as representações sociais da água entre alunos do Ensino Fundamental de escolas públicas urbanas e rurais de Vargem Alta- ES, Brasil, articulando a Teoria das Representações Sociais (TRS) com a Educação Ambiental. A pesquisa qualitativa, de caráter exploratório e descritivo, utilizou como instrumentos de coleta de dados: um questionário aplicado em 74 alunos e entrevista semiestruturada, aplicada em 20 participantes, de duas escolas: rural e urbana. Os dados dos questionários foram tabulados no Excel e as entrevistas, foram processados no software IRaMuTeQ. As interpretações dos estudantes sobre a degradação ambiental e a gestão dos recursos hídricos revelam que, enquanto os alunos urbanos relacionam a poluição à falta de saneamento e ao descarte inadequado de resíduos, os alunos rurais enfatizam as práticas agrícolas predatórias e o desmatamento. Essa divisão reforça que as representações sociais não são homogêneas, mas marcadas pelo contexto territorial e social dos sujeitos.

Palavras-chave: Água. Educação Ambiental. Representações Sociais.

RESUMEN

El objetivo de este estudio fue analizar las representaciones sociales del agua entre estudiantes de primaria de escuelas públicas urbanas y rurales de Vargem Alta - ES, Brasil, articulando la Teoría de las Representaciones Sociales (TRS) con la Educación Ambiental. La investigación cualitativa, de naturaleza exploratoria y descriptiva, utilizó como instrumentos de recolección de datos: un cuestionario aplicado a 74 estudiantes y una entrevista semiestructurada, aplicada a 20 participantes, de dos escuelas rurales y urbanas. Los datos de los cuestionarios se tabularon en Excel y las entrevistas se procesaron en el software IRaMuTeQ. Las interpretaciones de los estudiantes sobre la degradación ambiental y la gestión de los recursos hídricos revelan que, mientras que los estudiantes urbanos relacionan la contaminación con la falta de saneamiento y la eliminación inadecuada de residuos, los estudiantes rurales enfatizan las prácticas agrícolas depredadoras y la deforestación. Esta división refuerza que las representaciones sociales no son homogéneas, sino marcadas por el contexto territorial y social de los sujetos.

Palabras clave: Agua. Educación Ambiental. Representaciones Sociales.

INTRODUCTION

Water is a natural resource essential for sustaining the life of all living beings and maintaining the planet's environmental balance. It has a singular importance that goes beyond its physical and chemical properties, becoming the object of social representations by individuals and groups. These social representations influence people's attitudes and behaviors regarding the use and conservation of water, shaping daily practices, water resource management policies, and Environmental Education strategies (Vittorazzi; Gouveia; Silva, 2020). In a context where water scarcity is becoming an increasingly evident reality, understanding these representations is crucial for promoting more sustainable and conscious strategies for the use and management of this resource.

As with other types of social representations, perceptions of water are deeply rooted in the traditions of different peoples across diverse sociocultural contexts. In some cultures, water is seen as sacred, while in others it is mainly regarded as a commodity or an economic resource (Polli; Kuhnen, 2013). These varied understandings can influence how communities respond to water-related challenges, such as pollution, watershed management, and climate change (Jacobi; Grandisoli, 2017).

As Jodelet (2001, p. 17) explains, social representations serve a practical function, as they “[...] guide the collective way of naming and defining all aspects of everyday reality”. They originate from social groups that share a similar worldview and associated patterns of behavior. Furthermore, social representations evolve as both social and individual interactions change.

In a scenario marked by water crises and growing concerns about sustainability in its multiple dimensions (social, environmental, economic, political, and cultural), it becomes fundamental to understanding the social representations and the interactions of different social groups concerning water. Polli and Camargo (2015) reinforce the perspective that social representations of water reflect not only an understanding of its vital role in sustaining life but also reveal how different cultures and societies perceive, value, and interact with this indispensable resource.

In this sense, the study presented in this article is situated within the field of Environmental Education through two key areas of dialogue: critical understanding of the use of natural resources and ecological balance, especially in rural areas (Santos; Cândido, 2023); and the importance of Environmental Education in the formation of conscious citizens who are capable of acting locally and thinking globally, promoting practical solutions to critical environmental issues (Colagrande; Farias, 2021).

This research aimed to investigate the social representations of water among students in the later years of primary education from public schools in Vargem Alta, in the state of Espírito Santo,

Brazil. To achieve this, it was necessary to identify the challenges related to water scarcity within the community, as well as to understand the students' conceptions and practices regarding water conservation. Based on the Theory of Social Representations developed by Moscovici (1961) and expanded by Jodelet (2009), the study examined how these representations are shaped by social and cultural interactions, highlighting the importance of conscious water resource management. By investigating the student's social representations, the study contributes to the development of Environmental Education within the school context, providing guidelines for school programs and projects that aim to promote interdisciplinarity, environmental awareness, and water conservation.

1 METHOD

This qualitative research (Bauer; Gaskell; Allum, 2002), conducted during the first semester of 2024, was grounded in the psychosocial studies of Denise Jodelet's sociogenetic approach within the framework of Social Representations Theory (SRT). Accordingly, the psychosocial theoretical-methodological perspective adopted aimed to highlight the historical and cultural elements, as well as the tensions and convergences (Jodelet, 2017), that influence the social representations of water among the students surveyed.

The research was conducted in the municipality of Vargem Alta, Espírito Santo, Brazil, which is characterized by its extensive hydrographic network, including numerous rivers, lakes, watersheds, and aquifer recharge areas. These features play a fundamental role in supplying water for human consumption, agriculture, and recreational activities in the region. A detailed understanding of these characteristics is essential for analyzing the social representations of water among students from both rural and urban schools in the area.

According to the latest census (2022), Vargem Alta had approximately 19,563 inhabitants (IBGE, 2022) and faced ongoing challenges in basic sanitation and urbanization, with only 26.3% of households having access to adequate sanitation services (IBGE, 2010).

In the educational field, IBGE data indicate that the municipality achieved a 98.3% schooling rate among children aged 6 to 14 (IBGE, 2010). Moreover, in the 2023 Basic Education Development Index (IDEB), Vargem Alta scored 6.1 for the early years and 5.3 for the final years of elementary education.

The study was carried out in two schools within the municipality. One was a state school located in an urban area, with approximately 367 students, and the other was a municipal school with about 222 students, predominantly from rural communities. This contrast provided an important basis for comparative analyses between the urban and rural contexts examined in this study.

Data collection was conducted in two stages. In the first stage, a sociodemographic questionnaire was administered to better characterize and understand the investigated group. In the second stage, a semi-structured interview script was used, developed based on a literature review on SRT and Environmental Education (Polli; Camargo, 2013; Polli; Camargo, 2015; Monteiro; Monteiro, 2017; Monteiro et al., 2020), as well as previous studies (Rosa; Santos, 2017; Santos; Souza, 2021).

To participate in the research, students had to be between 14 and 16 years old, reside in the study area, and be enrolled in the final years of elementary education. A total of 74 students (40 from the urban school and 34 from the rural school) voluntarily completed the questionnaire, and 20 students (10 from each school) who had participated in the first stage also took part in the interview, again voluntarily.

The questionnaire provided a comprehensive profile of the students. The identification items included information such as age, school grade, gender, and self-declared ethnic-racial background, allowing for a broad understanding of the diversity within the school environment. Additionally, data on means of transportation and travel time to school, as well as pre- and post-school activities, revealed important aspects of students' daily routines, including how they spent their free time. The family profile section addressed household composition, number of siblings, guardians' education levels, and monthly family income. These data were crucial for understanding the students' socioeconomic contexts and their potential influence on school performance and experience. Regarding household characteristics, information was collected on place of residence, type and predominant building materials of the home, and property ownership status, to provide an overview of the students' living conditions. The infrastructure of their residential areas was examined through questions about water supply, waste collection, street paving, and the availability of public services in the community. These elements were essential for understanding the students' urban or rural living contexts and how these conditions could affect both their well-being and access to education.

The interview consisted of seventeen (17) predefined questions, conducted individually with the students, exploring various aspects of their relationship with water. Topics addressed included its significance, daily use, awareness of its origin and treatment, and understanding of community practices that affect local water sources. Specific themes such as household water consumption, the origin and treatment of sewage, familiarity with local springs and rivers and their conservation status were also covered. The interview encouraged students to reflect on practical measures to preserve and improve water quality within their community.

Descriptively, the main characteristics of the student groups investigated are summarized in

Table 1:

Table 1- Summary table showing the characteristics of students from the urban school (n=40) and the rural school (n=34) in Vargem Alta-ES

Categories	Urban School (%)	Rural School (%)
Gender		
Male	60%	52.9%
Female	40%	47.1%
Ethnic-Racial Self-Declaration		
Whites	32.5%	32.3%
Mixed Race	40%	52.9%
Blacks	25%	11.8%
Preferred not to declare	2.5%	2.9%
Means of Transport to School		
School transport (< 3 km)	40%	38.2%
Own transport	40%	52.9%
On foot	17.5%	40%
Other	2.5%	0%
Travel Time to School		
Less than 30 minutes	87.5%	52.9%
Between 30 minutes and one hour	12.5%	47.1%
Before/After School Routine		
Before/After School Routine		
Household chores	37.5%	32.3%
Working with parents/guardians	5%	52.9%
Studies/homework	100%	11.8%
Leisure	32.5%	2.9%
Others	2.5%	0%
Internet Access		
Mobile internet access	100%	100%
Internet access via computer	77.5%	23.5%
Social media access via mobile phone	100%	100%
Number of Siblings		
None	17.5%	17.6%
One	20%	32.3%
Two	37.5%	23.5%
Three	17.5%	14.6%
Four or more	7.5%	5.9%
Guardians' Educational Level		
Incomplete elementary school	5%	11.7%
Complete elementary	12.5%	32.3%
High School	42.5%	41.1%
Completed higher education	7.5%	2.9%
Preferred not to declare	35%	14.6%
Family Income		

10 to 20 minimum wages	0%	2.9%
2 to 4 minimum wages	15%	23.5%
Does not know	62.5%	44.1%
Preferred not to declare	22.5%	29.4%

Source: Prepared by the authors, 2025.

The Excel program was used to organize and process the sociodemographic data, while the free software Interface de R pour les Analyses Multidimensionnelles de Textes et de Questionnaires (IRaMuTeQ, version 2014) was used to analyze the interview data, through the application of Descending Hierarchical Classification (DHC).

The analysis followed the model proposed by Leblanc (2015), examining the lexical content of each class identified in the dendrogram and contextualizing it within the participants' statements, leading to the emergence of categories and subcategories.

Finally, the data were triangulated (Apostolidis, 2006), integrating the empirical findings with theoretical frameworks from Social Representations Theory (SRT) and Environmental Education, providing an accurate understanding of the social representations of water among elementary school students in public schools in Vargem Alta, ES.

2 RESULTS AND DISCUSSIONS

The comparative analysis of student profiles from urban and rural schools, based on the questionnaire data, reveals differences and similarities that impact both the educational context and students' development. In urban schools, there is a predominance of male students and greater ethnic diversity. School transportation is widely used, with most students experiencing short commutes, which tends to favor academic performance. Daily routines are balanced between study and household chores, and the intensive use of the Internet, mainly via mobile phones, highlights students' technological dependence.

In contrast, in rural schools, the gender distribution is more balanced, though with a predominance of mixed-race students. School transportation is also common, with most students traveling short distances. However, a small portion faces long commutes, which can negatively affect school attendance. Rural students' routines are characterized by study and leisure, and while all students have Internet access, computer use is notably less frequent.

In both contexts, parental presence is high, and most students have at least one or two siblings. Regarding the educational level of guardians, there are similarities between contexts, with a predominance of parents who completed high school, suggesting a moderate level of educational capital, which is important for supporting their children's academic success. However, it is concerning

that many students are unaware of their parents' education level, which may reflect a lack of communication or undervaluation of this aspect. Regarding family income, many students, both in urban and rural areas, reported not knowing their household income, and those who did report it mostly indicated modest earnings.

The analysis of housing characteristics among students from urban and rural school's highlights differences that influence both well-being and academic performance. In urban areas, most students live in owner-occupied, well-built masonry houses, reflecting greater residential stability and better access to urban infrastructure.

The near universality of such housing conditions in urban areas suggests a context with improved access to public services and resources. In rural areas, while most students also live in owner-occupied masonry houses, there is greater diversity in housing types, including farms and smallholdings. Non-cemented masonry houses and greater reliance on rented or loaned accommodations point to additional challenges related to housing stability and access to resources, which can negatively affect students' well-being and academic outcomes.

In both contexts, the stability provided by homeownership is a positive factor. However, differences in housing conditions and infrastructure access underscore the need for public policies tailored to the specificities of each scenario. Ensuring adequate housing for all students is essential for promoting equitable and quality education.

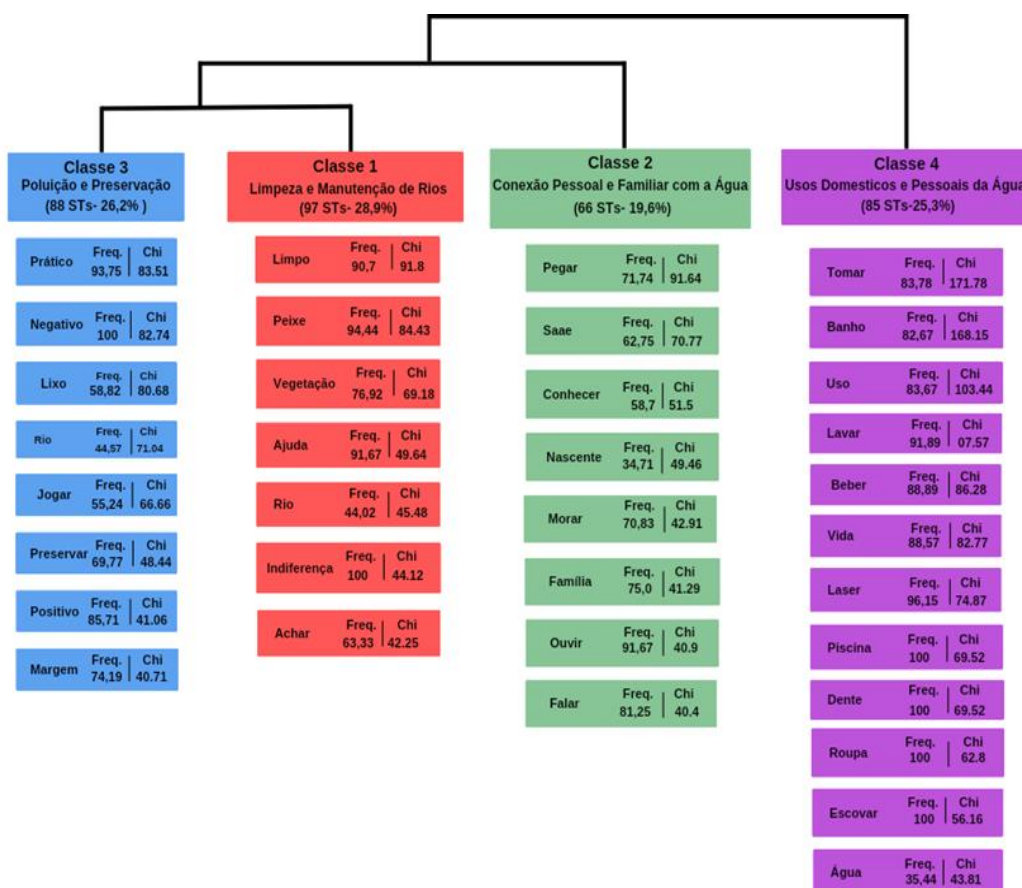
The comparative analysis of infrastructure in urban and rural areas reveals significant differences that are likely to impact students' quality of life and academic performance. In urban areas, most students have regular access to treated water, daily garbage collection, and paved streets, which facilitate transportation and contribute to a more favorable learning environment. These services are essential to ensuring basic health, safety, and well-being.

In rural areas, although a significant number of students also have access to treated water, there is greater reliance on alternative sources, such as wells and springs, which can lead to variations in the quality and availability of water resources. Garbage collection is less regular, and street paving is less common, making school access difficult, especially during adverse weather conditions such as rainy periods.

Following the processing of interview data using IRaMuTeQ software, four thematic classes emerged, comprising 20 categories across 424 textual segments (TSs), representing 79.2% of the corpus and corresponding to 1.356 words forms. In total, 14,719 words occurrences, 822 lemmas, 682 active forms, and 132 supplementary forms were identified.

Descriptively, as shown in Figure 1 below, analyzing the dendrogram from right to left, the first partition axis isolates Class 4, labeled "Domestic and Personal Uses of Water" (25.3%), indicating a greater statistical distance from the other classes. On the opposite side, a second partition axis emerges, revealing Class 2 – "Personal and Family Connection with Water" (19.6%), followed by a further split that gives rise to Class 1 – "Cleaning and Maintenance of Rivers" (28.9%), and Class 3, titled "Pollution and Preservation" (26.2%), which show greater statistical proximity to each other.

Figure 1. Dendrogram: Grouping of Textual Segments into Classes (Urban School Students/Rural School Students)



Source: Developed by the authors using IRaMuTeQ software (Version 2014).

In Class 4 (25.3%) – "Domestic and Personal Uses of Water" – the analysis concentrated on discursive excerpts concerning the daily use of water, covering aspects such as personal hygiene, consumption, leisure, sustainability, and survival.

The first set of statements in this class demonstrates that students recognize water as an essential resource for both human and animal life, emphasizing its vital role. Furthermore, water is

perceived as a practical and everyday element, serving purposes ranging from basic activities like hygiene and cooking to more complex processes, such as electricity generation. These representational elements are illustrated in the following excerpts:

[...] For me, water is indispensable for survival because without it I can't do anything. We don't take showers, we don't cook, we don't wash clothes. So, water is fundamental. (Urban school participant 04)⁴

"[...] Water is essential for hygiene and everything. I use water for drinking and bathing, and also for washing clothes, cleaning the house, and cooking. The water comes from springs, and we use a septic tank." (Rural school participant 02)

In addition to its practical uses, the participants emphasize the recreational dimension of water, associating it with leisure and enjoyment. This observation corroborates previous studies (Augusto et al., 2012; Polli & Camargo, 2015), which indicate that water carries symbolic meanings that go beyond its utilitarian function, serving as a cultural and experiential element for the group. For the students, water is associated with entertainment, relaxation, and moments of recreation, as exemplified in the following account: "[...] When I think of leisure involving water, I remember summer, playing with a hose, swimming pools, and the Concórdia waterfall." (Rural school participant 04).

Finally, Class 4 also highlights students' perceptions regarding water supply systems. While urban school students describe water as a metered service provided by the Autonomous Water and Sewage Service (SAAE), managed by the State, rural school students report greater reliance on artesian wells and natural springs, with no State mediation in the control or distribution of this resource. These contrasts are reflected in the following accounts:

[...] Most of the houses in my neighborhood have water supplied by SAAE, but I still hear about people who depend on springs, which are essential for community sustainability. (Urban school participant 05).

[...] In our community, we still heavily rely on springs for our daily water supply. Without them, we wouldn't be able to maintain our agricultural and domestic activities. (Rural school participant 10).

In summary, the data recorded in this class demonstrate that, for the group investigated, water is socially represented both as a vital and everyday resource and as an element of leisure and a

⁴ The excerpts from the interviews cited in this article were freely translated by the authors and will be presented prominently, standardized in italics as long direct quotations.

good with unequal access, depending on the socioeconomic and territorial context. This finding suggests potential disjunctions in the social representations of water within the investigation group.

In Class 2 (19.6%), titled "Personal and Family Connection with Water," narrative excerpts are grouped that reveal social representations concerning the community's and individuals' everyday relationship with water, the role of education and environmental awareness in preserving water resources, and representational elements linked to infrastructure and sanitation.

For the group, water occupies a central place in community life, both in urban and rural contexts. However, for students from rural areas, water is often associated with agricultural work, being essential for subsistence and, at the same time, a scarce and contested resource, disputed both by the community and the SAAE. These representational elements are evident in the following statements:

[...] My grandparents and parents used to say that, in the past, everyone collected water from the spring, but over time, as the number of people in the community increased, they started receiving water from SAAE because the spring water was no longer sufficient for all families. (Urban school participant 02)

[...] I use water for household chores, for cooking, and for farming. The water comes from a spring, and the sewage flows into the stream. Yes, people in my community are not supplied with water from SAAE. (Rural school participant 13)

Beyond daily usage, the group emphasizes the importance of education and environmental awareness in managing water resources. For the participants, river and sea pollution results from unchecked human activity, which degrades natural resources without considering their importance for future generations. Furthermore, the students criticize the impact of urbanization on water quality, pointing out that despite the image of progress associated with cities, these areas end up polluting rivers and using water excessively. These representations are illustrated in the following accounts:

"[...] The rivers in our municipality are quite polluted. Some streams remain clean but become degraded as they approach the community. (Rural school participant 08)

[...] The sewage from my house goes into a septic tank, but I know many people in my neighborhood who still discharge it into the river. I don't know anyone who draws water directly from springs or rivers. (Urban school participant 01)

[...] In my community, many people still rely on spring water. Springs are essential, especially because many do not have access to the municipal water service. (Rural school participant 13)

An aspect that stands out in this class is the way students link water to family memories, especially the experiences of parents and grandparents. The "water of the past" is often described as

purier, cleaner, and of better quality than it is today, despite technological advances and state management through SAAE. This process of symbolic construction reinforces the representational elements attributed to water, highlighting a sense of loss and environmental degradation over time, a phenomenon widely discussed in Environmental Education (Leff, 2001; Jacobi, 2003; Reigota; Prado, 2008).

Moreover, a noticeable discrepancy emerges between the social representations of urban and rural students. While rural students demonstrate awareness of their dependence on springs and artesian wells, some urban students remain unaware of this reality, assuming that everyone is supplied by SAAE. This limited repertoire suggests a narrow perspective on water access and sanitation, reflecting socioeconomic inequalities and highlighting the influence of social context in shaping social representations of this resource. Thus, Class 2 reveals that water is not only a material resource but also a representational object imbued with social, historical, and emotional meanings, mediated by family relationships, collective memory, and structural inequalities.

In Class 1 (28.9%), titled "Cleaning and Maintenance of Rivers," discursive excerpts are grouped that reflect students' social representations of the challenges of environmental preservation and the possible actions to mitigate water pollution and protect water resources, with two distinct subcategories being identified.

Regarding the first subcategory, the analysis reveals that the group perceives water as a resource simultaneously threatened by pollution caused by inadequate societal management and unequally contested, with fragile control by the State. For students from urban areas, there is a clear understanding that public authorities remain insufficiently attentive to water preservation, neglecting the implementation of a structured system for garbage collection, sewage treatment, and other systemic actions aimed at water sustainability. Among students from rural areas, although the State is mentioned as responsible for water management and conservation efforts, there is a recurring complaint that large landowners and small producers use water for crop irrigation and engage in deforestation near springs, converting these areas into pastures without respecting environmental reserves. These practices contribute to the progressive degradation of water resources, as illustrated in the following statements:

[...] To dry up a spring, all you have to do is remove the vegetation and replace it with pasture. I believe there should be public policies to help conserve springs, and there should also be sewage collection and treatment so that waste is no longer dumped into the river. (Urban school participant 02)

[...] The use of uncontrolled irrigation, sewage and garbage dumping, and the deforestation of riverbanks are major problems. Preserving springs and ensuring sustainable use, including

reusing part of the water that can be recovered, are essential. We must stop sewage from entering the river. (Rural school participant 12)

The second subcategory highlights the actions suggested by the students to mitigate water pollution and preserve water resources. According to the group, these initiatives should occur both at the State level, through the development and implementation of public policies focused on sustainability, management, and control of water resources, especially regarding sewage treatment and proper waste disposal in urban areas, and at the social level, through the promotion of collective awareness about the responsible use of water. The students emphasize that effective water preservation will only be possible within a harmonious system in which humans, animals, and water coexist in balance within biodiversity.

[...] I believe there should be public policies that help preserve the springs, and there should also be sewage collection and treatment so that waste is no longer dumped into the river. [...] I think there are still fish in the rivers, and for those who collect water from springs, this makes a difference. Since I get water from SAAE, I don't notice this difference, but I believe spring water must taste better and be fresher. (Urban school participant 02)

[...] But trees help keep the water cooler. I see uncontrolled crop irrigation as a problem. We should use only the necessary amount of water, avoiding waste, and we should prohibit household sewage from being discharged directly into rivers. (Rural school participant 08)

The representational elements expressed in Class 1 reinforce that students understand water both as an essential resource and as a symbolic element marked by disputes and insufficient attention from public authorities. Water degradation is interpreted because of urban pollution and the lack of adequate infrastructure, as well as the uncontrolled use of resources in rural areas. While urban students perceive failures in the formulation and implementation of public policies for river protection and basic sanitation, rural students emphasize the impact of exploitation by large landowners, highlighting tensions between different social groups. These interpretations align with the Social Representations Theory (Moscovici, 2003; Jodelet, 2001), which emphasizes how representations emerge from social interactions and symbolic disputes, shaped by historically situated practices and discourses.

Class 3 (26.2%), titled "Pollution and Preservation," brings together textual excerpts that express students' social representations regarding the roles and responsibilities involved in the degradation and conservation of water resources. Unanimously, the group attributes to humanity both the responsibility for polluting water sources and the duty to preserve them. The students perceive water degradation as a direct consequence of a productive and economic model based on indiscriminate waste disposal and irresponsible consumption, with little regard for environmental

consequences. As a result, nature has been severely impacted, leading to extreme fluctuations between droughts and floods, affecting both urban and rural areas. This concern is illustrated in the following statements:

[...] To preserve springs, it is necessary to reforest the surrounding areas. (Rural school participant 05)

[...] When it rains, it carries a lot of soil into the river, causing siltation and damaging the vegetation. (Urban school participant 03)

[...] Rivers are also very important because the environmental balance depends on their waters [...], but springs are better preserved as many are located within environmental protection areas. (Urban school participant 07)

[...] Negative practices that cause impact include dumping garbage into rivers, deforesting areas near springs, and polluting water with industrial chemicals and domestic waste. (Urban school participant 05)

Another point highlighted by the group concerns the impact of water pollution on human health and well-being, emphasizing the risks associated with consuming water contaminated with chemicals. The group stresses the need for effective public policies and sustainable initiatives to address these issues, such as water quality monitoring programs and incentives for environmentally friendly practices in agriculture and industry. In this regard, Almeida (2023) points out that educational campaigns in schools foster greater community participation in environmental conservation projects, indicating that integrating public policies with education is essential for promoting a sustainable environment and ensuring the preservation of water resources.

In summary, the results reveal that students' social representations of water are structured around three main axes: (1) daily use and essentiality; (2) preservation and environmental impacts; and (3) management and access to water resources. These representations highlight that water, beyond being a material resource, is also a symbolic object imbued with social, cultural, and historical meanings. Overall, water is perceived as a vital and indispensable element, linked to basic needs such as hygiene and food, as well as to leisure and well-being.

However, guided by Jodelet's (2017) psychosocial perspective, despite convergence in certain representations, clear disjunctions emerge between urban and rural students, especially concerning access to and management of water. For urban students, water is predominantly conceptualized as a State-managed service, with its supply mediated by SAAE and subject to service charges. In contrast, rural students demonstrate a more direct and dependent relationship with springs and artesian wells, highlighting the vulnerability of communities without regular water supply. This

contextual difference shapes the group's concerns: while urban students emphasize deficiencies in basic sanitation infrastructure and urban river pollution, rural students denounce the impacts of large landowner exploitation, deforestation of spring areas, and instability in access to potable water. For urban students, water is perceived primarily as a regulated public utility, whereas for rural students, it takes the form of a natural spring, symbolizing direct dependence on nature, clearly illustrating that different social groups construct and experience their representations in distinct ways.

3 FINAL CONSIDERATIONS

The study investigates the social representations of water among elementary school students from urban and rural schools in Vargem Alta, in the state of Espírito Santo, Brazil, highlighting how these representations shape attitudes and practices related to the use and conservation of water resources.

While students from urban schools benefit from more robust infrastructure, rural school students face challenges that may compromise their health, safety, and academic performance. Although both contexts provide essential public services, such as health facilities, the existing gaps in rural areas demand special attention to improve living conditions and ensure a more equitable learning environment.

Notably, students' interpretations of environmental degradation and water resource management reveal that, while urban students associate pollution with inadequate sanitation and waste disposal, rural students emphasize predatory agricultural practices and deforestation. This division reinforces the notion that social representations are not homogeneous but are shaped by the territorial and social contexts of the individuals involved. As Jodelet (2017) points out, social representations are organized through lived experiences and collective discourses, guiding how individuals perceive and interact with their environment. Thus, the image of water, far from having a single and fixed meaning, is imbued with diverse symbolisms and interpretations, perceived simultaneously as a right, a consumer good, a threatened natural element, and a heritage to be preserved.

This study demonstrates how distinct local contexts shape students' representations of water, underscoring the importance of Environmental Education programs tailored to the specific realities of each setting. Consequently, the findings reinforce the role of schools in fostering citizenship and guiding both pedagogical strategies and public policies aimed at the conservation and sustainable use of water resources. Therefore, the results suggest that Environmental Education adapted to the characteristics of each context can promote greater awareness, behavioral change, and the adoption

of sustainable practices, ensuring the responsible use of water and the long-term sustainability of both communities and ecosystems.

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**LAND SOLUTION COMMISSIONS AND THE
STRUCTURAL PROCESS: DEMOCRATIC
MANAGEMENT OF COLLECTIVE
AGRARIAN CONFLICTS IN BRAZIL**

**COMISSÕES DE SOLUÇÕES FUNDIÁRIAS E O
PROCESSO ESTRUTURAL: GESTÃO
DEMOCRÁTICA DOS CONFLITOS AGRÁRIOS
COLETIVOS NO BRASIL**

**COMISIONES DE SOLUCIONES AGRARIAS Y EL
PROCESO ESTRUCTURAL: GESTIÓN
DEMOCRÁTICA DE LOS CONFLICTOS AGRARIOS
COLECTIVOS EN BRASIL**

**ANA MARIA DE CARVALHO¹
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ABSTRACT

The land question in Brazil is, historically, the epicenter of socio-environmental inequalities and conflicts, shaped by a conception of private property that consolidated to the detriment of traditional

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territorialities. This article argues that the root of this structural violence and extreme land concentration lies in the modern juridical mentality, which, according to the critiques of Karl Polanyi and Paolo Grossi, transformed land into a fictitious commodity and an absolute and exclusionary right. It is demonstrated that the traditional adjudicatory model, with its bipolar and formalist logic, is inherently insufficient for resolving collective and polycentric agrarian disputes, which are essentially manifestations of a structural problem rooted in a failed state structure. The central thesis is that the adoption of the Structural Process and the institutionalization of Land Solution Commissions (mandated by the STF in ADPF 828 and regulated by CNJ Resolution n. 510/2023) emerge as the most appropriate jurisdictional technique for social restructuring. These Commissions represent a paradigm shift by mandating institutional dialogue, in loco technical visits, and structured mediation as prior and necessary steps to any collective eviction order, aiming for responsive jurisdiction. The study, grounded in critical, philosophical, and jurisprudential research, confirms that this approach is essential for promoting the social function of land, protecting the territorialities of vulnerable populations (such as indigenous peoples and quilombolas), and realizing agro-environmental justice in Brazil.

Keywords: Collective Agrarian Conflicts. Land solution commissions. Private Property. Social Function of Land. Structural process.

RESUMO

A questão da terra no Brasil é, historicamente, o epicentro de desigualdades e conflitos socioambientais, moldada por uma concepção de propriedade privada que se consolidou em detrimento das territorialidades tradicionais. Este artigo defende que a raiz dessaviolência estrutural e da extrema concentração fundiária reside na mentalidade jurídica da modernidade, que, conforme as críticas de Karl Polanyi e Paolo Grossi, transformou a terra em uma mercadoria fictícia e em um direito absoluto e excludente. Demonstra-se que o modelo adjudicatório tradicional, com sua lógica bipolar e formalista, é inerentemente insuficiente para resolver os litígios agrários coletivos e policêntricos, que são, em sua essência, manifestações de um problema estrutural enraizado em uma estrutura estatal falha. A tese central é que a adoção do Processo Estrutural e a institucionalização das Comissões de Soluções Fundiárias (determinadas pelo STF na ADPF 828 e regulamentadas pelo CNJ na Resolução n. 510/2023) emergem como a técnica jurisdicional mais adequada para a reestruturação social. Essas Comissões representam uma virada paradigmática, ao impor o diálogo institucional, a visita técnica in loco e a mediação estruturada como etapas prévias e necessárias a qualquer ordem de desocupação coletiva, visando a uma jurisdição responsiva. O estudo, alicerçado em pesquisa crítica, filosófica e jurisprudencial, confirma que esta abordagem é essencial para promover a função social da terra, proteger as territorialidades das populações vulneráveis (como indígenas e quilombolas) e efetivar a justiça agroambiental no Brasil.

Palavras-chave: Comissões de Soluções Fundiárias. Conflitos Agrários Coletivos. Função Social da Terra. Processo Estrutural. Propriedade Privada.

RESUMEN

La cuestión de la tierra en Brasil es, históricamente, el epicentro de las desigualdades y los conflictos socioambientales, moldeada por una concepción de la propiedad privada que se consolidó en detrimento de las territorialidades tradicionales. Este artículo sostiene que la raíz de esta violencia estructural y de la extrema concentración de tierras reside en la mentalidad jurídica de la modernidad, que, según las críticas de Karl Polanyi y Paolo Grossi, transformó la tierra en una mercancía ficticia y en un derecho absoluto y excluyente. Se demuestra que el modelo adjudicatorio tradicional, con su lógica bipolar y formalista, es inherentemente insuficiente para resolver los litigios agrarios colectivos

y policéntricos, que son, en esencia, manifestaciones de un problema estructural arraigado en una estructura estatal deficiente. La tesis central es que la adopción del Proceso Estructural y la institucionalización de las Comisiones de Soluciones Agrarias (determinadas por el STF en la ADPF 828 y reglamentadas por el CNJ en la Resolución n. 510/2023) emergen como la técnica jurisdiccional más adecuada para la reestructuración social. Estas Comisiones representan un cambio de paradigma al imponer el diálogo institucional, la visita técnica in loco y la mediación estructurada como etapas previas y necesarias a cualquier orden de desalojo colectivo, buscando una jurisdicción responsiva. El estudio, basado en investigación crítica, filosófica y jurisprudencial, confirma que este enfoque es esencial para promover la función social de la tierra, proteger las territorialidades de las poblaciones vulnerables (como indígenas y quilombolas) y hacer efectiva la justicia agroambiental en Brasil.

Palabras clave: Comisiones de Soluciones Agrarias. Conflictos Agrarios Colectivos. Función Social de la Tierra. Proceso Estructural. Propiedad Privada.

INTRODUCTION

The issue of land in Brazil has historically been an epicenter of inequalities, violence, and socio-environmental conflicts, shaped by a conception of private property that was consolidated to the detriment of social, environmental, and traditional territorial needs.

The private appropriation of land is deeply unequal in its configuration, and this structure not only perpetuates exclusion but acts as a catalyst for collective land conflicts and various forms of rural violence, directly affecting the ways of life, collective memories, and ancestry of populations.

In this scenario, this article argues that understanding and overcoming Brazilian territorial disputes require a radical critique of the modern conception of property and the establishment of an ethic of care towards the land. It is argued that the commodification and instrumentalization of soil rupture territorial resonance relationships and are social pathologies that undermine the effectiveness of justice.

To this end, the study develops along three interconnected axes: first, a critique of the modern project concerning private property will be undertaken, seeking to (re)construct mentalities that transcend the logic of territorial domination; next, the social function of land and the protection of vulnerable populations will be analyzed as a social protection countermovement; finally, the urgency of a responsive jurisdiction that addresses collective territorial disputes as structural problems will be addressed.

And it is within this third axis that the central thesis of the intervention resides: the insufficiency of traditional legal approaches, based on a bipolar logic, is glaring in the face of the polycentric complexity of conflicts. In this step, this study points to Structural Litigation (or the Structural Process) as a necessary legal technique for social restructuring.

In this line, the recent institutional movement within the Brazilian Judiciary is highlighted, which resulted in the creation of specialized structures aimed at the democratic and consensual management of collective land conflicts. These structures represent an institutional effort to promote dialogue, on-site visits, and pacification, overcoming the traditional adjudicatory model and advancing towards a more responsive jurisdiction.

An analysis of specialized literature in Agrarian Law, Philosophy, Sociology, and History was conducted. This included fundamental works addressing the transformation of land into private property, the critique of economic liberalism and the concept of fictitious commodities (land, labor, and money), as well as discussions on the social function of possession and property, along with documentary, normative, and jurisprudential research on the core of the structural problem and the respective innovations in procedural treatment.

The focus, however, lies in the institutionalization of the Land Solution Commissions as a proposed structural technique aimed at a democratic and participatory perspective. The objective is to identify paths for the effectiveness of agro-environmental justice in Brazil, demonstrating the inseparability between philosophical/sociological critique and innovation in procedural technique.

To this end, a dialectical-argumentative methodology and bibliographic and jurisprudential research techniques are employed. It should be emphasized that the methodological design is not merely descriptive but rather a critical application of the theoretical framework. The critique of modern property and the denaturalization of land as a fictitious commodity serve as theoretical lenses to analyze the structural failure that results in collective agrarian conflicts.

In this sense, the analysis of jurisdictional innovations is carried out under the premise that the technique of the Structural Process is not merely a procedural alternative, but the necessary legal manifestation of a social protection countermovement, which seeks to safeguard the human and natural substance of society. This, in practical terms, translates into the requirement for bureaucratic and dialogic reorganization as a condition for realizing the social function of land and protecting vulnerable populations.

1 CRITIQUE OF THE MODERNITY PROJECT AND THE (RE)CONSTRUCTION OF MENTALITIES

The modern conception of private property is a pillar of the modernity project, emerging with mercantilism and capitalism, based on an absolute and exclusive character (Marés, 2003; Grossi, 2006). For jurists, property is often interpreted as power over a thing, built upon historically consolidated values, and often disconnected from social reality (Grossi, 2006).

Carlos Frederico Marés discusses its social perspective and relevance to rights-holders, pointing out that "the creation of modern property places on one side a person, who is the holder of the right, called a subject of rights, an individual. On the other side, the object of this right, an asset, a thing, which composes the individual patrimony" (Marés, 2003).

Initially, these assets were material and, later, even reached the abstraction and patrimonialization of rights (as also mentioned by Paolo Grossi). In this sense, "everything that was collective and could not be understood as public use would have no legal relevance. Everything that could not be materialized into patrimony and could not have a symbolic value was also outside the Law" (Marés, 2003). Private property is seen as a contract, because "the praise of the free worker transforms into the legal presumption of contractual freedom" (Marés, 2003).

Marés points out that the process of transforming land into private property was "theoretical, ideological, contrary to reality, to society, and to the interests of people in general, of human groups and peoples, because all depend on land to live" (Marés, 2003).

In turn, Paolo Grossi emphasizes that property is a verbal artifice reflecting variable historical solutions, and not a singular and immutable entity. The Western tendency to interpret all property under an individualistic and formalistic lens generated a Manichean legal discourse that elevated the interests of specific classes to an absolute status (Grossi, 2006).

Paolo Grossi adds that, in collective structures, the idea of the "legal mine" (private property) becomes devoid of meaning, making it possible to even question the legitimacy of a single receptacle for the so-called "property" (Grossi, 2006).

It is evident that land has a specific condition, but capital exerts pressure on land ownership and distorts it, aiming to transform it into capital, into mere property, absolutized. From this analytical perspective, for the historian, property is a verbal artifice indicating the historical solution that a legal system attributes to the problem of the most intense legal relationship between a subject and an asset (Grossi, 2006).

We speak of mentalities regarding the conception of land as property, endowed with generality and abstraction, and in the teachings of Paolo Grossi, who discusses this asset from a social perspective and its relevance to subjects of rights, not only for providing means of subsistence but also for evidencing the civilizing process to humans.

Grossi's premise is that, in the relationship between history and the legal dimension, it is imperative to perceive law and legal institutions as a mentality of "how subjects and phenomena interact, a mentality of the force and the role attributed to one and the other in the vision of the whole" and, also, as a "system resulting from the set of forms of belonging measured within the complex of

all organizational forms of the economic reality, which for the medievalist will be reduced to organizational forms of cultivation and agrarian production." (Grossi, 2006). Finally, mentality is that which:

[...] complexo de valores circulantes em uma área espacial e temporal capaz, pela sua vitalidade, de superar a diáspora de fatos e episódios espalhados e de constituir o tecido conectivo escondido e constante daquela área, e deve portanto ser colhido como realidade unitiva, o seu terreno é sem dúvida congenial e familiar ao jurista, um intelectual dominado, devido sua natureza (porque ajusta sempre as contas com o nível de valores), por uma íntima tensão à sincronia e ao sistema, isto é, a unificação orgânica de dados. Com o olhar prevalentemente sincrônico, já que os valores tendem a permear a globalidade da experiência, com atitude prevalentemente sistemática, já que os valores tendem a permanecer e a cristalizar-se, o jurista se sente à vontade - quase em casa, dir-se-ia - no terreno das mentalidades; é aí que o jurídico tem suas raízes" (Grossi, 2006, p. 30).

Modern property seeks simplicity as an essential quality, understood as "an extreme purification of the relationship" (Grossi, 2006), that is, "an agile, concise, highly functional instrument, characterized by simplicity and abstraction" (Grossi, 2006), freeing itself from diverse contents and defining itself as power.

The idea of simplicity aims to separate belonging from the conditioning of the complexity of things, internalizing dominion in the subject. Alongside it, the second typifying trait of property is abstraction, a pure relationship, not marked by facts, although available to them, in which dominion is embraced as will, as intent, and not as use.

That is to say: "simple as is the subject, a unilinear unity upon which it is modeled and from which it is like a shadow in the realm of goods; abstract like the individual liberated by the new culture, of which it wants to be both a manifestation and a most valid means of defense and offense" (Grossi, 2006).

This view finds a parallel in Karl Polanyi's critique of the "myth of the self-regulating market" and the transformation of land, labor, and money into fictitious commodities (Polanyi, 2000).

Thus, the premise that items bought and sold are always produced for that purpose is unreal concerning them, because they are not, in fact, commodities, and describing them as such is something entirely fictitious. This is because what is called labor is the human activity that accompanies life, which is not necessarily produced for sale. In turn, "land is merely another name for nature, which is not produced by man," and finally, "money is merely a token of purchasing power" (Polanyi, 2000).

Polanyi argues that subordinating the fate of human beings and nature to the laws of the market would annihilate them, turning society into a satanic mill. The mobilization of land, from this

perspective, meant the liquidation of organic forms of existence, resulting in the disintegration of cultural and social environments (Polanyi, 2000). And thus reflects the author:

Aquilo que chamamos terra é um elemento da natureza inexplicavelmente entrelaçado com as instituições do homem. Isolá-la e com ela formar um mercado foi talvez o empreendimento mais fantástico dos nossos ancestrais. Tradicionalmente, a terra e o trabalho não são separados: o trabalho é parte da vida, a terra continua sendo parte da natureza, a vida e a natureza formam um todo articulado. A terra se liga, assim, às organizações de parentesco, vizinhança, profissão e credo - como a tribo e o templo, a aldeia, a guilda e a igreja. Por outro lado, Um Grande Mercado é uma combinação de vida econômica que inclui mercados para os fatores da produção. Uma vez que esses fatores não se distingam dos elementos das instituições humanas, homem e natureza, pode-se ver claramente que a economia de mercado envolve uma sociedade cujas instituições estão subordinadas às exigências do mecanismo de mercado. O pressuposto é tão utópico em relação à terra como em relação ao trabalho. A função econômica é apenas uma entre as muitas funções vitais da terra. Esta dá estabilidade à vida do homem; é o local da sua habitação, é a condição da sua segurança física, é a paisagem e as estações do ano. Imaginar a vida do homem sem a terra é o mesmo que imaginá-lo nascendo sem mãos e pés. E no entanto, separar a terra homem e organizar a sociedade de forma tal a satisfazer as exigências de um mercado imobiliário foi parte vital do conceito utópico de uma economia de mercado (Polanyi, 2000).

It must not be forgotten that "labor and land are nothing but the human beings themselves that every society is made of, and the natural environment in which it exists. To include them in the market mechanism means to subordinate the substance of society itself to the laws of the market" (Polanyi, 2000).

And what Paolo Grossi terms as mentality – for private and individual property – is also seen when perceiving land, taken as a commodity as fiction and as a mode of organization of modern society, for Polanyi.

There is an implicit, imposed, and naturalized agreement that creates obstacles to other positions or understandings regarding land, as they may hinder the functioning of market mechanisms, which follows the lines of the fiction of the commodity/mentality of the legal 'mine'.

The reconstruction of mentalities therefore involves a relativization and pluralization of the concept of property, recognizing the profound discontinuity of history (Grossi, 2006). This requires that jurists – in particular – transcend mere dogmatism and legal formalism, incorporating a critical, historical, and teleological analysis of law that considers the specificities of the social context (Grossi, 2006; Marés, 2003).

Legal absolutism, a product of the bourgeois era and economic liberalism, by linking law to the State and reducing the role of the jurist to a mere executor of norms, ultimately uprooted it from the richness of society and culture. It is necessary to overcome legal idolatry and the belief in the infallibility of the legislator so that law can fulfill its social and transformative role (Grossi, 2006).

And it was precisely in the construction of such a modality of private property that, also in Brazil, land, hegemonical, ceased to belong to all and became, hegemonical, a right of individual and exclusive property. This has made the problem of land concentration and the consequent collective land conflicts evident.

The seriousness of transforming land into absolute private property, which emerged with mercantilism and capitalism and is based on an exclusive character often detached from social reality, is thus perceived, as such mentality compromises the existence of those whose ways of being, doing, and living involve the land.

Furthermore, the productivity of land as a permanent process is even compromised, as there is no productivity when resource exhaustion occurs, which is undoubtedly caused by a capitalist logic that distorts land, turning it into mere capital and distancing it from its human and social dimension.

In fact, as will be seen next, according to constitutional provision, property – and land – must fulfill its social function, which remains a fundamental right and an unamendable clause to be respected. In other words, even in capitalist legal systems, collective rights prevail over individual ones in this specific scenario.

In summary, the transformation of land into a mere fictitious commodity and capital, disconnected from its social and ecological dimension, has generated the disintegration of social structures and the concentration of power and wealth, as evidenced in the Brazilian land context. Therefore, the critique of the absolutist conception of private property is fundamental for the (re)construction of mentalities that recognize the plurality of property and the role of law as an instrument of social organization, and for seeking concrete paths towards the realization of agri-environmental justice.

2 CONFLITOS AGRÁRIOS COLETIVOS, FUNÇÃO SOCIAL DA TERRA E PROTEÇÃO DE VULNERÁVEIS

Returning to Paolo Grossi (2006), when speaking about property and its individualization – the idea of the "legal mine" – it is recalled that the aforementioned author cites the phenomena of universality and abstraction. And, along the same lines, Pierre Bourdieu (2014) discusses how market unification prohibits the social reproduction of peasants.

This is because the State brings with it universalizing integration and alienating integration, as conditions for domination, submission, and dispossession. And market unification has as its

counterpart a dispossession, through the imposition of a unified market, the recognized domination of a mode of production or a product (Bourdieu, 2014).

Pierre Bourdieu also highlights that agrarian policy aimed to transform undivided property into individual assets, which contributed to disaggregating traditional social units and breaking an economic balance whose best protection was the property of tribes and clans. At the same time, it facilitated the appropriation of the best lands by European settlers through auctions and imprudent sales procedures.

The great agrarian laws had the manifest objective of establishing favorable conditions for the development of a modern economy based on private enterprise and individual property, assuming that legal integration was the indispensable basis for economic transformation. But the true aim of this policy was different.

Thus, expropriation was favored by establishing a legal system that presupposed an economic attitude, and more precisely, an attitude regarding time that was completely foreign to the spirit of peasant society. The consequence was the disaggregation of traditional units that had been the soul of resistance against colonization; it was supposed to be a natural consequence of the destruction of the economic bases of their integration. And indeed, this is what happened (Bourdieu, 2017).

Bourdieu's critique of the transformation of undivided property into individual assets and the disaggregation of traditional social units can be read as a process of rupturing communal and social relations with the territory, in favor of a market logic that accelerates exploitation and exclusion.

This reasoning can be transposed to what occurred in Brazil, where the private appropriation of land began with territorial invasion, continued through the Empire-Colony-Republic periods, and worsened with the 1850 Land Law. At that moment, private property began to have state backing to support its legitimacy, consolidating large estates and unproductive latifundia through the land-grabbing process (Smith, 2008).

Currently, the situation of land concentration in the country remains, and considering the Gini index/coefficient of Gini,³ According to IBGE data, concerning inequalities in land distribution, it is perceived that the agrarian structure presents a high degree of concentration. According to the

³ The Gini index is a coefficient that measures inequality in a given territory, ranging from 0 to 1, where 0 corresponds to income equality and 1 to maximum inequality. The closer to 1, the more unequal the distribution.

2017 Agricultural Census, the Gini index – an indicator of inequality in the countryside – recorded 0.867 points, the highest level compared to data from previous surveys, demonstrating the extreme concentration of land in Brazil (IBGE, 2017).

Historically, inequality is related to land concentration, a structure that catalyzes land conflicts, especially collective ones, and various forms of rural violence. State action, which even has constitutional provision, is therefore relevant.

In this scenario, all those involved in collective agrarian conflicts – here, a parenthesis is opened to point out that this is a plural group, including indigenous peoples, quilombolas, traditional communities, riverine populations, squatters, small farmers, among others – are vulnerable people, victims of State action over time and of market logic.

In this context, promoting an ethic of care towards the land implies recognizing its social function as a legal principle distinct from property, emphasizing its role in meeting the common needs of human beings (Fachin, 1988; Marés, 2003).

The Federal Constitution of 1988 (Brazil, 1988) establishes clear requirements for fulfilling the social function of rural property, encompassing rational use, environmental preservation, observance of labor relations, and the well-being of owners and workers (Marés, 2003).

Furthermore, Carlos Frederico Marés argues that capitalist logic, however, has distorted land, turning it into mere capital, distancing it from its human and social dimension. The author adds that the transformation of land into private property was an ideological process, contrary to societal reality and the interests of those who depend on the land to live (Marés, 2003). He also highlights that "in reality, what fulfills a social function is not property, which is a concept, an abstraction, but the land [...] Therefore, the social function is relative to the asset and its use, and not to the right" (Marés, 2003).

That said, attention is called to distinct conceptions, such as the perspectives of biocentric and ecocentric ethics, which postulate that all life has intrinsic value, with dignity based on existence, and reject anthropocentrism (Beckert, 2003). In this sense, humans, as a species capable of evaluation and creators of culture, have the responsibility to maintain nature in its most original form. Moreover, overcoming speciesist prejudice and the anthropocentric view is fundamental for a holistic understanding of nature (Beckert, 2003).

The protection of vulnerable populations, such as indigenous peoples and peasants, among others, is intrinsic to this ethic. Historically, the modern conception of property disregarded the collective possession of lands by indigenous peoples, forcing them into an individualistic model

(Marés, 2003). Small squatters and "intruders" were precursors of peasant smallholding, constantly fighting against large estates (Guimarães, 1981).

And, as already mentioned, the 1850 Land Law, although ostensibly regulatory, contributed to the formation of a massive workforce for large farms, limiting land access for poor immigrants (Silva, 1996). It is opportune to highlight that Polanyi mentioned the emergence of a social protection countermovement as a reaction to the social disarticulation caused by the market, aiming to safeguard the human and natural substance of society (Polanyi, 2000).

This movement involved the need for collective and state interventions to protect man, nature, and the very productive organization from the destructive forces of the market (Polanyi, 2000). This thinking, once again, draws attention to the consideration of different mentalities, in a proposal for a dialogued understanding of the land that goes beyond its capitalized value, recognizing the interdependence of all ecosystems and the inherent dignity of life (Beckert, 2003).

The protection of vulnerable populations, whose ways of life are intrinsically linked to the land, is a clear example of how to preserve and restore resonance relationships threatened by modern acceleration and domination. The social protection countermovement (Polanyi, 2000) can be interpreted as a social quest to restore forms of resonance against the destructive forces of the market.

And, as mentioned in the previous topic, one of the reasons for agrarian conflicts are the different conceptions of property. In such a scenario, collective agrarian conflicts result from a flawed state structure and an unregulated process of occupation and distribution, dating back to the beginnings of colonization.

Precisely for this reason, the hegemonic thinking of the State, whether in public policies or in resolving problems brought before the courts, does not achieve effective solutions, as the rigid logic does not encompass them. Thus, it is necessary to care for this segment of the population, adopting new conflict resolution techniques that are not merely imposed, but participatory and democratic.

Modernity, by idealizing the bourgeois man as autonomous, entrepreneurial, and competitive (Konder, 2000), generated a type of autonomy that, paradoxically, leads to external conflicts and a deep internalization of violence (Konder, 2000; Han, 2017).

Author Byung-Chul Han describes the topological change of violence in modernity, which becomes increasingly internalized and psychologized, culminating in self-aggression and burnout in the performance society (Han, 2017). Although the critique initially targets the individual and urban sphere, it also finds a deep causal link with the pressure for land ownership in the Brazilian countryside.

The absolutist logic of property, reinforced by the 1850 Land Law, imposed a model of land performance that demands from individuals the constant competitive effort to maintain the "legal mine" (GROSSI, 2006), even in the face of structural illegality. Social suffering and the internalization of violence occur when communities, living in dissonance with land as a commodity, are forced into the bipolar logic of individualized possession disputes.

In turn, symbolic violence naturalizes land concentration by making the defense of collective possession, essential for social reproduction (Bourdieu, 2017), be seen by the traditional judicial system as a mere individualized infraction. Symbolic violence, which naturalizes oppression and maintains relations of domination without physical coercion, is a subtle manifestation of this dynamic (Han, 2017). Leandro Konder points out that the bourgeois man, with his contradictions between vices and virtues, perpetuates social and economic inequalities, often naturalized (Konder, 2000).

Although focused on individual violence, this perspective can be correlated with agrarian conflicts by indicating a social environment where the pressure for performance and possession, exacerbated by capitalist logic over land, generates tensions and suffering, both for those who are marginalized and for those involved in perpetuating the system.

Symbolic violence, in turn, is crucial to understanding how oppression and relations of domination are maintained without evident physical coercion, naturalizing inequalities. In the Brazilian agrarian context, this symbolic violence manifests itself in the consolidation of large estates and unproductive latifundia, which marginalize plural groups such as indigenous peoples, quilombolas, traditional communities, and small farmers. The aforementioned 1850 Land Law, for example, gave state backing to this legitimization, perpetuating land concentration and inequalities.

By transforming land into a fictitious commodity (Polanyi, 2000), abstract and individualized (Grossi, 2006), the Brazilian legal and political system, since the 1850 Land Law, has aggravated land concentration. This logic, besides promoting symbolic violence and the disaggregation of social units (Bourdieu, 2014; 2017), compromises the very livelihood of vulnerable groups whose ways of being, doing, and living are intrinsically linked to the territory.

This violence is naturalized and becomes one of the pillars supporting collective agrarian conflicts in Brazil, which are, in essence, structural litigations, resulting from a flawed state structure and a historically unregulated process of land occupation and distribution. Traditional procedural tools, with their bipolar logic focused on individual litigations, are insufficient for resolving these complex issues, as will be seen next.

3 STRUCTURAL LITIGATION AND THE INADEQUACY OF BIPOLAR LOGIC IN COLLECTIVE AGRARIAN CONFLICTS

Considering the reflections already made, attention is drawn to the fact that the Justice system, based on the traditional adjudicatory model, reveals a profound insufficiency in the face of the complexity of contemporary litigations.

The justice system, grounded in the traditional adjudicatory model, reveals a profound inadequacy in the face of the complexity of contemporary litigations. Its logic is inherently bipolar, seeking unequivocal remedies and operating with rigid structures, which becomes unsuitable for contemporary complexity. This systemic inadequacy manifests in the inability to handle complex, polycentric, and mass litigations that require multifaceted solutions.

In this sense, it is pointed out that a "collective litigation is a conflict of interests that involves a group of people, more or less extensive, where these people are treated by the opposing party as a set" (Vitorelli, 2020). And they are structural when they stem "from the way a bureaucratic structure, usually of a public nature, operates. It is the functioning of the structure that causes, allows, or perpetuates the violation that gives rise to the collective litigation" (Vitorelli, 2020).

That is to say, structural litigations are defined by the convergence of characteristics that exceed the resolution capacity of the traditional model: polycentricity (involving multiple subjects with diverse and interrelated interests), complexity (requiring multiple plausible solutions, whose efficacy is not beforehand or easily clear), structural nature (their origin lies in bureaucratic or institutional structures that cause persistent rights violations).

And whether because it was structured incorrectly or because it did not adapt to new social demands, it is evident that land concentration in Brazil and the consequent collective agrarian conflicts are a structural litigation/problem. Thus, the mere removal of the violation solves the problem only apparently, "without empirically significant results, or temporarily, repeating itself in the future" (Vitorelli, 2018).

It is added that a structural problem is defined by "the existence of a state of structured nonconformity" (Didier, 2020). The state of nonconformity is a "situation of structural disorganization, a break with normality or the ideal state of things, which requires a (re)structuring intervention. This disorganization may, or may not, be a consequence of a set of illicit acts or conducts" (Didier, 2020).

It is in this context that structural litigation emerges as an innovative and effective approach. Characterized by procedural flexibility, dialogic nature, fragmented decision-making, and negotiated solutions, structural litigation goes beyond the mere removal of specific illegalities, aiming for lasting institutional reforms (Vitorelli, 2020).

From this perspective, land concentration as a structural problem, and the consequent collective agrarian conflicts, allow the issue to be positioned as a structural litigation amenable to treatment through structural litigation techniques, seeking to restructure a state of nonconformity to cease the rights violation.

Structural collective litigations, in many cases, can receive more adequate and effective treatment in light of structural litigation techniques, which emerge not from theory but from practice (a practicalist phenomenon), through a new way of considering normativity. In short, the starting point is a critical perspective on the traditional conception of property as an essential backdrop to demonstrate the need for structural litigation.

Consequently, and delving deeper into the issue, it is recalled that the first leading case with the adoption of structural techniques on record is the case of *Brown vs. Board of Education* in 1954, in which the U.S. Supreme Court declared the unconstitutionality of segregationist practices in schools, ordering the enrollment of Black students in schools previously intended exclusively for white people, in an attempt to change the state of nonconformity of things through structural injunctions, management, and handling ability of the jurisdictional remedy.

In Brazil, since the 1990s, there have been cases that were structural, progressive, and incremental, in an unofficial manner – that is, without naming the technique, used intuitively – and, officially, the first action managed with structural techniques was related to dam inspection services, by the Federal Public Ministry, in Minas Gerais-MG, in 2019.

As an academic study, structural litigation arrived in Brazil in the second decade of the 2000s and has been consolidating as a jurisdictional response to situations of persistent, massive, and systemic violations of fundamental rights, aiming at prevention, reparation, and promotion of their effectiveness. On this point, a parenthesis is opened to highlight that, despite the similarities, it is not correct to state that Brazilian practice was not directly inspired by the North American experience, although a similar movement occurred.

Just as in the United States (USA) Owen Fiss (a reference in structural litigation) developed his idea of "civil rights injunctions" by observing what judges were doing in implementing school desegregation measures, Brazilian authors described practices that already existed, using the North American theoretical matrix and terminology, thereby fitting them into the categorization developed

in that country. However, regardless of the nomenclature, structural litigation would have continued to exist, perhaps under another name, but the empirical phenomenon would be exactly the same (FISS, 2025).

Although the 2015 Brazilian Code of Civil Procedure (CPC/2015) brings a more flexible view of jurisdictional procedure, with mechanisms that allow some adaptability, such as atypical procedural agreements (art. 190), atypical judicial cooperation (arts. 68 and 69), atypical enforcement measures (arts. 139, IV, and 536, § 1º), in addition to the fragmentation of decisions (art. 356), structural litigation techniques go further. They present advantages such as a dialogic and collaborative character, greater production of information, subsidizing higher quality decisions, equitable implementations, and better handling of side effects (Vitorelli, 2020, p. 473).

On the issue, Recommendation No. 163/2025 was issued by the National Council of Justice (CNJ), which establishes guidelines for identifying and conducting structural proceedings. It points out that the structural nature of the litigation or proceeding can be identified by elements such as multipolarity; social impact; prospectivity; incremental and lasting nature of necessary interventions; complexity; existence of a serious situation of continuous and permanent irregularity, by action or omission; and intervention in the mode of operation of a public or private institution.

Furthermore, it recommends the adoption of measures to broaden adversarial proceedings, create opportunities for agreements, schedule hearings for participatory procedure conduct, develop a structural action plan with a diagnosis of the litigation, goals, monitoring and evaluation indicators, an implementation schedule for planned measures, and the inclusion of people with recognized expertise to collaborate in the construction, improvement, and monitoring of the structural action plan, with the production of technical reports that support decision-making in the proceeding, among others (CNJ, 2025).

In the same sense, the National Council of the Public Ministry (CNMP) issued Recommendation No. 05/2025, which recommends the adoption of good practices for action in structural proceedings, aiming at institutional improvement and the effectiveness of the protection of rights and social interests by the Public Ministry.

Its text expressly provides for the structural action cycle, composed of the following stages: diagnosis of the structural problem; structural plan; execution; monitoring; review; and closure. It also encourages the participation of institutional subjects and the community and prioritizes structural self-composition (CNMP, 2025).

Opportunely, and given its relevance, it is highlighted that Bill No. 3 of 2025 is currently being processed, which aims to regulate structural litigation, based on the shared construction of

solutions, the expansion of the principle of adversarial proceedings with greater participation of impacted groups, and a gradual, prospective, and lasting judicial action.

The draft defines structural problems as those that, due to their multipolarity, effective social impact, prospectivity, lasting nature of interventions, complexity, and need for intervention in public and private bureaucracies, cannot be adequately resolved by classical procedural techniques.

It points to the following as fundamental norms of structural litigation (Brazil, 2025 a):

- [...] I - prevenção e resolução consensual dos litígios estruturais, judicial ou extrajudicialmente;
- II - primazia de técnicas que compatibilizem a tutela efetiva do direito com as capacidades institucionais e as atribuições dos poderes e dos agentes tomadores de decisão;
- III - diálogo entre o juiz, as partes e os demais interessados, inclusive os potencialmente impactados pela decisão, para a construção de um contraditório efetivo na busca da solução plural e adequada;
- IV - participação dos grupos impactados, mediante a realização de consultas e audiências públicas e outras formas de participação direta e indireta;
- V - ampla publicidade e transparência;
- VI - consideração dos regramentos e dos impactos orçamentários e financeiros decorrentes das medidas estruturais;
- VII - flexibilidade do procedimento e das providências de estruturação, observado o contraditório efetivo, nos termos dos artigos 9º e 10, da Lei nº 13.105, de 16 de março de 2015 (Código de Processo Civil);
- VIII - tratamento isonômico dos indivíduos pertencentes aos grupos impactados;
- IX - ênfase em medidas prospectivas, mediante elaboração de planos com objeto, metas, indicadores e cronogramas definidos, com implementação em prazo razoável;
- X - oralidade e instrumentalidade das formas; e
- XI - boa-fé e cooperação.

The guiding principles include a preference for consensually, the adaptation of judicial protection to the institutional capacities of the powers involved, permanent dialogue among procedural subjects, and broad publicity and transparency of the measures adopted. Furthermore, the proposal stipulates that the plaintiff must indicate the structural nature of the litigation in the initial petition and that the judge must ensure the correction or integration of the passive party to include all truly interested parties or those responsible for the intended structural action (BRAZIL, 2025a).

It also provides that a structural proceeding will not be dismissed for lack of passive legitimacy without allowing for the correction or integration of the passive party to include all interested subjects who may bear responsibility in the sought structural action. This provision aligns with the Inter-American Court of Human Rights' Advisory Opinion on the Climate Emergency (OC-32/2025), which reinforces the obligation of courts to overcome formalisms and examine the merits of actions to protect threatened human rights, such as the right to a stable climate (IACHR, 2025).

Thus, Structural Litigation also embodies the Pro Actione principle, offering complex and dialogic solutions to systemic failures, overcoming the binary "win-lose" logic of the traditional model and utilizing its flexibility to protect human rights.

Obviously, there are no guarantees it will be approved by the Legislative Branch, with or without amendments. However, its processing demonstrates that structural litigation is a reality in Brazil, and moreover, that it already develops without specific legislation. Nevertheless, given its relevance, its regulation is currently being studied.

Given these considerations, it is certain that the essence of structural problems/litigations lies in the need to reorganize a deficient bureaucratic structure, as the mere removal of a specific illegality is insufficient to solve the root causes of the problem, which would tend to recur.

Therefore, structural litigations demand structural responses, endowed with procedural flexibility, dialogic nature, fragmented decision-making, negotiated solutions, and atypical execution. Precisely for this reason, a strict and delimited definition is not of interest; instead, postures aimed at institutional reform, prospectivity, spontaneity, pragmatism, creativity, dynamism, and the construction of measures aimed at an effective decision are key.

Such adaptations can be made *ex officio* by the judge (art. 139, item VI, CPC/2015) or by the parties, by mutual agreement, via procedural legal acts (art. 190, CPC/2015), privileging consensually. Sérgio Arenhart teaches that structural litigation "should resemble a broad arena for debate, where the various positions and interests can be heard and can interfere in the formation of the jurisdictional solution," serving as a democratic environment for participation (Arenhart, 2021).

And to speak of a democratic environment, issues brought before the Judiciary must be treated from a perspective that sees land – and the collective and/or structural issues arising from it – beyond mere capitalized property.

There is also talk of adequacy, with respect to the choice of those interested, aiming to avoid the perpetuation of violations affecting society's fundamental rights. Ideally, their restructuring should occur independently of Judicial Branch action, through the Executive or Legislative Branch, but in the face of possible omissions or insufficiency, it can occur through structural litigation.

Structural proceedings can be judicial or extrajudicial, and the Judiciary has the duty to perform case management (management of the caseload), with the purpose of avoiding lack or deficiency of the justice system in cases where its intervention is necessary to resolve conflicts, but also avoiding excess by the Judiciary, always guided by principles such as the procedural duty of dialogue, which results from the combination of the principles of adversarial proceedings and

cooperation with the legal rules enshrined in arts. 10, 138, 489, §1º, 493, sole paragraph, 927, §2º, 983, §1º and 1,038, item II, all of the Code of Civil Procedure.

Basically, structural litigation contributes by offering a theoretical and practical framework for the Judiciary to stop merely responding punctually to demands and become a catalyst for profound institutional and social transformations, a stance especially relevant to the intrinsic complexity of collective agrarian conflicts in Brazil. Such conduct allows an approach that sees the problem not as an isolated fact but as a symptom of a flawed structure that needs to be readjusted to ensure the effective protection of rights.

4 ADPF 828 AND THE JUDICIAL GOVERNANCE OF LAND CONFLICTS: THE LAND SOLUTION COMMISSIONS

ADPF 828, driven by the COVID-19 health crisis, represents a turning point in the Brazilian model of jurisdictional treatment of collective land conflicts. The intervention of the Federal Supreme Court (STF) was not limited to a specific protective act but used the technique of structural litigation to impose new judicial governance, requiring the reorganization of bureaucratic structures and the search for collective and complex solutions.

The context of the COVID-19 pandemic dramatically exposed social vulnerabilities, with the Zero Eviction Campaign warning of the risk of a humanitarian crisis resulting from the simultaneous execution of thousands of eviction orders. The Judiciary, which historically prioritized a proprietary and patrimonialism logic, was confronted with the need to reconcile the right to property with the rights to housing, life, and health.

On June 3, 2021, Minister Luís Roberto Barroso issued the first preliminary injunction in ADPF 828, later ratified by the Plenary. The decision initially suspended, for six months, administrative or judicial measures resulting in evictions, vacate orders, or repossessions of a collective nature in properties serving as housing or productive areas for vulnerable populations, provided the occupations occurred before March 20, 2020 (the start of the state of public calamity) (STF, 2021).

For occupations after the pandemic's temporal marker, the State could act to prevent their consolidation, provided it ensured that removed persons were taken to public shelters or were otherwise guaranteed adequate housing.

This initial suspension was successively extended by the rapporteur in four injunctions ratified by the Plenary. In one of these extensions, the STF acted in a counter-majoritarian manner,

extending protection to rural occupations, which had been excluded by Law No. 14,216/2021, in respect of the principle of equality and to correct an unreasonable distinction. These decisions allowed for the suspension of forced removals of thousands of vulnerable families (STF, 2021).

However, ADPF 828 was not limited to granting provisional relief but consolidated as an instrument of structural litigation. The STF, in dealing with the eviction crisis, confronted the systematic violation of rights caused by the functioning of a bureaucratic structure. This is because the decision imposed a complex obligation to act (structural injunction), requiring the institutional reorganization of the Judiciary and the Executive Branch.

Thus, it is perceived that the STF promoted a paradigmatic shift, abandoning the traditional view that treats conflict as a univocal issue (legal/illegal) and the act of occupation as the zero point. Instead, the Court began to center its analysis on the vulnerability of the occupants and the consequences of removal.

This structural intervention manifested by imposing state involvement, requiring Public Authorities to participate in constructing alternative or cumulative solutions to removal, not just in providing police support for order enforcement. Furthermore, it established conditionality and action plans, compiling proposals that functioned as conditions for resuming evictions, such as the need for removal to be an exceptional measure, the prior elaboration of an eviction plan, and the guarantee of resettlement or adequate housing.

Moreover, it required dialogue and flexibility, as the structural decision requires procedural flexibility and the establishment of participatory and dialogic adversarial proceedings. In the case of ADPF 828, this was instrumentalized by mandating the creation of specialized bodies (such as the Land Solution Commissions).

On October 31 and November 2, 2022, the STF issued the Fourth Provisional Incidental Relief and its ratification, recognizing the easing of the health crisis and the lack of need for maintaining the total suspension. Instead of simply terminating the intervention (closure of the traditional bipolar process), the STF adopted a transition regime, an essential technique of structural litigation. This regime aimed to ensure the resumption of repossessions in a responsible, cautious, and gradual manner, avoiding the feared social upheaval (STF, 2022).

The core of this transition was the order for the immediate creation of Land Conflict Commissions in the Courts of Justice and Federal Regional Courts, established as auxiliary bodies to the judge. Their attributions include mediating collective conflicts (rural or urban), conducting technical visits and judicial inspections at the litigation site as a prior and necessary step before any

collective eviction order, and proposing a strategy for the gradual and phased resumption of the execution of suspended decisions.

That is to say: the STF's decision was a catalyst for change in the treatment of evictions, acting as a jurisdictional response to a socio-legal crisis by establishing a transition regime and imposing the immediate creation of Land Solution Commissions in the courts, consolidating a kind of judicial public policy in Brazil, which is a concrete manifestation of adopting structural litigation techniques.

Among the functions of the Land Solution Commissions is mediating collective evictions before a judicial decision, establishing rules to reduce housing and humanitarian impacts in case of collective evictions, with structures capable of observing technical, political, social, and legal aspects in potential consensual agreements (STF, 2022).

Following the decision in ADPF 828, the National Council of Justice (CNJ) issued CNJ Resolution No. 510/2023, which "reflects the need to promote adequate case management and court management structures, in a new approach to the principle of efficiency" (Prazeres, 2023).

The cited resolution precisely regulates the creation, within the scope of the CNJ and the Courts respectively, of the National Land Solution Commission and the Regional Land Solution Commissions. It also establishes guidelines for conducting technical visits to areas subject to possessory litigation and sets protocols for handling actions involving evictions or repossessions in properties serving as collective housing or productive areas for vulnerable populations (CNJ, 2023).

By instituting guidelines for conducting technical visits and establishing protocols for handling actions involving evictions or repossessions in properties serving as collective housing or productive areas for vulnerable populations, CNJ Resolution No. 510/2023 concretizes the need for more active and humane management of conflicts, reflecting a new approach to the principle of judicial efficiency.

It should be added that the Land Solution Commission does not have jurisdictional authority, nor any power to influence the processing of the case. Its mission is:

[...] aprimorar a cognição do juiz sem pretender exercer influência em seu convencimento, contribuindo para adequar a prestação jurisdicional à complexidade das demandas que envolvem conflitos fundiários coletivos”, o que não se limita ao processo, ou seja, à judicialização, pois “em demandas complexas e policêntricas, exige-se do julgador visão mais abrangente da natureza e das implicações do conflito (Prazeres, 2023).

This comprehensive vision has levels of appreciation and interpretation, and in the present proposal, it is believed that the root of collective agrarian litigations – and, generally, structural ones – is the structural problem, so that there is a need to study this cause-and-effect relationship.

And this is, undoubtedly, the same perception contained in ADPF 828, when establishing the aforementioned transition regime for the resumption of eviction and repossession orders. It is emphasized that the Supreme Court ordered the creation of Land Solution Commissions as an "auxiliary body to the judge of the case, who remains – as it must be – with decisional competence, and may, if so desired, accompany the carrying out of the diligences" (STF, 2022).

And it so determined upon ascertaining that acts such as mediation hearings and site visits "allow procedural actors to have an exact notion of the dimension of the problem" (STF, 2022), helping the judge "understand the scope and degree of planning necessary to implement structuring measures (aimed at land regularization, for example) or removal of things and persons" (STF, 2022), with conflict management (case management) (Prazeres, 2023).

From this, an operational framework for effectiveness is extracted, based on the combined identification of the problem's dimensions, the scope, and the degree of planning to implement structuring measures. On this issue, recall what Vitorelli names as the cycles of the structural process: first, the "characterization of the litigation"; after, the "definition of a strategy to conduct the reform"; then, the "elaboration of a plan to restructure the institution"; subsequently, the "implementation of the plan"; and finally, "the re-elaboration of the plan or closure of the case" (Vitorelli, 2025).

These Commissions therefore represent the instrumentalization of the structural technique for managing land conflicts, aiming at the reorganization of the Judiciary's action. The STF's decision required a structural approach to understanding the scope and degree of planning necessary to implement structuring measures, such as land regularization. The Court abandoned the logic of conflict resolution by mere subsumption (zero point: occupation, end point: removal) and adopted a structural perspective, focused on the vulnerability of occupants.

It seeks, then, an effective protection of rights and the transformative capacity of the Judiciary. This approach reaffirms the importance of social connections and seeks a balance with individual autonomy, promoting social justice and the democratization of access to land. It becomes evident that the conflict resolution model introduced by the Land Solution Commissions emerges as a promising and necessary approach, capable of mitigating the inherent violence in collective agrarian conflicts by prioritizing institutional dialogue and mediation before the summary execution of evictions.

However, it is not believed that this is a path without adjustments and challenges, as the Commissions depend on institutional cooperation and overcoming serious structural obstacles. It is believed that the success of the Commissions intrinsically depends on institutional dialogue and cooperation. On this point, besides the participation of the involved parties, the Public Defender's Office and the Public Ministry are relevant as essential actors, with their summoning being mandatory in collective litigations.

On the other hand, the participation of Executive Branch agencies (responsible for agrarian and urban policy) is fundamental, as without their involvement in offering public policies, the Commission's intervention is limited. Furthermore, if the belief in removal as a priority solution persists, the new model could be reduced to mere formalism.

The distortion of the institute could merely prolong possessory insecurity or legitimize the violation of fundamental rights. Precisely for this reason, it is relevant that the Judiciary, especially in the final judgment of ADPF 828, not only declare the Land Solution Commissions as permanent structures but also reinforce the exceptional nature of forced removals. To overcome these limits, the Commissions must focus on the materially effective protection of rights, not just the fulfillment of formal procedural rites.

5 FINAL CONSIDERATIONS

here is relevance in dialogued and managerial discussions regarding the right to land, the right to housing, social function, and human dignity. The Judiciary must use new forms of action in the face of highly complex litigations involving public policies, employing structural mechanisms to guarantee fundamental rights, and with a better understanding of the dispute by knowing different perspectives.

It is perceived that when speaking of the adoption of structural litigation techniques within the scope of the Land Solution Commissions, one thinks of a reconstruction of mentality, which also involves the relativization and pluralization of the concept of property, recognizing the profound discontinuity of history, considering that a large part of conflicts involve a collectivity and, more than that, people who do not see land merely as private property.

This requires that jurists transcend mere dogmatism and legal formalism, incorporating a critical, historical, and teleological analysis of law that considers the specificities of the social context. As already pointed out, legal absolutism, a product of the bourgeois era and economic liberalism, by

linking law to the State and reducing the role of the jurist to a mere executor of norms, ended up uprooting it from the richness of society and culture.

As Grossi suggests, it is necessary to free legal culture from a purely romanistic vision and prejudices, allowing an analysis that contemplates effectiveness and reality, beyond ideal and cultural models. Legal idolatry and the belief in the infallibility of the legislator must be overcome so that law can fulfill its social and transformative role.

In summary, the idealization of the bourgeois man and his pursuit of individualistic autonomy, combined with the absolutist conception of private property, generate the conditions for agrarian conflicts, especially collective ones. Violence, both internalized and symbolic, contributes to the naturalization and perpetuation of land inequalities, making collective conflicts a manifestation of a social and legal structure that refuses to recognize the plurality of property and the social function of land.

Along this intellectual line, the analytical journey traversed in this article confirmed that the genesis of collective agrarian conflicts in Brazil is not merely a matter of individual possession disputes but rather a structural problem rooted in the legal mentality of modernity. The absolutist conception of property, unveiled by the critique of Polanyi and Grossi, transformed land into a fictitious and abstract commodity, promoting territorial dis-resonance and the historical exclusion of populations that depend on collective use and a relationship of belonging with the soil.

The first premise was reinforced: overcoming land inequality requires a (re)construction of legal mentalities, aligned with the social function of land as an active and biocentric principle (not just as a constitutional abstraction), as an ethical foundation for recognizing the territorialities and identities of traditional communities, with the protection of these vulnerable groups being the legitimate social countermovement.

Secondly, it was demonstrated that the polycentric and structural nature of these litigations makes the traditional adjudicatory model inherently insufficient. The bipolar and rigid logic of common proceedings is not capable of addressing the complexity, the multiplicity of actors, and the need to restructure the system that generated the rights violation.

In this sense, the Land Solution Commissions, established by the STF in ADPF 828 and regulated by CNJ Resolution No. 510/2023, emerge as a promising example of this jurisdictional turn. By imposing on-site technical visits, institutional dialogue, and structured mediation as prior and necessary steps to collective eviction orders, these Commissions constitute a structural technique that breaks with judicial passivity, seeking effective conflict management (case management).

However, for Structural Litigation to be, in fact, a catalyst for transformations and not be reduced to mere formalism or temporary crisis management, it is crucial to evaluate its practical indicators of success.

According to the guidelines for conducting structural proceedings established by CNJ Recommendation No. 163/2025, the Judiciary must adopt objective indicators to ensure the effectiveness of decisions, such as evaluating the percentage of litigations that culminated in land regularization in contrast to those resolved only by removals; monitoring the number of removed families that were effectively resettled in adequate housing or had their productive area guaranteed; assessing the frequency and quality of the mandatory participation of the Executive Branch in offering and executing the public policies required by the structural plan; and quantifying the inclusion of actors with expertise (civil society, technicians) in hearings and the work of the Commissions, ensuring the shared construction of solutions.

In summary, the effectiveness of the Social Function of Land and the pacification of conflicts depend on a responsive jurisdiction willing to reform its mentality and its tools. The Commissions and Structural Litigation are not just procedural alternatives; they are strategies of democratic and collaborative resistance, essential for the Judiciary to actively contribute to overcoming the social pathologies of modernity and achieving agro-environmental justice in the Brazilian countryside.

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THE SOCIAL FUNCTION OF RURAL PROPERTY: NEW LEGAL CHALLENGES IN THE FACE OF DIGITAL LAND GRABBING

A FUNÇÃO SOCIAL DA PROPRIEDADE RURAL: NOVOS DESAFIOS JURÍDICOS FRENTE À GRILAGEM DIGITAL DE TERRAS

LA FUNCIÓN SOCIAL DE LA PROPIEDAD RURAL: NUEVOS DESAFÍOS JURÍDICOS ANTE EL ACAPARAMIENTO DIGITAL DE TIERRAS

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ABSTRACT

The objective of this scientific article is to analyze the irregular appropriation of Brazilian lands, one of Brazil's major historical challenges, marked by land concentration, the fragility of records, and the persistence of illegal land grabbing (grilagem). Since the colonial period, the absence of an effective agrarian policy has consolidated inequality in land access, favoring illicit practices of document falsification to legitimize irregular possessions. Thus, the lack of a fair land distribution and the irregular appropriation have worsened over time. This research, qualitative in nature and based on the deductive method, begins by analyzing constitutional and infra-constitutional norms, especially the social function of property provided for in article 5, XXIII, and article 186 of the Federal Constitution, contrasting them

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with the practices of traditional illegal land grabbing and, more recently, with the so-called "digital land grabbing" or "digital grilagem." Digital land grabbing refers to the electronic manipulation and falsification of data in public registry systems, which poses a new challenge to agrarian and environmental law. Therefore, the research shows that the irregular appropriation of land, in any of its forms, compromises the social function of property, undermines agrarian justice, and increases conflicts in rural areas. Not only that, but the use of artificial intelligence, integrated with efficient public policies, is also proving essential to safeguard legality, promote the equitable distribution of land, and ensure the effectiveness of the social function, a central pillar of the Brazilian agrarian legal system.

Keywords: Irregular Appropriation. Digital Land Grabbing. Social Function of Land. Illicit Practices and Artificial Intelligence.

RESUMO

O objetivo do presente artigo científico é analisar a apropriação irregular das terras brasileiras, sendo um dos maiores desafios históricos do Brasil, marcada pela concentração fundiária, pela fragilidade dos registros e pela persistência da grilagem. Desde o período colonial, a ausência de uma política agrária efetiva consolidou a desigualdade no acesso à terra, favorecendo práticas ilícitas de falsificação documental para legitimar posses irregulares. Desse modo, a falta de distribuição de terras, de forma justa, e a apropriação irregular foram agravadas ao longo do tempo. A presente pesquisa, de natureza qualitativa e fundamentada pelo método dedutivo, parte da análise das normas constitucionais e infraconstitucionais, em especial a função social da propriedade prevista no artigo 5º, XXIII, e no artigo 186 da Constituição Federal, confrontando-as com as práticas da grilagem tradicional e, mais recentemente, com a denominada "grilagem digital". A grilagem digital refere-se à manipulação e falsificação eletrônica de dados nos sistemas públicos de registros, o que demonstra um novo desafio ao direito agrário e ambiental. Portanto, a pesquisa evidencia que a apropriação irregular de terras, em qualquer de suas modalidades, compromete a função social da propriedade, prejudica a justiça agrária e amplia conflitos no meio rural. Não somente isso, como também, a utilização da inteligência artificial, integrada a políticas públicas eficientes, mostra-se essencial para resguardar a legalidade, promover a distribuição equitativa da terra e assegurar a efetividade da função social, pilar central do ordenamento jurídico agrário brasileiro.

Palavras-chave: Apropriação Irregular. Grilagem Digital. Função Social da Terra. Práticas Ilícitas e Inteligência Artificial.

RESUMEN

El objetivo del presente artículo científico es analizar la apropiación irregular de tierras brasileñas, siendo uno de los mayores desafíos históricos de Brasil, marcada por la concentración de la tierra, la fragilidad de los registros y la persistencia del acaparamiento ilegal de tierras (grilagem). Desde el período colonial, la ausencia de una política agraria efectiva consolidó la desigualdad en el acceso a la tierra, favoreciendo prácticas ilícitas de falsificación documental para legitimar posesiones irregulares. De este modo, la falta de una distribución justa de tierras y la apropiación irregular se agravaron a lo largo del tiempo. La presente investigación, de naturaleza cualitativa y fundamentada en el método deductivo, parte del análisis de las normas constitucionales e infraconstitucionales, en especial la función social de la propiedad prevista en el artículo 5º, XXIII, y en el artículo 186 de la Constitución Federal, confrontándolas con las prácticas del acaparamiento ilegal de tierras tradicional y, más recientemente, con el denominado "acaparamiento ilegal de tierras digital" o "grilagem digital". El acaparamiento ilegal de tierras digital se refiere a la manipulación y falsificación electrónica de datos en los sistemas públicos de registros, lo que demuestra un nuevo desafío para el

derecho agrario y ambiental. Por lo tanto, la investigación evidencia que la apropiación irregular de tierras, en cualquiera de sus modalidades, compromete la función social de la propiedad, perjudica la justicia agraria y amplía los conflictos en el medio rural. No solo eso, sino que también, la utilización de la inteligencia artificial, integrada a políticas públicas eficientes, se muestra esencial para salvaguardar la legalidad, promover la distribución equitativa de la tierra y asegurar la efectividad de la función social, pilar central del ordenamiento jurídico agrario brasileño.

Palabras clave: Apropiación Irregular. Acaparamiento Digital de Tierras. Función Social de la Tierra. Prácticas Ilegales e Inteligencia Artificial.

INTRODUCTION

Rural property in Brazil has, throughout its history, been a central theme in discussions on economic development, social justice, and environmental preservation. In this way, a right initially absolute, inherited from the colonial period, has evolved into a concept that incorporates the social function, a constitutional principle that subordinates the individual interest of the owner to the collective interests of society. This transformation, consolidated in the 1988 Federal Constitution and detailed in various laws, seeks to ensure that land fulfills its productive, environmental, and social role, combating land concentration and promoting human dignity in the countryside.

However, the challenges for the effective realization of the social function of rural property are constant and renew themselves with technological advancement. In this sense, the emergence of "digital land grabbing" represents a new and sophisticated threat to legal security and land governance. Thus, using digital tools such as the Rural Environmental Registry (CAR - Cadastro Ambiental Rural) and geospatial data, criminals manage to fraudulently register and illegally appropriate vast extensions of public lands, conservation units, and territories of traditional communities. From this perspective, this practice not only violates the legitimate right to property but also intensifies agrarian conflicts, drives deforestation and environmental degradation, and perpetuates social exclusion in the countryside.

Given this complex scenario, blockchain technology emerges as a potential tool to *combat* digital land grabbing, due to its characteristics of immutability, transparency, and decentralization. Therefore, the implementation of this technology in the Brazilian legal context requires an in-depth analysis of its compatibility with existing legislation and the regulatory, technical, and social challenges that need to be overcome.

Thus, the research problem is to understand how digital land grabbing impacts the realization of the social function of rural property in Brazil and what are the legal challenges and opportunities for promoting more secure and transparent land regularization. Furthermore, the general objective is

to analyze the legal challenges posed by digital land grabbing to the social function of rural property in Brazil, aiming to promote legal security and social justice. In addition, the specific objectives are to understand the Brazilian land structure, the concept of traditional and digital land grabbing, and how this legally affects the social function of land.

The methodology used to achieve the proposed objectives for this article involved bibliographic research with authors such as Arnaldo Rizzardo and Nelson Malzoni. In addition, consultation was made to specialized scientific databases, such as SciELO. In this sense, the method used is based on deductive reasoning, moving from general concepts to specific analyses. Furthermore, bibliographic research was applied to substantiate the problem identified in this article. The type of research carried out was Qualitative Research.

1 BRAZILIAN LAND STRUCTURE AND LAND GRABBING

Since the colonial period, the distribution and use of land have been marked by a concentration model that perpetuated inequalities and directly influenced social and economic relations in Brazil, as the roots of this concentration can initially be traced to the territorial organization implemented by the Portuguese Crown.

Thus, the hereditary captaincies were instituted in the 16th century as a strategy of the Portuguese Crown to promote the occupation and economic exploitation of Brazilian territory. Through this system, the *Sesmarias* regime was created, that is, vast areas granted to grantees who held full powers over their lands, including rights of possession, administration, and hereditary transmission. In this sense, the *sesmarias* regime further intensified land concentration by distributing large extensions to few beneficiaries under the pretext of stimulating agricultural production.

With Brazil's independence and the abolition of slavery, the land issue gained new nuances. Consequently, the 1850 Land Law was created to regulate land possession and property, establishing that from that moment on, land could only be acquired through purchase and sale, and no longer by donation or possession. This measure, which aimed to formalize property and curb land grabbing, in practice made access to land even more difficult for former slaves and the poorer population, who lacked the resources to buy it. Thus, the 1850 Land Law consolidated latifundia, land grabbing, and land concentration as structural characteristics of Brazilian society, preventing the formation of a class of small rural landowners and maintaining the hegemony of agrarian elites.

The proclamation of the Republic and the various subsequent constitutions brought discussions about the need for agrarian reform and the social function of property. However, it was

only with the Land Statute in 1964 that the concept of the social function of land was formally introduced into Brazilian legislation. Therefore, the Land Statute established that rural property must fulfill its social function, i.e., be productive, respect labor and environmental laws, and promote social well-being. The law provided for the expropriation of lands that did not fulfill this function, with compensation in agrarian debt bonds, for agrarian reform purposes.

In 1988, with the promulgation of the Federal Constitution, known as the "Citizen Constitution," the principle of the social function of property was reinforced, making it a fundamental right and one of the pillars of the economic and social order. In view of this, Article 186 of the Federal Constitution details the requirements for rural property to fulfill its social function, including rational and adequate use, proper use of available natural resources and environmental preservation, observance of provisions regulating labor relations, and exploitation that favors the well-being of owners and workers. Thus, expropriation for agrarian reform purposes, based on non-compliance with the social function, is an instrument provided to promote the fair distribution of land.

However, Brazilian land history is intrinsically linked to land grabbing (*grilagem*), a practice dating back to the early days of colonization and perpetuated to the present day, adapting to new technological realities. In this way, the practice of land grabbing, once characterized by the falsification of physical documents and rural violence, evolved into the digital sphere, using electronic systems to legitimize land possession illicitly. Therefore, this evolution of land grabbing, from a rudimentary practice to a sophisticated digital fraud, demonstrates the persistence of a historical problem that adapts to new technologies to continue promoting land concentration and illegality.

Continuing with the development of the social function of land, initially, the concept of property was markedly individualistic and absolute, reflecting the influences of Roman law and colonization policies that privileged the appropriation of vast land extensions. However, over the centuries, this conception was gradually transformed, culminating in the incorporation of the principle of social function as one of the pillars of the Brazilian legal system (Assis, 2008).

Thus, the beginning of the principle of the social function of land came with the 1916 Civil Code (Federal Law No. 3,071), which consolidated absolute private property, in line with the legal liberalism of the time. Consequently, the owner held the rights to use, enjoy, and dispose of the asset in an almost unrestricted manner. With this, the acquisition of property was formalized by the transcription of the title in the property registry, accession, adverse possession, and hereditary right, without major concerns about the social or environmental impact of land use.

Given the lack of concern about the social or environmental impact, the 1934 Federal Constitution introduced the social function of property into the Brazilian legal system. This milestone

represented a break with the purely individualistic view, establishing that the exercise of the right to property should be in harmony with the interests of the collectivity. Thus, expropriation by the Public Authorities, regulated later by Decree-Law No. 3,365 of 1941, became an instrument to ensure the fulfillment of this function. Furthermore, the 1934 Constitution included adverse possession based on labor (*usucapião pró-labore*), valuing work as a requirement for acquiring ownership, a concept that would be deepened by the Land Statute.

Moreover, the Land Statute (Law No. 4,504/64) listed the social function of rural property as a fundamental principle of Agrarian Law, in its Art. 2, § 1. The 1988 Federal Constitution elevated the social function of property to the category of a fundamental principle, consolidating it as one of the pillars of the Democratic Rule of Law.

Land grabbing (*grilagem*) is an ancient practice in Brazil and, according to documentation from the National Confederation of Agricultural Workers (CONTAG), the denomination derives from the custom of using crickets (*grilos*) to age the falsified documents of acquired lands. Land grabbing can be characterized in various ways, such as promoting the appropriation and exploitation of massive areas of land, usually public lands (*devolutas*), by individuals or companies, without legal recognition through purchase, donation, or concession by the Public Authorities, and driven not only by private interests but also by the interests of national and international economic groups (Contag, 2021).

According to the jurist and legal scholar, Arnaldo Rizzardo, land grabbing corresponds to the fraudulent practice of acquiring rural properties through falsification of documents or simulation of legal transactions, seeking to legitimize illegal possession. This phenomenon, with historical roots, was aggravated by the fragility of the property registration system and the absence of effective land inspection (Rizzardo, 2024).

However, land grabbing does not materialize only through falsified documents, but also when it is carried out simply by the temporal connection to land possession. In this sense, the classification of improper land occupation is adopted, which encompasses all occupations not recognized by the State. This distinction serves for studies where land possession grounds the rights and duties of the parties involved, preceding the question of the legality of the documentation (Ipam, 2024).

The practices of devastation of the Amazon rainforests are frequently associated with land grabbing, an activity oriented towards personal benefit through the falsification of information to obtain legal property. During Brazil's formation, land grabbing was a serious problem that led to the creation of laws like Decree No. 9,760/46. In regions such as Pará, Rondônia, Acre, and Mato Grosso,

rich in natural resources, one can observe the concentration of land in the hands of companies and few rural landowners. This concentration generates violence and disorderly deforestation, characterizing the Brazilian State as negligent. According to the coordinator, Rodrigo Jorge, of the Chico Mendes Institute for Biodiversity Conservation (ICMBio), in 2023 about 20% of the Amazon was devastated, including protected areas and indigenous lands (Agência Senado, 2023)

Evidently, the act of grabbing land is illegal, causing very serious problems for specific localities; it also enables the illegal occupation of public places, a social issue whose resolution depends on government policies for land disputes. From this perspective, the Land Statute is the ideal instrument to punish those responsible and regularize property, both for large companies and family farmers. The practice of land grabbing combines the falsification of documents with the improper and illegal appropriation of third-party lands, especially in rural areas (Uol, 2023).

The illegal activities of land grabbing have caused various social damages in the places where they are installed, such as the violation of the rights of local communities, the displacement of traditional families, disrespect for public areas, and the impossibility of public access to deforested areas.

Furthermore, the scholar Nelson Malzoni highlights that land grabbing cannot be seen only as document fraud, but as a mechanism for perpetuating social inequalities in the countryside, as it impedes the democratization of access to land. Thus, land grabbing affects not only the right to property but also compromises agrarian development and social pacification (Malzoni, 2025).

Land grabbing, even inserted within a cultural and historical context of the occupation of large rural areas, currently cannot be considered a socially correct practice, as it generates serious atrocities against nature, people living in rural areas, and specifically, in the regions of greatest violence and poverty in Brazil. No matter how much Brazilian legislation allows a certain type of action in rural areas, the social function of land must be capable of preventing that which offers wealth only for an individual to the detriment of a large mass of people who also need to enjoy the lands (Transparência Internacional, 2021).

The social responsibility of business organizations and society itself is of great importance in the process of combating and eradicating land grabbing in the country, so that it cannot be conceived only as a governmental issue, because, without inspection and social mobilization, the effects of land grabbing will remain as serious social and environmental problems not only in the regions of Brazil that still have large rural areas but throughout the country (Transparência Internacional, 2021).

2 DIGITAL LAND GRABBING

As mentioned previously, land grabbing (*grilagem*), historically, consists of the illegal appropriation of land, often through document forgery and violence. Consequently, the term harks back to the practice of aging false documents in boxes with crickets (*grilos*) to give them an appearance of authenticity. Currently, this practice has evolved into the digital sphere, taking advantage of vulnerabilities and the lack of oversight in electronic land registration and cadastre systems.

In this way, digital land grabbing manifests itself, for example, through the improper use of the Rural Environmental Registry (CAR - *Cadastro Ambiental Rural*), a system that allows individuals to declare data themselves, in order to map environmental information of rural properties. In view of this, land grabbers (*grileiros*) insert false data into the CAR, illegally registering vast areas, including public and indigenous lands, as if they were private properties. Although registration in the CAR does not confer property rights, it generates an official document that can be used to simulate possession, thereby obtaining financing and even justifying deforestation and illegal economic exploitation (Ciência Hoje, 2023).

Therefore, this new form of land grabbing is particularly dangerous due to its speed and scale, since the ease of access and manipulation of data on digital platforms allows large land areas to be "grabbed" in a short time, making identification and repression by supervisory agencies difficult. Another point is the delay in analyzing and validating registrations, coupled with the complexity of land legislation, creates an environment conducive to the proliferation of these frauds, with serious environmental, social, and economic consequences, especially in the Amazon (Estadão, 2023).

The proliferation of these frauds, as a criminal practice, culminates in the irregular appropriation of forest areas, promoting deforestation, ecosystem destruction, and violence against traditional communities. In this way, the camouflage of illegal transactions and the creation of false documentation, through blockchain, drives the irregular appropriation of lands (Estadão, 2023).

Blockchain technology is known for its ability to create secure and immutable records, through a chain of encrypted data blocks that are complex to alter. From this perspective, blockchain should be a tool to ensure the security of legitimate transactions; however, it is used in digital land grabbing as a "parallel notary" in the virtual world. In this way, criminals use this technology to fraudulently register land possession, creating a transaction history that, at first glance, appears legitimate (Figueiredo, 2020).

Therefore, the adoption of blockchain by land grabbing creates a complex problem for authorities, as immutability prevents false records from being erased, not allowing the transaction to be annulled even if the fraud is discovered. Moreover, the absence of specific regulation for land transactions using blockchain allows criminals to operate in a gray area where current legislation cannot act effectively (Figueiredo, 2020).

Thus, blockchain has the potential to be a tool for good, yet it is manipulated to give a false appearance of legality to criminal transactions, making tracking and inspection even more challenging (Figueiredo, 2020).

3 LEGAL CHALLENGES IN COMBATING DIGITAL LAND GRABBING

Despite legislative advances, land grabbing (*grilagem*) has remained a persistent practice in Brazilian land history, adapting and evolving with new realities. The practice of land grabbing, previously characterized by the forgery of physical documents and rural violence, evolved into the digital sphere, using electronic systems to legitimize land possession illicitly. This transition represents an even greater challenge for authorities, as fraud becomes harder to track and combat, requiring new tools and strategies for inspection and investigation. Globalization and data interconnection also facilitate the action of organized criminal groups, which operate on various fronts to legitimize their illegal possessions.

The emergence of "digital land grabbing" represents a new and sophisticated threat to legal security and land governance. Using digital tools such as the Rural Environmental Registry (CAR) and geospatial data, criminals manage to fraudulently register and illegally appropriate vast extensions of public lands, conservation units, and territories of traditional communities. This practice not only violates the legitimate right to property but also intensifies agrarian conflicts, drives deforestation and environmental degradation, and perpetuates social exclusion in the countryside. The ease of data manipulation in digital environments, the complexity of systems, and the lack of adequate inspection create fertile ground for the actions of digital land grabbers (*grileiros digitais*), who take advantage of the slowness and bureaucracy of traditional systems to consolidate their frauds, often with the complicity of corrupt public officials. The lack of interoperability between different registries and registration systems also hinders the identification of fraud and the action of control agencies.

The role of the Judiciary is multifaceted. Regarding its jurisdictional function, it is responsible for adjudicating lawsuits involving land conflicts, applying the law to concrete situations. This includes possessory actions, which are crucial instruments for guaranteeing the collective

possession of traditional peoples and communities, often victims of land grabbing. However, the low conviction rate in land grabbing cases in the Amazon (only 7%) reveals the difficulty of proving the crime and the impunity that often prevails, discouraging reporting and the realization of justice (Climate Policy Initiative, 2023).

In the administrative sphere, the Judiciary, through its inspectorates (*corregedorias*), has the competence to inspect and control the activities of real estate registry offices (*cartórios de registro de imóveis*). This inspection is vital to ensure the legality and security of transactions and legal documents. In view of this, issuing guidelines, conducting inspections, and regulating registry practices are important mechanisms to curb the participation, conscious or unconscious, of registry officials in digital land grabbing schemes (Climate Policy Initiative, 2023).

According to the scholar, Fernando Pereira Sodero, a central figure in Brazilian Agrarian Law, known for his participation in drafting the Land Statute (Law No. 4,504/64) and for his deep analysis of the social function of property, argues that the legal regime of land is based on the doctrine of the social function of property, whereby the right to property is not absolute but must meet the interests of the collectivity, food production, and environmental preservation.

In this sense, the Land Statute (Law No. 4,504, of November 30, 1964) is the main legal milestone of Brazilian agrarian policy. From this perspective, its primary objective is to promote agrarian reform and sustainable rural development, seeking the fair distribution of land and the fulfillment of its social function. Thus, one of the pillars of the Statute is the principle of the social function of property, which conditions the right of property to its productive use and the observance of social and environmental criteria. Therefore, property must favor the well-being of owners and workers, maintain satisfactory productivity levels, ensure the conservation of natural resources, and respect labor relations. As a result of non-compliance with the social function, expropriation for agrarian reform purposes may occur, carried out by INCRA.

In the context of digital land grabbing, the Land Statute faces significant challenges, since the illegal appropriation of land, facilitated by digital means, subverts the objectives of agrarian reform and land regularization. The absence of a robust and integrated registration system, capable of validating data authenticity and curbing fraud in real time, weakens the application of the Statute's norms. Digital land grabbing, by creating false legitimacy over improperly occupied lands, makes it difficult to identify the true owners and implement land regularization policies. This represents a direct violation of the principle of social function, as the illegal appropriation of land prevents the fulfillment of this principle inherent to rural property, generating conflicts and social and environmental imbalances.

4 LEGAL ANALYSIS

The analysis of irregular land appropriation and, especially, of digital land grabbing, must be carried out considering the Brazilian legal system, which enshrines the social function of property as a structuring principle of the economic and social order. Article 5, XXIII, of the 1988 Federal Constitution provides that "property shall fulfill its social function," a principle complemented by Article 186 of the CRFB/88, which establishes four essential requirements: rational and adequate use; proper use of natural resources and environmental preservation; observance of labor laws; and exploitation that favors the well-being of owners and workers. Thus, the social function is not a mere legal ornament but a condition for the validity of the right to property itself.

In the infraconstitutional field, the Land Statute (Law No. 4,504/1964) reinforces this guideline by conditioning the legitimacy of rural property to the fulfillment of its social function, defining land as an asset of collective interest, intended to promote social justice and sustainable development. As Rizzardo (2024) highlights, land grabbing represents a fraud that directly opposes the social function, as it seeks to legitimize irregular possession through document forgery or simulation of legal transactions. The evolution of this practice into the digital sphere, through the manipulation of registries like the CAR (Rural Environmental Registry), has only made the same historical logic of exclusion and land concentration more sophisticated.

From the perspective of Agrarian Law, which is an autonomous branch of law that seeks to regulate the relationship between humans and land, focusing on social justice, food production, and environmental preservation, its fundamental principles are essential for understanding and combating irregular land appropriation. Thus, the Principle of the Social Function of Property is the pillar of Agrarian Law, subordinating the individual right of property to collective interests, requiring land to be productive, respect the environment and labor relations, and promote social well-being. From this perspective, irregular land appropriation directly violates this principle, as illegitimate possession prevents the fulfillment of the property's social requirements. Since land grabbing distorts the purpose of property, turning it into an instrument of speculation and illicit accumulation, to the detriment of its social and environmental role. Therefore, land, instead of fulfilling its function of generating food and promoting development, becomes an asset for illegal exploitation, with serious consequences for society and the environment. The realization of this principle requires the expropriation of unproductive lands and their allocation for agrarian reform purposes, ensuring access to land for those who produce it and contributing to the reduction of social inequalities in the countryside.

The Principle of Social Justice seeks the equitable distribution of land and the guarantee of dignified living and working conditions in the countryside. Land grabbing, by concentrating land in the hands of a few through illicit means, aggravates social inequality and prevents the realization of social justice in rural areas. Since the practice of land grabbing contributes to social exclusion, rural exodus, and the precariousness of living conditions for traditional communities and small farmers, who are expelled from their lands or prevented from accessing them. Therefore, agrarian reform is a fundamental instrument to promote social justice in the countryside and combat land concentration, guaranteeing access to land for all who need it, and the creation of public policies that encourage family farming and the production of healthy food also contributes to social justice in the countryside.

The agrarian principle of Environmental Preservation recognizes the importance of conserving natural resources and sustainability. Thus, land grabbing, especially in agricultural frontier areas like the Amazon, is often associated with illegal deforestation and environmental degradation, contradicting this principle. In 2023, about 20% of the Amazon was devastated, including protected areas and indigenous lands, evidencing the gravity of the problem. In this situation, the destruction of ecosystems, loss of biodiversity, and emission of greenhouse gases are direct consequences of land grabbing and illegal land exploitation, with global impacts on climate and quality of life. Therefore, environmental protection is everyone's duty, and land grabbing represents a serious violation of this duty, requiring rigorous action by inspection agencies and raising societal awareness about the importance of environmental conservation. Thus, digital land grabbing compromises the fundamental rights linked to an ecologically balanced environment (Article 225 of the Federal Constitution), as the advance of land grabbing over public lands and preservation areas results in illegal deforestation and environmental degradation, making land fraud also an issue of agrarian environmental law. In this sense, the social function of land must be interpreted together with the environmental function, to ensure the sustainability of the territory and the protection of present and future generations.

The Brazilian Civil Code establishes the foundations of private law, including rules regarding property, possession, and real rights. Its provisions are crucial for the analysis of digital land grabbing, as they define what is legally recognized as property and possession, and the consequences of their acquisition by illicit means. From this analysis, Article 1,228 defines property as the right to use, enjoy, dispose of, and recover the asset, but this right is not absolute and must be exercised in accordance with its economic and social purposes. Thus, possession (Articles 1,196 et seq.) is the *de facto* exercise of the powers inherent to ownership, and digital land grabbing, by resorting to fraud in registries, constitutes an unjust and bad-faith possession. In view of this, real

rights (Article 1,225) and the acquisition of immovable property, which occurs with the registration of the transfer deed at the Real Estate Registry Office (Article 1,245), are directly affected by digital land grabbing, which seeks to circumvent this system. Moreover, the practice of digital land grabbing, involving fraud and causing damages, may generate civil liability for those involved, under the terms of Articles 186 and 927 of the Civil Code.

Regarding the Brazilian Penal Code, there is the classification of various crimes that can be applied in combating land grabbing and its ramifications. Thus, land grabbing, in its essence, is a criminal activity manifested through a series of illicit conducts, many of them foreseen in the Penal Code, and its practice involves a complex network of actors and actions, from document forgery to violence against legitimate occupants. From this perspective, one of the most common crimes in traditional and digital land grabbing is Falsification of Public Documents (Art. 297, CP), given the need to create an appearance of legality for illegitimate possession. Since certificates, property registrations (*matrículas*), notarial records, and other public documents are frequent targets of forgery, making fraud identification a challenge for authorities and requiring the modernization of registration systems, with the implementation of technologies that ensure the authenticity and inviolability of documents.

Moreover, land grabbing can also be classified as the crime of Falsification of Private Documents (Art. 298, CP), as the falsification of purchase and sale contracts, powers of attorney, and other private instruments can be forged to simulate legitimate transactions, deceiving third parties in good faith and making it difficult to prove illegality, which requires meticulous analysis of documents and verification of signature authenticity, often with the aid of forensic handwriting analysis. Finally, another classification is Ideological Falsehood (Art. 299, CP), because omitting, in a public or private document, a statement that should be included, or inserting or causing to be inserted a false or different statement from what should be written, with the aim of prejudicing a right, creating an obligation, or altering the truth about a legally relevant fact. This is often used in digital land grabbing, where data in electronic systems, such as the CAR, is manipulated to create a false registry reality, altering information about ownership, boundaries, or property characteristics. The difficulty in tracing the origin of this false information makes investigation and punishment even more complex, requiring collaboration between inspection agencies and the use of data analysis tools.

From the perspective of Administrative Law, the State's action is fundamental to guarantee the correct allocation of lands and combat improper appropriation, which often occurs in areas of great environmental or strategic value, such as forests and water sources, compromising public assets and the environment. In this way, the grabbing of public lands (*terras devolutas*) is a serious problem,

as it involves the appropriation of public goods. The application of Law No. 6,383/76 to regulate the discriminatory process of lands is fundamental. The lack of inspection and the slowness in the processes of land discrimination and appropriation (*arrecadação*) of these lands contribute to the proliferation of land grabbing, especially in remote and hard-to-access regions, such as the Amazon, where inspection is more precarious and the action of land grabbers is facilitated by the absence of the State. Expediting land regularization processes and allocating these lands for agrarian reform settlements or conservation units are essential measures to combat the grabbing of public lands, ensuring the protection of public assets and the sustainable use of natural resources.

Therefore, the set of legal, urbanistic, environmental, and social measures aimed at regularizing irregular settlements and titling their occupants. Law No. 13,465/2017 (Urban Land Regularization Law - Reurb) and other related norms seek to simplify and expedite these processes, but they also need to be robust enough to avoid being used to legitimize land grabbing. The slowness of regularization processes and the State's difficulty in inspecting and curbing such conducts contribute to the perpetuation of irregular appropriation.

From a practical standpoint, there is a normative and institutional deficit in confronting digital land grabbing. Although there are legal repression mechanisms, such as the penal offenses of falsification of public documents (Article 297 of the Penal Code) and ideological falsehood (Article 299 of the Penal Code), such provisions are insufficient in the face of the complexity of electronic fraud. The same occurs in civil actions of adverse possession, possessory actions, or discriminatory actions, which, although adequate in traditional cases of land grabbing, prove to be slow and ineffective against the speed of digital manipulations.

Another critical point lies in the absence of specific regulation for digital registries and blockchain applied to land administration, since the Brazilian legal system has not yet integrated these technologies into the registry system normatively, leaving space for criminals to use blockchain's own immutability as a "parallel notary" to give an appearance of legality to fraud.

Thus, the legal analysis demonstrates that combating digital land grabbing requires more than the application of existing norms. Legislative modernization is necessary, capable of foreseeing the validity of electronic registries, establishing rules for interoperability between digital registries and traditional registry offices, and defining technical and legal responsibilities for electronic land transactions. Furthermore, the use of artificial intelligence in cross-referencing databases can be a relevant tool for fraud prevention and transparency promotion.

5 FINAL CONSIDERATIONS

Considering all that has been presented, it is understood that the social function of rural property, a fundamental principle of the Brazilian legal system, has been constantly challenged by new realities and technologies. Digital land grabbing emerges as one of the most imminent obstacles to its effective realization, using digital tools to fraudulently register and illegally appropriate vast land areas, with serious environmental, social, and economic consequences. However, the same technology that underpins these new forms of illegality, blockchain, presents itself as a promising solution to strengthen legal security and transparency in rural land regularization.

Thus, digital land grabbing has revealed how land grabbers exploit the vulnerabilities of current systems to illegally appropriate lands, which will consequently have profound legal and social impacts. In this context, the analysis of Brazilian legislation has shown that, although there are legal tools to combat land grabbing and promote land regularization, they are insufficient to deal with the sophistication of digital land grabbing and to fully integrate blockchain innovations. Judicial slowness, lack of training, and the absence of specific regulation for blockchain registries are gaps that need to be filled.

Therefore, legislative and regulatory modernization is imperative, with the creation of specific laws that recognize the validity of blockchain registries, regulate registry office operations, define responsibilities, and ensure data protection. In the technical and operational sphere, the development of a national land registration platform on blockchain, with the standardization of geospatial data, are essential measures. Finally, social aspects, such as social participation, education, combating the digital divide, and strengthening effective public land policies, are crucial to ensuring that technology serves as a tool for social justice and sustainable development.

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THE ALLOCATION OF PUBLIC REAL ESTATE FOR TRADITIONAL PEOPLES AND COMMUNITIES

A DESTINAÇÃO DE BENS IMÓVEIS PÚBLICOS PARA OS POVOS E COMUNIDADES TRADICIONAIS

EL DESTINO DE LOS BIENES INMUEBLES PÚBLICOS PARA LOS PUEBLOS Y COMUNIDADES TRADICIONALES

MARIA TEREZA QUEIROZ CARVALHO¹

ABSTRACT

Public administration has been instigated regarding the need to allocate public real estate to traditional peoples and communities, in order to regularize the use and occupation of these spaces. Considering this, the promulgation of standards addressing this social demand is ongoing, although they are not mentioned in mainstream administrative law doctrines. This situation makes the search for information on the performance of public agencies an important alternative amid the scarcity of legal studies explaining how public administration can act in response to this social demand. This article presents the outcome of bibliographic and documentary research, using primary and secondary sources to analyze the methods of allocating public real estate to traditional peoples and communities. The main objective is to explain the procedures carried out by the federal public administration and contribute to updating the approach to this subject, especially in administrative law. It is important to highlight that the research starts from the production of geographic space (traditional territory) to its formalization before public administration. Therefore, given the dynamic between society and nature, it explains how it is possible to articulate social demand and administrative mechanisms for land regularization.

Keywords: Federal public administration; Geographic space; Land regularization; Management of public real estate; Traditional use and occupation.

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RESUMO

A administração pública tem sido provocada sobre a necessidade de destinar bens imóveis públicos para os povos e comunidades tradicionais, no intuito de regularizar o uso e a ocupação desses espaços. Diante disso, continua em curso a publicação de normas que tratam dessa demanda social, em que pese elas não serem mencionadas em doutrinas majoritárias do direito administrativo. Esse fato faz com que a busca por informações sobre a atuação dos órgãos públicos seja uma alternativa frente à escassez de estudos jurídicos que expliquem como a administração pública pode agir diante dessa demanda social. Assim, este artigo apresenta o resultado de uma pesquisa bibliográfica e documental, que utilizou fontes primárias e secundárias para analisar as formas de destinação de bens imóveis públicos para os povos e comunidades tradicionais. O objetivo é explicar quais são os trâmites realizados pela administração pública federal, e contribuir com a atualização da abordagem sobre esse tema, sobretudo no direito administrativo. Importa ressaltar que a pesquisa parte da produção do espaço geográfico (território tradicional) para sua formalização perante a administração pública. Portanto, diante do que está posto pela dinâmica entre sociedade e natureza, explica como é possível articular demanda social e mecanismos administrativos de regularização fundiária.

Palavras-chave: Administração pública federal; Espaço geográfico; Gestão de bens imóveis públicos; Regularização fundiária; Uso e ocupação tradicional.

RESUMEN

La administración pública ha sido provocada sobre la necesidad de destinar bienes inmuebles públicos a pueblos y comunidades tradicionales, con la intención de regularizar el uso y la ocupación de esos espacios. Frente a esto, sigue en curso la publicación de normas que tratan esta demanda social, aunque no sean mencionadas en doctrinas mayoritarias del derecho administrativo. Este hecho hace que la búsqueda de información sobre la actuación de los órganos públicos sea una alternativa ante la escasez de estudios jurídicos que expliquen cómo puede actuar la administración pública ante esta demanda social. Así, este artículo presenta el resultado de una investigación bibliográfica y documental, que utilizó fuentes primarias y secundarias para analizar las formas de destino de bienes inmuebles públicos a pueblos y comunidades tradicionales. El objetivo es explicar qué trámites realiza la administración pública federal y contribuir con la actualización del abordaje sobre este tema, sobre todo en el derecho administrativo. Importa resaltar que la investigación parte de la producción del espacio geográfico (territorio tradicional) hasta su formalización ante la administración pública. Por tanto, frente a la dinámica entre sociedad y naturaleza, explica cómo es posible articular demanda social y mecanismos administrativos de regularización agraria.

Palabras clave: Administración pública federal; Espacio geográfico; Gestión de bienes inmuebles públicos; Regularización agraria; Uso y ocupación tradicional

INTRODUCTION

The advance in publishing regulations regarding the allocation of public real estate to traditional peoples and communities (PCTs) has not been matched by administrative law doctrines, despite the existence of hundreds of administrative processes initiated by public agencies. Therefore,

seeking information about the actions of public agencies is an alternative in the face of the scarcity of legal studies explaining how public administration can act in response to this social demand.

Even though the territorial rights of traditional peoples and communities have constitutional support and are provided for in Federal Decree No. 6,040 of 2007², when dealing with the management of public real estate, major doctrines usually do not mention the allocation of these assets to these social groups. As a rule, the territorial rights of indigenous peoples, expropriation for social interest purposes, and urban land regularization are the examples of social demands presented.

Given this, the research sought to identify regulations concerning the allocation of public real estate to traditional peoples and communities, and, based on them, to explain the procedures carried out by public administration. Therefore, the research focused on analyzing the experiences of federal public agencies, considering that public administration occurs at various levels and that the federal level ends up guiding the others.

Thus, initially, a survey of regulations was carried out on the Legislação Portal (Legislation Portal), linked to the official website of the Presidency of the Republic, and then in the legislation collection of the official website of the Chamber of Deputies. Based on the regulations found, it was necessary to carry out other surveys, this time in the databases of the public agencies mentioned in the regulations initially found: the Secretariat of Federal Heritage (SPU), the National Institute of Colonization and Agrarian Reform (INCRA), and the Chico Mendes Institute for Biodiversity Conservation (ICMBio).

To support the analysis of the regulations, both administrative law and civil law doctrines, as well as research addressing the territorial rights of traditional peoples and communities, were used as theoretical frameworks. Therefore, the research has a multidisciplinary character, both due to gaps in legal doctrine and the imperative need for articulation between various fields of knowledge to enable understanding of the topic.

In this sense, it is important to emphasize that the research starts from the production of geographic space, in this case, traditional territory, to its formalization before public administration. Therefore, considering what is presented by the dynamics between society and nature, how is it possible to articulate social demand and administrative mechanisms for land regularization?

Traditional peoples and communities are considered in this article with the same breadth provided for in Federal Decree No. 6,040 of 2007³. That is, the territorial rights of one or another

² Establishes the National Policy for the Sustainable Development of Traditional Peoples and Communities - PNPCT.

³ “Traditional Peoples and Communities: culturally differentiated groups that recognize themselves as such, which possess their own forms of social organization, occupy and use territories and natural resources as a condition for their

specific social group will not be addressed, because besides being diverse, there is no exhaustive list defining which social groups are traditional.

It is important to note that until the writing of this article, the regulation of Federal Decree No. 6,040 of 2007 had not been published, regarding specific administrative procedures for the land regularization of traditional territories. This pending issue contributes to the invisibility of the territorial rights of traditional peoples and communities and to uncertainty about the administrative paths that can be followed.

In the first section of the article, I discuss how the allocation of public real estate is fundamental for state management, balancing economic, social, and cultural interests. In this sense, I highlight the need for land regularization and the challenges faced by public administration in managing a vast and complex heritage.

Next, in the second section of the article, I show that the Secretariat of Federal Heritage – SPU, the National Institute of Colonization and Agrarian Reform – INCRA, and the Chico Mendes Institute for Biodiversity Conservation – ICMBio have developed legal-administrative instruments to regularize the use and occupation of public properties by traditional peoples and communities. However, conflicts persist due to the overlapping of land categories, the fragility of some instruments, and the tendency to prioritize individual titling.

1 THE ALLOCATION OF PUBLIC REAL ESTATE AS A MANAGEMENT STRATEGY

Public assets (*bens públicos*) are those belonging to any of the federative entities (Union, States, Federal District, or Municipalities), their autonomous agencies (*autarquias*), or public foundations. Thus, by integrating the public domain, these assets can be used by public administration for various purposes, observing their classification⁴. There are also natural assets that, by constitutional determination, are indisputably of the Union, according to Article 20 of the Federal Constitution (Brazil, 1988).

Doctrine usually classifies public assets into assets for common use (*bens de uso comum*), assets for special use (*bens de uso especial/privativo*), and domain assets (*bens dominicais*). This classification stems from interpretations of Articles 98 and following of the Civil Code (Brazil, 2002), which deals with public assets, as verified:

cultural, social, religious, ancestral, and economic reproduction, utilizing knowledge, innovations, and practices generated and transmitted by tradition (Art. 3 of Federal Decree No. 6,040/2007).

⁴ Review Law No. 9,636/1998.

Art. 98. Public assets are those of the national domain belonging to legal entities of public internal law; all others are private, regardless of the person to whom they belong.

Art. 99. Public assets are: I - those for common use by the people, such as rivers, seas, roads, streets, and squares; II - those for special use, such as buildings or lands intended for the service or establishment of federal, state, territorial, or municipal administration, including those of their autonomous agencies; III - domain assets, which constitute the patrimony of legal entities of public law, as an object of personal or real right of each of these entities. Sole Paragraph. Unless the law provides otherwise, assets belonging to legal entities of public law that have been given a private law structure are considered domain assets (Brazil, 2002).

In summary, assets for common use by the people are those that can be used by anyone without the need for authorization. In turn, assets for special use are those that public administration has allocated for the provision of public services or granted exclusive use to third parties through authorization, permission, or concession⁵. And domain assets are those that integrate the public patrimony but have not received a specific allocation, which is why the transfer of their ownership is admissible in this case. Regarding the classification of public assets, Di Pietro (2023) teaches:

O critério dessa classificação é o da destinação ou afetação dos bens: os da primeira categoria são destinados, por natureza ou por lei, ao uso coletivo; os da segunda ao uso da Administração, para consecução de seus objetivos, como os imóveis onde estão instaladas as repartições públicas (...); os da terceira não têm destinação pública definida, razão pela qual podem ser aplicados pelo Poder Público, para obtenção de renda; é o caso das terras devolutas, dos terrenos de marinha, dos imóveis não utilizados pela Administração, dos bens móveis que se tornem inservíveis. (Di Pietro, 2023, p. 758)

Assets for common use by the people and assets for special use, "because they are destined for collective use or because they are allocated for the direct or indirect use of the Administration, to achieve its ends" (Di Pietro, 2023, p. 759), are unavailable (*indisponíveis*). Therefore, they are inalienable⁶ (*inalienáveis*), which consequently also makes them imprescriptible (*imprescritíveis*) and non-attachable (*impenhoráveis*)⁷.

However, domain assets are available (*disponíveis*), as they are those that have not received an allocation, have not been affected to a purpose. As they integrate the public patrimony, it is common to find in administrative law doctrines that their function is to ensure revenue for the State.

Regarding this, Abe (2013) teaches that public administration must seek the realization of primary and secondary public interests: those provided for in the Brazilian legal system to effectuate common or special use; and those for economic exploitation and generation of income or revenue,

⁵ Review Law No. 9,636/1998.

⁶ Its ownership cannot be transferred to another's patrimony, as occurs, for example, in sale, donation, or exchange.

⁷ Nevertheless, the protection of inalienability can be relativized in certain cases, when there is de-affectation (*desafetação*) of the asset by administrative will, in accordance with legal precepts. Thus, the unavailability (*indisponibilidade*), inalienability (*inalienabilidade*), and imprescriptibility (*imprescritibilidade*) of the components of the public domain will last as long as such assets remain affected to a public destination" (Santos 2023, p. 32)

respectively. Thus, based on this order of priorities, the financial function of domain assets would be attenuated:

Encontra-se mitigada a concepção de que os bens dominicais constituem categoria jurídica dotada de uma função patrimonial ou financeira, destinada a assegurar rendas para o Estado, por meio de locação, aforamento, concessão e alienações, pois os bens dominicais devem ter uma destinação pública compatível com os objetivos constitucionais. (Abe, 2013, p. 100)

At the federal level, the main norms dealing with the management of public real estate are Decree-Law No. 9,760 of 1946, which provides for Union assets; and Law No. 9,636 of 1998, which provides for the regularization, administration, emphyteusis, and alienation of real estate owned by the Union. Thus, based on the interpretation of these norms, administrative law doctrines list the following possibilities for the use of these assets by private parties: assignment (*cessão*), permission of use (*permissão de uso*), and special concession for housing purposes (*concessão especial para fins de moradia*) (Law No. 9,636/1998, Art. 18 et seq.)⁸; rent (*aluguel*), emphyteusis (*aforamento*), assignment (*cessão*), fee tail (*enfiteuse*)⁹, and concession of real right of use (*concessão de direito real de uso*) (Decree-Law No. 9,760/1946, Art. 64 et seq.).

For this article, it is also important to highlight Decree-Law No. 271 of 1967, which deals with urban subdivision (*loteamento urbano*), developer responsibility, and the granting of use and airspace. This is because, like the previously cited norms, the said decree was updated by Law No. 11,481 of 2007, which in this case included the possibility of granting use¹⁰ for land regularization purposes to preserve traditional communities and their means of subsistence (Law No. 11,481/2007, Art. 7).

Given the above, it is verified that public assets can be used by private parties through an administrative act authorizing such use. However, public assets can also be alienated, i.e., have their ownership transferred to third parties. For this, it is first necessary to observe the provisions of the Civil Code (Brazil, 2002), namely:

⁸ The special concession for housing purposes (*concessão de uso especial para fins de moradia*) aims to grant the use of public property located in an area with urban characteristics and purposes, as a way to promote the constitutional right to housing (art. 6, CF/88)" (Santos, 2023, p. 65).

⁹ In technical language, emphyteusis (*aforamento*) or fee tail (*enfiteuse*) is the real right of possession, use, and full enjoyment of another's property that the holder (emphyteuta or tenant-in-chief) can alienate and transmit hereditarily, but with the obligation to pay a perpetual annual fee (quit-rent or *foro*) to the immediate lord (*senhorio direto*). Characteristic of emphyteusis or fee tail is, therefore, the simultaneous exercise of domain rights over the same property by two persons: one, over the direct domain - the State; the other, over the useful domain (*domínio útil*) - the private emphyteuta, in the case of public assets" (SANTOS, 2023, p. 73).

¹⁰ It is the contract by which the Administration transfers, for a fixed term or indeterminate period, as a resolvable real right (*direito real resolúvel*), the remunerated or gratuitous use of public land to be used for specific purposes (...) (Mello, 2023, p. 826).

Art. 100. Os bens públicos de uso comum do povo e os de uso especial são inalienáveis, **enquanto conservarem a sua qualificação**, na forma que a lei determinar.

Art. 101. Os bens públicos dominicais **podem ser alienados**, observadas as exigências da lei (Brasil, 2002, grifo meu).

The management of public assets implies not only the formalization of their uses and related economic transactions. It is necessary to remember that, while a given public asset belongs to a federated entity, its autonomous agencies, or foundations, it is necessary for public administration to monitor its use and compliance with the conditions established for the user of the asset.

To illustrate the complexity of the topic, I cite the report of the Federal Court of Accounts (*Tribunal de Contas da União - TCU*) regarding the survey of federal real estate patrimony, managed by the Secretariat of Federal Heritage (SPU)¹¹. According to the document, published in the first half of 2024, the management done by the SPU is inefficient, and the agency's structure cannot manage the 742,000 (seven hundred and forty-two thousand) properties under its management, valued at approximately R\$ 1.35 trillion.

Therefore, regarding public real estate, the category that interests this article, it is important to emphasize the importance of allocating them to a purpose or regularizing situations of use. This is because such management acts enable the establishment of partnerships that should contribute to public administration in the conservation of these assets or in generating revenue. Furthermore, for Abe (2013), allocating public real estate is a duty of public administration:

Embora a Administração Pública possua a discricionariedade para definir qual o melhor momento para emitir o ato, não tem o poder de escolher não agir, ou se omitir indefinidamente, especialmente quando os fatos acontecidos na realidade (motivo) tornam necessário o exercício da competência. O Poder Público não pode deixar de dar destinação aos imóveis públicos, se omitindo dolosamente e indefinidamente diante de circunstâncias (motivos) que exigem a prática de providências administrativas, sob pena de essa omissão acarretar a responsabilidade do Estado (...) (Abe, 2013, p. 98).

Regarding the realization of the territorial rights of traditional peoples and communities, public administration has acted in cases where traditional territory coincides with areas of public properties. For this, the possibilities of using public assets by private parties have been observed for the creation of specific legal instruments. This is verified with the Term of Authorization for Sustainable Use (TAUS - Termo de Autorização de Uso Sustentável) and the Contract for Concession of Real Right of Use (CCDRU - Contrato de Concessão de Direito Real de Uso), instruments used by

¹¹ Available at: https://pesquisa.apps.tcu.gov.br/documento/acordao-completo/*/KEY%253AACORDAO-COMPLETO2637572/DTRELEVANCIA%2520desc%252C%2520NUMACORDAINT%2520desc/0. Accessed on: October 10, 2024.

public administration to guarantee the permanence of traditional peoples and communities in territories located on public properties.

The issue is that even recognizing the existence of traditional territories, as a rule, public administration does not renounce the ownership of assets for common use and assets for special/private use. That is, considering a hierarchy of rights, in practice those of traditional peoples and communities would not be above those of federated entities, their autonomous agencies, or foundations, which act in the public interest.

To further complicate this discussion, it is important to note that, at another time, the affectation of domain real estate to make them for special use was a strategy to preserve local communities and their territories. This was observed mainly between the 1980s and the early 2000s, due to the legislation available at the time.

Thus, sustainable use conservation units and settlements were created, for example, possibilities that remain in force but have been reconsidered by traditional peoples and communities. In this sense, with the publication of Federal Decree No. 6,040 of 2007, these social groups have advocated for the land regularization of traditional territories through possibilities that guarantee the management of the area exclusively by them, even if with the aid of public policies.

As mentioned earlier, insofar as public administration authorizes or regularizes the use of public real estate by private parties but without transferring ownership, it falls to the public agency responsible for managing that asset to monitor its use. Because of this, recognizing the existence of traditional territory located on public property allocated to another purpose implies shared management as long as it remains affected to that purpose.

The issue is that the ways of life of traditional peoples and communities are not always in accordance with the rules established by public administration. Therefore, this overlap of traditional territory with public property, when ownership of the latter is not transferred to the traditional people or community, commonly generates conflicts.

For this reason, there are initiatives by traditional peoples and communities seeking recognition of the supremacy of their territorial rights over administrative law and notarial and registry law. In this sense, if successful, they hope that, regardless of the classification of the public asset, public administration will take the appropriate measures to transfer the property's ownership to the interested social group.

2 EXPERIENCES OF FEDERAL AGENCIES IN MANAGING PUBLIC REAL ESTATE OVERLAPPING TRADITIONAL TERRITORIES

In the process of regularizing the use of public property, the classification of this asset will indicate which legal instrument can be executed between public administration and the traditional people or community. As mentioned earlier, if the traditional territory is located on a real estate asset for common use or special use, agreements or contracts will be signed that authorize the use and/or occupation of the property but do not transfer ownership to the social group. However, if the real estate asset is domain (dominial), and therefore has not been affected to a specific purpose, its ownership can be transferred.

Given this, this chapter will present the experiences of the Secretariat of Federal Heritage (SPU), the National Institute of Colonization and Agrarian Reform (INCRA), and the Chico Mendes Institute for Biodiversity Conservation (ICMBio) with the regularization of the use and/or occupation of public properties by traditional peoples and communities. Thus, it is important to emphasize that these actions start from the classification of public real estate and from what administrative law dictates regarding the formalization of the use and/or occupation of these assets by private parties.

Highlighting this starting point is essential because the traditional territory claimed by the traditional people or community may be larger than the area under the management of public administration. This is why the expression "regularization of the use and/or occupation of public real estate" has been used throughout the article, and not "regularization of traditional territory located on public real estate," since they may coincide entirely or not.

2.1. Secretariat of Federal Heritage (Spu)

The National Policy for the Management of Union Heritage (PNGPU - *Política Nacional de Gestão do Patrimônio da União*) was established within the Secretariat of Federal Heritage (SPU) ¹² through SPU Resolution No. 03 of December 6, 2010, which guides the planning and actions of this agency. In addition to a series of principles and guidelines, this norm introduced the concept of the socio-environmental function of Union heritage, as well as the express guidance to carry out land regularization "in areas occupied by low-income populations" (SPU Resolution No. 03/2010, Art. 6, item II).

¹² Currently linked to the Ministry of Management and Innovation in Public Services.

In this sense, SPU Ordinance No. 89 of 2010 was published, which "regulates the use and utilization of Union properties in favor of traditional communities" (SPU Ordinance No. 89/2010, Art. 1), aiming to enable rational and sustainable use on the maritime and riverfront. For this purpose, the Term of Authorization for Sustainable Use (TAUS - *Termo de Autorização de Uso Sustentável*) is the instrument to be used by SPU to formalize the use of these areas by traditional communities.

It is important to note that in 2017 Federal Law No. 9,636 of 1998 was amended to include the authorization of sustainable use as one of the forms of allocating Union properties¹³, namely:

Art.10-A. A autorização de uso sustentável, de incumbência da Secretaria do Patrimônio da União (SPU), ato administrativo excepcional, transitório e precário, é outorgada às comunidades tradicionais, mediante termo, quando houver necessidade de reconhecimento de ocupação em área da União, conforme procedimento estabelecido em ato da referida Secretaria.

Parágrafo único. A autorização a que se refere o caput deste artigo visa a possibilitar a ordenação do uso racional e sustentável dos recursos naturais disponíveis na orla marítima e fluvial, destinados à subsistência da população tradicional, de maneira a possibilitar o início do processo de regularização fundiária que culminará na concessão de título definitivo, quando cabível (Brasil, 1998).

The Term of Authorization for Sustainable Use (TAUS - *Termo de Autorização de Uso Sustentável*), according to SPU Ordinance No. 89/2010, is a transitory and precarious instrument, created to formalize¹⁴, the permanence of traditional communities "in floodable areas, watercourses belonging to the Union, of incontestable domain" (Costa, 2021, p. 03). Regarding areas of incontestable domain, Article 2 of SPU Ordinance No. 89/2010 follows the provisions of Article 20 of the Federal Constitution (Brazil, 1988). Furthermore, the TAUS can be converted into a concession of real right of use (CDRU - *concessão de direito real de uso*), according to Article 11 of the same Ordinance.

Still regarding SPU's competences to proceed with the land regularization of occupations located in Union areas, it is important to emphasize that SPU can act indirectly or directly. Specifically, regarding traditional peoples and communities, SPU shares actions with other agencies (indirect action), except in cases where the territorial demands of these social groups are not under the responsibility of others (direct action). In this regard, the following information can be found on the official federal government website:

As ações podem ser compartilhadas com outros órgãos, como por exemplo, o caso de Quilombolas (atua em conjunto com o Incra - Portaria Interministerial MP/MDA nº

¹³ Disponível em: <https://www.gov.br/gestao/pt-br/assuntos/patrimonio-da-uniao/destinacao-de-imoveis/regularizacao-fundiaria>. Acesso em: 2 ago. 2025.

¹⁴ Art. 3º, inciso I, do Federal Decree nº 6.040/2007.

210/2014; dos indígenas (atua com a FUNAI); das comunidades tradicionais que ocupam unidades de conservação (alinha-se com Ministério do Meio Ambiente – MMA e Instituto Chico Mendes de Biodiversidade – ICMBIO - Portaria Interministerial MP/MDA nº 436/2009); sendo essas destinações majoritariamente indiretas.

Existe, porém, aquelas comunidades tradicionais que não estão sob a tutela de nenhum órgão e acabam tendo sua pauta de regularização tratada pela SPU, como é o caso dos pescadores, ribeirinhos e caiçaras. Nesses casos a SPU atua na regularização fundiária direta (Brasil, 2022).

Considering the objective of guaranteeing traditional peoples and communities their territories and access to the natural resources they traditionally use, it is important to mention that Union properties can be allocated through other instruments. Besides TAUS and CDRU, Federal Law No. 9,636 of 1998 deals, for example, with the donation of Union real estate, namely:

Art. 31. **Mediante ato do Poder Executivo** e a seu critério, poderá ser **autorizada a doação** de bens imóveis de domínio da União, observado o disposto no art. 23 desta Lei, a:

- I - Estados, Distrito Federal, Municípios, fundações públicas e autarquias públicas federais, estaduais e municipais;
- II - empresas públicas federais, estaduais e municipais;
- III – fundos públicos e fundos privados dos quais a União seja cotista, nas transferências destinadas à realização de programas de provisão habitacional ou de regularização fundiária de interesse social;
- IV – sociedades de economia mista direcionadas à execução de programas de provisão habitacional ou de regularização fundiária de interesse social;
- V – **beneficiários, pessoas físicas ou jurídicas, de programas de provisão habitacional ou de regularização fundiária de interesse social desenvolvidos por órgãos ou entidades da administração pública, para cuja execução seja efetivada a doação;** ou
- VI – instituições filantrópicas devidamente comprovadas como entidades beneficentes de assistência social e organizações religiosas (Brasil, 1998, grifo meu).

It is also necessary to consider land regularization of traditional territories in the Legal Amazon (*Amazônia Legal*), an area comprising the States of Acre, Amapá, Amazonas, Mato Grosso, Rondônia, Roraima, Tocantins, Pará, and the portion of Maranhão west of the 44th Meridian.¹⁵ According to Federal Law No. 11,952 of 2009, which provides for "the land regularization of occupations occurring on lands located in Union areas, within the scope of the Legal Amazon" (Law No. 11,952/2009, Art. 1), traditional territories shall be regularized observing specific regulations, according to Article 4, § 2:

Art. 4º Não serão passíveis de alienação ou concessão de direito real de uso, nos termos desta Lei, as ocupações que recaiam sobre áreas:

(...)

§ 2º As terras ocupadas por comunidades quilombolas ou tradicionais que façam uso coletivo da área serão regularizadas de acordo com as normas específicas, aplicando-se-lhes, no que couber, os dispositivos desta Lei (Brasil, 2009).

¹⁵ Art. 2º of Complement Law nº 124, de 3 de January de 2007.

Furthermore, Article 8, item I, determines that if a conflict between local communities and private individuals is identified during the land regularization process, the former shall have priority. It is important to note that this norm considers the concept of local communities adopted in Article 3 of Federal Law No. 11,284 of 2006 (Brazil, 2006), thus encompassing traditional peoples and communities, namely:

Art. 3º Para os fins do disposto nesta Lei, consideram-se:

(...)

X - comunidades locais: populações tradicionais e outros grupos humanos, organizados por gerações sucessivas, com estilo de vida relevante à conservação e à utilização sustentável da diversidade biológica; (...) (Brasil, 2006).

In turn, Federal Decree No. 10,592 of 2020, "regulates Law No. 11,952 of June 25, 2009, to provide for the land regularization of rural areas located on Union lands, within the scope of the Legal Amazon, and on lands of the National Institute of Colonization and Agrarian Reform, through alienation and concession of real right of use of properties" (summary). This norm was amended by Federal Decree No. 11,688 of 2023, especially regarding the composition and competences of the Technical Chamber for Allocation and Land Regularization of Federal Public Rural Lands.

Thus, following the amendments, Federal Decree No. 10,592 of 2020 provided that one of the purposes of said Technical Chamber is to deliberate on the allocation of federal public lands, through a Resolution of its members. The Technical Chamber is coordinated by the Ministry of Agrarian Development and Family Agriculture (MDA - *Ministério do Desenvolvimento Agrário e Agricultura Familiar*) and composed of the public agencies and entities listed in Article 11, § 1.

2.2. National Institute of Colonization and Agrarian Reform (Incra)

Environmentally differentiated settlement projects (*projetos de assentamento ambientalmente diferenciados*) are modalities created in response to the demands of traditional populations¹⁶. Thus, initially, the extractivist settlement project - PE (*projeto de assentamento extrativista*) was created, transformed into an agro-extractivist settlement project (PAE - *projeto de assentamento agroextrativista*) and included in the National Agrarian Reform Plan through INCRA Ordinance No. 268 of 1996, whose use concession should be "under a communal regime," therefore collective. That is, the PAE represented an advance because the State recognized that the standard model of rural worker settlement project was not suitable for traditional peoples and communities.

¹⁶ Normative Instruction No. 136 of November 13, 2023, uses the term *populações tradicionais* (traditional populations) in its Article 3, item I, but the concept is the same as that of *povos e comunidades tradicionais* (traditional peoples and communities) set forth in Federal Decree No. 6,040/2007.

Over time, other modalities were created, and currently, besides the agro-extractivist settlement project (PAE), there are also the sustainable development project (PDS - *projeto de desenvolvimento sustentável*) and the forest settlement project (PAF - *projeto de assentamento florestal*). These modalities are provided for in Article 2 of Normative Instruction No. 129 of December 15, 2022, which provides for the "administrative procedures for the creation by the National Institute of Colonization and Agrarian Reform - Incra of settlement projects and environmentally differentiated settlement projects."

According to the presentation made available by INCRA at the seminar *Marcos Regulatórios e Regularização Fundiária dos Povos e Comunidades Tradicionais no Brasil: Retrospectivas e Desafios*¹⁷ (Regulatory Frameworks and Land Regularization of Traditional Peoples and Communities in Brazil: Retrospectives and Challenges), 408 (four hundred and eight) agroextractivist settlement projects - PAE have been created, with 97% of them located in the northern region and 3% in the northeastern region. Regarding sustainable development projects - PDS, 135 (one hundred and thirty-five) have been created, with 61% of them located in the northern region. Furthermore, 06 (six) forest settlement projects - PAF have been created, all located in the northern region.

The aforementioned regulation provides that the Regional Superintendencies are responsible for initiating the administrative process for the creation of settlement projects on rural public lands under INCRA's management and lists a series of documents that must support it. Therefore, as in the case of a conventional settlement project, the creation of an environmentally differentiated settlement project can arise from a situation where the public authorities verify non-compliance with the social function of property.

Despite the creation of settlement project modalities more suitable to the ways of life of traditional peoples and communities, there have been controversial normative changes. This is the case of Federal Law No. 13,465 of 2017, which amended provisions of various norms on land regularization, among them Federal Law No. 8,629 of 1993, by including § 14 in Article 18, to provide that the ownership title or CDRU cannot be granted to a legal entity. Regarding this change, Monteiro et al. (2019) state:

¹⁷ The Seminar *Marcos Regulatórios e Regularização Fundiária dos Povos e Comunidades Tradicionais no Brasil: Retrospectivas e Desafios* (Regulatory Frameworks and Land Regularization of Traditional Peoples and Communities in Brazil: Retrospectives and Challenges) took place on November 23 and 24, 2023, at the Office of the Attorney General of the Republic (*Procuradoria Geral da República*) in Brasília/DF. The event was jointly organized by the Ministry of Agrarian Development and Family Farming (MDA), the Ministry of the Environment and Climate Change (MMA), the Ministry of Racial Equality (MIR - *Ministério da Igualdade Racial*), the 6th Chamber of Coordination and Review of the Federal Public Ministry (6^o *Câmara de Coordenação e Revisão do Ministério Público Federal*), and the National Council of Traditional Peoples and Communities (CNPCT - *Conselho Nacional de Povos e Comunidades Tradicionais*).

A proibição de titular pessoas jurídicas nos assentamentos, referendada pelo Acórdão nº 625/2018 do Tribunal de Contas da União, faz com que estas comunidades tenham suas formas específicas de organização negadas. Isso estimula os conflitos internos, o desrespeito aos Planos de Uso debatidos coletivamente, levando ao aumento da violência no campo e a negação dos direitos territoriais destas comunidades (Monteiro *et al.*, 2019, p. 57).

That is, community associations, for example, could no longer represent the traditional community in signing the contract for concession of real right of use (CCDRU), creating a certain dispersion regarding community political organization. Furthermore, the possibility of signing the CCDRU under a communal regime was extinguished, and, unlike conventional settlements, ownership titles are not issued subsequently in these cases. Along with this, "in the last ten years over thirty thousand individual contracts have been issued by the federal government in environmentally differentiated settlement projects" (Monteiro *et al.*, 2019, p. 57), factors that reinforce the perception that the State prioritizes individual titling over collective titling, even in environmentally differentiated settlements.

In this sense, Benatti and Silva (2022) report that INCRA issued a series of use concession contracts in environmentally differentiated settlements without consulting the representative entities of traditional communities. The number of contracts issued in the Legal Amazon between 2010 and 2021 would have been as follows: "Pará - 381; Amazonas - 5,991; Acre - 766; Maranhão - 27; Mato Grosso - 1; Amapá - 19" (Benatti and Silva, 2022, p. 93).

According to Monteiro *et al.* (2019), the CDRU is the main instrument used for the land regularization of traditional territories, but it has a precarious character and can be revoked. Comparatively, the recognition of the right to property for Quilombola communities is indicated as the one that would guarantee greater security to the community regarding its territorial right (Monteiro *et al.*, 2019).

Art. 18. A **Reserva Extrativista** é uma área utilizada por **populações extrativistas tradicionais**, cuja subsistência baseia-se no extrativismo e, complementarmente, na agricultura de subsistência e na criação de animais de pequeno porte, e tem como objetivos básicos proteger os meios de vida e a cultura dessas populações, e assegurar o uso sustentável dos recursos naturais da unidade.

§ 1º A Reserva Extrativista é de **domínio público, com uso concedido às populações extrativistas tradicionais** conforme o disposto no art. 23 desta Lei e em regulamentação específica, sendo que as áreas particulares incluídas em seus limites devem ser desapropriadas, de acordo com o que dispõe a lei. (...)

Art. 20. A **Reserva de Desenvolvimento Sustentável** é uma **área natural que abriga populações tradicionais**, cuja existência baseia-se em sistemas sustentáveis de exploração dos recursos naturais, desenvolvidos ao longo de gerações e adaptados às condições ecológicas locais e que desempenham um papel fundamental na proteção da natureza e na manutenção da diversidade biológica. (...)

§ 2º A Reserva de Desenvolvimento Sustentável é de **domínio público, sendo que as áreas particulares incluídas em seus limites devem ser, quando necessário, desapropriadas**, de acordo com o que dispõe a lei.

§ 3º O uso das áreas ocupadas pelas populações tradicionais será regulado de acordo com o disposto no art. 23 desta Lei e em regulamentação específica (...) (Brasil, 2000, grifos meus).

The management of conservation units is carried out by the Chico Mendes Institute for Biodiversity Conservation (ICMBio), linked to the Ministry of the Environment and Climate Change (MMA - *Ministério do Meio Ambiente e Mudança do Clima*)¹⁸, and the main instruments used are the Management Plan (*Plano de Manejo*), the Commitment Agreement (*Termo de Compromisso*), the Contract for Concession of Real Right of Use (CCDRU - *Contrato de Concessão de Direito Real de Uso*), and the Management Agreement (*Acordo de Gestão*) (Rios Paula, 2022, p. 324-326).

The presence of traditional peoples and communities in federal Conservation Units is a concrete and common fact in various states of Brazil (BRASIL/MPF, p. 16, 2014). The issue generates conflicts especially when this presence is permanent, involving the establishment of residence and/or use of natural resources in strictly protected conservation units. In these cases, Article 42 of Federal Law No. 9,985 of 2000 establishes that resident traditional populations must be relocated by public authorities, even if the presence of these social groups predates the creation of the conservation unit.

However, "a set of researches conducted in the most diverse areas of knowledge have demonstrated the viability and interest in protecting and maintaining these peoples in their traditional territories, even when located within Strictly Protected Conservation Units" (Brasil/MPF, 2014, p. 20). This is what a map prepared by ICMBio on the Legal Amazon revealed, as the concentration of protected areas is, for the most part, located in territories occupied by traditional communities (Brasil/MPF, 2014, p. 21).

According to Rios Paula (2022), Technical Information No. 03/2021COGCOT/CGSAM/DISAT/GABIN/ICMBio, dated February 22, 2021, addresses the issue of territorial overlaps and presents the following survey:

Até o momento, conforme dados do levantamento realizado em 2013 e 2014 foram identificados 124 casos de sobreposição entre UC de proteção integral e territórios de povos e comunidades tradicionais. Desse total, 24 envolvem indígenas, 11 quilombolas, 36 comunidades tradicionais e 53 agricultores familiares. (...) Atualmente, encontram-se vigentes 20 (vinte) TC envolvendo indígenas, quilombolas, comunidades tradicionais e

¹⁸ The instruments are governed by the following normative acts: Normative Instruction No. 26 of July 4, 2012 - Establishes guidelines and regulates the procedures for the elaboration, implementation, and monitoring of commitment agreements (*termos de compromisso*) between the Chico Mendes Institute and traditional populations residing in conservation units where their presence is not admitted or is inconsistent with the management instruments. / Normative Instruction No. 29 of September 5, 2012 - Regulates, within the scope of the Chico Mendes Institute, the guidelines, requirements, and administrative procedures for the elaboration and approval of a Management Agreement (*Acordo de Gestão*) in a federal Sustainable Use Conservation Unit with traditional populations. / Normative Instruction No. 7 of December 21, 2017, which establishes guidelines and procedures for the elaboration and revision of management plans for federal nature conservation units.

agricultores familiares que tiveram todo ou parte de seus territórios de vida transformados em unidades de conservação da natureza. A tabela denominada “Termos de Compromisso Vigentes em 2021” (SEI 8447183) contém a relação dos termos de compromisso vigentes, seus respectivos processos administrativos, objetivos e atividades permitidas e restringidas. (ICMBio *apud* Rios Paula, 2022, p. 299).

To address conflicts arising from the overlap between traditional territories and strictly protected conservation units, some solutions have been presented by public agencies and researchers. Among them are de-affectation (*desafetação*), recategorization (*recategorização*), and dual affectation (*dupla afetação*) of the properties where strictly protected conservation units are located, or the removal of populations.

In the same vein is the understanding of the Specialized Federal Prosecutor's Office with ICMBio (*Procuradoria Federal Especializada junto ao ICMBio*), which in LEGAL OPINION N. 00175/2021/CPAR/PFE-ICMBIO/PGF/AGU expressed itself on the need to reconcile the activities of traditional populations with the objectives of strictly protected conservation units. Regarding the measures that can be adopted, partial suppression/partial de-affectation (*supressão parcial/desafetação parcial*), dual affectation, and recategorization were listed (Rios Paula, 2022, p. 323-324).

According to the Opinion, the alteration of the conservation unit's boundaries must be carried out by specific law, "§ 6 of Article 22 of Law No. 9,985 of 2000 does not apply, i.e., it cannot be done by a normative instrument of the same hierarchical level as the one that created the unit" (Rios Paula, 2022, p. 323-324). The same would apply to recategorization, as it signifies a reduction in the environmental protection regime (Rios Paula, 2022, p. 324).

3 FINAL CONSIDERATIONS

This research analyzed the regulations concerning the allocation of public real estate to traditional peoples and communities, with the aim of explaining the procedures carried out by federal public administration in response to social demand. Based on this, the research can contribute to updating the approach to this topic, especially within administrative law.

The results demonstrate that regulations addressing this social demand have been published; therefore, the claims of traditional peoples and communities have been prompting changes in public administration. Given this, it falls upon administrative law doctrines to consider these regulations and the experiences that have been built by public agencies in managing their real estate assets.

It is important to keep in perspective that the possibilities for allocating public real estate to traditional peoples and communities are under construction. Therefore, the actions of SPU, INCRA,

and ICMBio exemplify how federal public administration was acting in the specific context when the research was conducted. In this sense, there are still regulations to be made, such as the regulation of Federal Decree No. 6,040/2007 regarding the establishment of administrative procedures for the land regularization of traditional territories.

Although regulation is necessary for public administration's action, it is worth mentioning that the territorial rights of traditional peoples and communities' conflict with those of other groups. Therefore, conducting an administrative process may not be sufficient to implement what has been regulated. This is verified, for example, in cases where traditional peoples and communities demand the de-affectation (*desafetação*) of properties allocated for the creation of strictly protected conservation units: on one side is the demand for recognition and land regularization of the traditional territory, and on the other, the demand to maintain these spaces allocated for the implementation of environmental policies.

The simplest situations would be those where the traditional territory overlaps with a domain real estate asset (*bem imóvel dominical*), without allocation. However, even then, it is common for other interests to exist regarding these locations, both from the State and from private individuals, a situation that can interfere with the implementation of what the regulations provide.

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**(DE)BOVINIZATION, (DE)SERRANIZATION
AND SOLIDARITY IN THE SIERRAS OF
CORDOBA, ARGENTINA (2000-2020)**

**(DE)BOVINIZAÇÃO, (DE)SERRANIZAÇÃO E
SOLIDARIEDADE NAS SIERRAS DE CÓRDOBA,
ARGENTINA (2000-2020)**

**(DES)BOVINIZACIÓN, (DES)SERRANIZACIÓN Y
SOLIDARIDAD EN LAS SIERRAS DE CÓRDOBA,
ARGENTINA (2000-2020)**

**JOAQUIN ULISES DEON FAVRE¹
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ABSTRACT

What is the situation of the dispersed rural population in the highlands in relation to small-scale livestock production and the advance of real estate, tourism, and quarrying in the departments of Totoral, Punilla, Colón, Calamuchita, and Santa María in the Province of Córdoba? In the territories of the Chaco Serrano morphoclimatic zone, in the eastern portion of the Pampean Highlands, existing territorial structures not only shape the landscape in the reproduction of capital, but also generate social conflicts over food, water, and land, such as those that exist in the Sierras Chicas region, where the depopulation of the highlands through intentional fires, deforestation, and destruction of watersheds is displacing the small farming families who have historically lived there. Through interviews, field surveys, analysis of regulatory frameworks, and journalistic sources, we document here the ongoing (de)serranization. The deterritorialization of mountain life and traditional family cattle farming practices is increasingly occurring in the face of urban and real estate development, large-scale quarrying,

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recreational/tourist activities, and initiatives that prioritize environmental and tourism services through depopulated areas, thus undermining the habitat and agricultural practices of the mountains. This deterritorialization process is leading to resistance and resilience in the mountains, sustained by food security and urban-rural solidarity against land grabbing, the expansion of mining and real estate development, which have serious consequences for ecosystems, local economies, and water availability in watersheds.

Keywords: (De)bovinization. Hills. Territory.

RESUMO

Qual é a situação da população rural dispersa nas terras altas em relação à pecuária de pequena escala e ao avanço do mercado imobiliário, do turismo e da extração mineral nos departamentos de Totoral, Punilla, Colón, Calamuchita e Santa María, na província de Córdoba? Nos territórios da zona morfoclimática do Chaco Serrano, na porção leste das Terras Altas Pampeanas, as estruturas territoriais existentes não apenas moldam a paisagem na reprodução do capital, mas também geram conflitos sociais por alimentos, água e terra, como os que existem na região das Sierras Chicas, onde o despovoamento das terras altas por meio de queimadas controladas, desmatamento e destruição de bacias hidrográficas está deslocando as pequenas famílias de agricultores que historicamente ali viviam. Por meio de entrevistas, pesquisas de campo, análise de marcos regulatórios e fontes jornalísticas, documentamos aqui a (des)serranização em curso. A desterritorialização da vida nas montanhas e das práticas tradicionais de criação de gado familiar ocorre cada vez mais em resposta ao desenvolvimento urbano e imobiliário, à extração mineral em larga escala, às atividades recreativas/turísticas e às iniciativas que priorizam serviços ambientais e turísticos em áreas despovoadas, comprometendo, assim, o habitat e as práticas agrícolas das montanhas. Esse processo de desterritorialização gera resistência e resiliência nas regiões montanhosas, sustentadas pela segurança alimentar e pela solidariedade urbano-rural contra a grilagem de terras, a expansão da mineração e o desenvolvimento imobiliário, que têm sérias consequências para os ecossistemas, as economias locais e a disponibilidade de água nas bacias hidrográficas.

Palavras-chave: (De)bovinização, Serras. Colinas. Território.

RESUMEN

¿Cuál es el estado de la población rural serrana dispersa en relación a la pequeña producción ganadera serrana y ante el avance inmobiliario, turístico y minero de canteras en los departamentos Totoral, Punilla, Colón, Calamuchita y Santa María en la Provincia de Córdoba? En los territorios del dominio morfoclimático del Chaco Serrano, en la porción oriental de las Serranías Pampeanas, las territorialidades presentes no sólo son modeladoras del paisaje en la reproducción del capital, sino también las generadoras de conflictos sociales por los alimentos, el agua y la tierra, como los que existen en la región de las Sierras Chicas donde el despoblamiento serrano a fuerza de incendios intencionales, desmontes y destrucción de cuencas hídricas está desterritorializando a las pequeñas familias agroganaderas que históricamente allí habitan. Mediante entrevistas, relevamientos a campo, análisis de marcos normativos y fuentes periodísticas documentamos aquí la (des)serranización en curso. Una desterritorialización de la vida serrana y de las prácticas ganaderas bovinas familiares cada vez mayor ante el avance urbano-inmobiliario, la megaminería de canteras, las actividades recreativas/turísticas y aquellas que tienden al cobro de planes de conservación ambiental priorizando los servicios ambientales y turísticos con campos despoblados, en detrimento del hábitat y las

prácticas agro culturales serranas. Un proceso desterritorializador que está conllevando resistencias y re-existencias serranas sostenidas por la alimentación y la solidaridad urbano-rural contra el acaparamiento de la tierra, el avance extractivista minero y del negocio inmobiliario con graves consecuencias en los ecosistemas, en las economías locales y en los daños a la disponibilidad de agua en las cuencas hídricas.

Palabras clave: (Des)bovinización. Sierras. Territorio.

INTRODUCTION

The transfer of thousands of heads of cattle between the 1980s and 2000s to the Sierras of Córdoba - first to the Sierras Cordobesas and later, from the central area (Sierras Chicas, Punilla, Paravachasca, and Calamuchita) to the Southern Sierras of Córdoba, San Luis, Santiago del Estero, and Catamarca during the 2010s - was termed the process of *bovinization* by Hocsman and Preda (2006). This process transformed local productive dynamics: families that once owned only dozens of animals became cattle raisers integrated into market circuits, in parallel with the soybean expansion and agriculturalization of Argentina's Pampas and extrapampas regions. Bovinization caused severe damage to local grasslands and forests (Scaglia et al., 2021). Although many species of native forest ecosystems - such as the Gran Chaco and Espinal and their mountainous ecotones - had developed symbiotic relations with low-scale family cattle ranching (no more than 100 cattle and/or horses on a minimum of 200 hectares), the impacts of bovinization intensified due to sporadic wildfires (Argibay; Reninson, 2018).

Two of the interviewees expressed this clearly, stating:

los incendios a son cada vez más seguidos y es una pena porque no son para que reverdezca la pastura para los animales o cosas así, son intencionales y lo que buscan es destruir el monte, sacar a todos los que vivimos acá hace años y hacer negocios entre ellos (como explica G. D. en una entrevista. 15-01-2024).

Although wildfires had been a recurring practice for decades, families living in the mountains remained there due to their direct relationship with mountain watersheds and extensive, community-based cattle ranching in forested areas. They also stayed because they worked as drovers, field caretakers, rural teachers, small farmers, bricklayers, slaughterers, fencing workers, and stone masons. This was possible thanks to an extensive network of local slaughterhouses and meat-processing plants (municipal or small-town butcheries) that facilitated short commercialization circuits, which functioned until the 1990s, when these facilities began to close and livestock started to be sold live to other provinces.

However, wildfires and floods following deforestation - or the diversion of upstream waterways to supply tourist complexes and gated communities - have increasingly influenced the depopulation of family livestock establishments. To the unfavorable conditions produced by privatization and closure of local slaughterhouses, the meager prices paid by transporters and buyers of live cattle for large multinational or national meat-processing companies located in medium and large cities (such as Córdoba, Alta Gracia, Jesús María, or Villa María), a territorial problem was added: the impacts of intentional wildfires, which began to undermine cattle breeding, watering, bathing areas, and family habitats. Indeed, the proliferation of intentional fires that kill animals, burn pastures, destroy watersheds and water sources, and threaten rural mountain life has become a weapon for the eviction of families engaged in agricultural production and food processing of animal and plant origin in the Sierras.

These territorial impacts have also transformed watersheds into real “slides,” where rainfall washes everything down eroded slopes after fires. What is destroyed by intentional fires is followed by machinery of dispossession - such as bulldozers, motorsport circuits (rally races, quad bikes, enduro), and groups of technicians who advise families to “restore” the forest without inhabiting it, charging fees for soil-management plans and environmental services - thus creating new tools of dispossession of the means and ways of life of mountain families (Deon, 2022; Díaz; Deon, 2025).

As early as the 17th and 18th centuries, Dobrizhofer (1783) had already noted the severe impact of livestock-related fires on colonial and Jesuit estates. More recently, Martin De Moussy (1864) and Alfred Stelzner (1890) also denounced these situations, while simultaneously mapping and meticulously describing soils and forests to facilitate exploitation for timber, firewood, and mining to support railway, construction, and port infrastructure development between the 19th century and the first half of the 20th century (Wedovoy, 1994). In these and many other works - such as those examined in Rosenzvaig’s (1997) historicization of the Gran Chaco ecological universe - authors insisted on debating whether to maintain or abandon livestock activities, considering them incompatible with the economic activities expected to expand in the region: mining and urbanization (touristic and residential/commercial).

Although mining activity peaked in the Sierras Chicas until the 1970s (Gaido et al., 2015), both mining and family cattle management consolidated a hybrid territory in which livestock and mining production coexisted for nearly 80 years (Deon, 2021). From the 1980s onward, however, intentional forest fires enabled new large-scale quarry mining and, later, urbanization through gated communities and tourist complexes, which gradually displaced livestock from approximately 180,000 hectares of mountain land and eliminated about 130 agricultural establishments in just ten years. This

process not only displaced cattle but also producer families and community activities (festivities, communal slaughtering, rural schools and parishes closed) and even entire villages such as Ischilín, Copacabana, Villa Colimba, Pampa de Olaen, and San Fernando.

Indeed, concentrated economic power groups take advantage of declining land values after fires or floods, violently occupying or purchasing hundreds or thousands of mountain hectares at very low prices for recreational, urban, touristic, holistic, or eco-village development. In doing so, they pressure mountain inhabitants to transform their livestock-based agro-cultural practices (Quirós, 2022), leading to their displacement from rural areas to nearby medium-sized urban centers (Sili, 2016; 2018).

Although these processes of territorialization and deterritorialization have unfolded for decades, the period from 2000 to 2020 has revealed the emergence of collectives organizing to resist by sharing autonomously produced food and forming consumer-producer networks, fairs, and communal kitchens (Balmaceda; Deon, 2021). These foods circulate through networks sustained by work with land, animals, crops, harvesting fruits, herbs, mushrooms, and other artisanal mountain products.

Among these foods, meat from family producers - shared during household slaughtering - brings people together in barbecues, stews, and empanadas prepared during *juntadas*³, community gatherings and festivities. These events not only involve cooking food but also sharing oral histories transformed into poems, songs, and narratives, along with recipes, water-management practices, and proposals for collective work in defense of the forest. Such festive and harmonious encounters are essential to portray in order to situate mountain territoriality as constructed through communal gatherings.

Far from romanticized, these gatherings are embedded in intense struggles of resistance in a region where the process is no longer one of bovinization. In the Sierras Chicas - a territory of about 500,000 hectares across the departments of Santa María, Calamuchita, Colón, eastern Punilla, and southern Totoral - the National Service for Agrifood Health and Quality (SENASA), through data from the 2018 National Agricultural Census (CNA 2018), has revealed an accelerated process we term *debovinization*. Quantitatively, while these departments held approximately 340,314 head of cattle in 2009, by 2018 this number had fallen to 266,994 (CNA 2018).

³ “Juntada” is a regional term commonly used in the mountain regions (*Serras*) to designate a gathering in which food is shared, guitar playing takes place, and conversations occur among friends, family members, and acquaintances. In these *juntadas*, collective decisions are also often made, such as organizing activities that may lead to a larger festivity, a popular assembly, or a social mobilization (Deon, 2022).

These finding challenges earlier studies that highlighted livestock displacement from core Pampas areas to extrapampas regions due to soybean expansion (Hocsman; Preda, 2006). The 2018 Census shows a loss of 73,320 heads of livestock (cattle, goats, horses, sheep) in this extrapampas region. It also reveals, as elsewhere in the country, increasing land concentration: agricultural establishments declined from 2,678 in 2008 to 1,847 in 2018 (Villulla et al., 2019). Of these, only 1,033 reported cattle ownership in the latter census, whereas all establishments had reported cattle previously. This coincides with accelerated rural depopulation. Table 1 summarizes estimated rural dispersed population losses based on the 2010 and 2022 National Population Censuses.

Table 1. Dispersed rural population in departments of the Sierras Chicas belt, 2010 and 2022.

Department	Dispersed rural population 2010	Estimated dispersed rural population 2022
Calamuchita*	2249	356
Colón+	1500	194
Punilla*	3422	687
Santa María*+	981	382
Totoral+	345	169

*Includes dispersed rural population in other mountain ranges such as Achala and Sierras Grandes.

+Includes dispersed rural population in piedmont and plains areas.

Source: Authors' elaboration based on data from the Provincial Directorate of Statistics and Censuses and INDEC (National Population Censuses 2010 and 2022).

The most striking case is Colón Department, where the rural population declined from 1,500 to 194 inhabitants, leaving 121 uninhabited houses in mountain areas, according to municipal and communal surveys conducted for the 2018 Agricultural Census and the 2022 Population Census. Here, land concentration intensified sharply: properties larger than 80 hectares decreased from 127 owners in 2010 to 36 owners in 2022 (IDECOR; Provincial Cadastre). Although data for other departments are unavailable, agricultural establishments declined intercensally by 30 to 56 percent.

These findings raise multiple questions: What explains these population and livestock reductions? How are they related to land and watershed concentration? What territorial impacts does debovinization entail - not only as a livestock process but also as an agrocltural deterritorialization?

While these questions are central, it is equally important to recognize the productive strategies sustaining agricultural establishments and the actions of populations contributing to agrocltural life in mountain landscapes.

Accordingly, we propose a methodology based on genealogical analysis using primary and secondary data, combined with direct participation in assemblies and post-fire solidarity actions, to understand rural development models and metropolitan urban expansion in this portion of the Gran

Chaco Sierras - a mountain territory that is also metropolitan, located within 100 km of the city of Córdoba.

We will employ journalistic inquiry, interviews, and census data to address the question: *What processes of capital territorialization and of re-existence/reterritorialization occur in the Pampas Sierras related to family livestock production?* We focus on the Sierras Chicas in dialogue with previously studied cases from other Córdoba mountain areas. This article expands on doctoral research conducted within the Doctorate in Agrarian Social Studies (CEA-UNC), including the dissertations *Sierras Chicas: Conflicts over Water and Territorial Planning* (directed by Dr. Luis Daniel Hocsman, co-directed by Dr. Omar Arach) and *Emergence of Food-Nutritional Autonomies in Sierras Chicas, Córdoba* (directed by Dr. Daniela Martina, co-directed by Dr. Omar Felipe Giraldo).

1 MORPHOCLIMATIC TERRITORIAL DOMAINS OF AB'SÁBER AND THE GRAN CHACO

The vast Sierras Pampeanas, located west of the Andes Cordillera, east of the Chaco-Pampean Plain and Mesopotamia, south of the Gran Chaco, and north of the Patagonian Plateau, constitute - together with the Andes - the country's main area of water recharge. From this region originate rivers and streams that form part of arheic, endorheic, and exorheic basins, replenishing aquifers in the plains and feeding major river systems such as the Paraná, the Salado (in Buenos Aires), the Dulce River, the Desaguadero, and lagoons such as the Mar de Ansenúza and the Pampas lagoon system.

Despite its arid and semi-arid conditions, this region functions as a true hydrological spring, where streams and rivers that sustain Argentina's main water basins originate. If Brazil's Cerrado region is considered the country's "water box" (*Caixa d'água do Brasil*) (Porto-Gonçalves, 2019, p. 32), the Sierras Pampeanas - together with the Andes - constitute Argentina's water box. From this territory flow rivers toward the Cuyo region, such as the Desaguadero; toward the central-southern region, rivers such as the Chocancharava and the Ctlamochita, which merge into the Carcarañá and continue eastward to the Paraná; while others, such as the Popopis, feed the extensive lagoon system of southeastern Córdoba Province and southern Santa Fe. The Paraná is also nourished by the Salado River (north), the Bermejo, and all waterways originating in the vast Chaco-Pampean Plain. Rivers from the central-northern Sierras feed the large endorheic basin of the Salinas Grandes and Ambargasta, as well as the Mar de Ansenúza system, supplied by rivers such as the Suquía, Xanaes, Carnero, Jesús María, and, further north, the Dulce. Finally, from this region - together with tributaries from the Andes - originate the Pilcomayo River and other rivers draining into the endorheic and Paraná basins

of the Gran Chaco. This extensive hydrological territory has enabled, for thousands of years, the development of diverse human agricultural and livestock practices.

Both Giberti (1961) and Reca and Frogone (1982) characterized the history of Argentine livestock production and emphasized the importance of geographical characteristics in the gradual expansion and industrialization of the beef agro-food complex. Their works highlight that the Pampas Plain and its “productive core” (between the Salado and Paraná rivers), followed by Mesopotamia (between the Paraná and Uruguay rivers), and later the Chaco Plain, were the territories most suitable for the development of cattle ranching. These areas encompass multiple morphoclimatic domains that enabled the territorialization, development, and long-term maintenance of livestock production as a central economic practice between the 17th and 20th centuries.

However, these morphoclimatic domains were not the only ones where livestock production developed. In territories where life is shaped by the convergence of diverse characteristics - soil, water availability, solar exposure, floristic and faunal diversity, and relief (Ab’Sáber, 1977) - other ways of inhabiting and working with livestock emerged. One such space is the mountainous regions. This extensive territory, formed by tectonic folding over 200 million years ago, became - through erosion and watercourses - a headwater area of river basins, a zone of biome convergence (given its central position between plains and valleys), and a supplier of minerals to those plains and valleys through wind and water action. For more than 800 years, livestock production in these areas followed a distinct trajectory from that of the Pampas and, indeed, served as a foundation for the social and territorial organization of Pampas livestock production. Llama and guanaco herding - and, in the Andes, vicuña and alpaca herding - developed within these morphoclimatic domains characterized by altitudinal variation, vegetation diversity, seasonal water availability, temperature fluctuations, and rocky terrains, enabling forms of habitation that would not have been possible without livestock production: first with camelids, later with equines and mules, and more recently with cattle (De Moussy, 1864; Montes, 1950; Serrano, 1945; Pastor et al., 2012).

Mountain morphoclimatic domains thus shaped a unique agro-cultural landscape. Alongside natural mountain landscapes, geographic spaces and ways of life exclusive to this territory emerged. Populations built corrals, dwellings, paths, and roads to connect their collective livestock practices, using animals native to the ecoregion (such as llamas and guanacos), which were later rapidly transformed into bovine and equine practices following the swift adaptation of livestock species introduced during colonial times from Europe - species already present in other morphoclimatic domains such as the Pampas or Littoral regions.

Dobrizhoffer (1784), Montes (1950), Valdemarca (2003), Reyna (2023), among many others, describe how, in the Sierras Pampeanas or the Serrano Chaco, cattle ranching since the 18th century transformed landscapes and consolidated new territorialities. In the Sierras Chicas, stone enclosures (*pircados*),

some spiral-shaped - indicating communal camelid corrals - and straight-sided corrals - reflecting coloniality, private property formation, and European management practices - are now part of the heritage of Indigenous and Afro-descendant communities, municipalities, communes, and the provincial state. These structures are increasingly recognized for their cultural value and for their continued use by mountain populations up to the present (Deon et al., 2022). Livestock territoriality has been both a component of cultural landscape construction and, today, a collective tool for territorial defense against new advances of capital seeking to deterritorialize livestock production, appropriate watersheds, and destroy heritage sites.

In Argentina, the Sierras Pampeanas (Ramos, 1999) represent one of the main territories whose morphoclimatic domains are defined not only by geomorphological and altitudinal features - where climates and multiple forms of life from other regions converge - but also by endemic species specific to the region and its ecotones. The presence of grasslands and abundant watercourses made mountain landscapes favorable for cattle, equine, and mule livestock production since the 17th century, a process of bovinization similarly experienced in the Tandilia and Ventania ranges in present-day Buenos Aires Province.

The region's morphoclimatic characteristics enabled the construction of high-altitude shelters, drovers' outposts, corrals, paths for herding thousands of animals, stone fences, milling spaces, irrigation channels, communal canals, slaughterhouses, and settlement networks that energized social and economic exchanges between the Sierras and other Argentine regions for centuries through livestock production.

Family livestock territoriality emerged from subsistence needs and is closely linked to food production through the rational use of fluctuating watershed dynamics, forest resources, introduced fruits cultivated in gardens and orchards, and recipes shared ancestrally and interculturally, as well as processions and dances celebrated within families and among friends in mountain hamlets. When family livestock production became a livelihood enabling the subsistence and reproduction of family productive units, it came to be organized - over the past two centuries - around the crucial roles of *puesteras*, *puesteros*, herders, and livestock caretakers. In the 19th and early 20th centuries, this system primarily benefited large landowners through the sale of thousands of animals - often hardy creole breeds adapted to mountain terrain - later sold live through short commercialization circuits serving the meat industry, largely oriented toward local production and consumption via families working as butchers, processors, slaughterers, and traders. This mixed livestock system persists today, often combining cattle with pigs, goats, chickens (for eggs and meat), and sheep (for wool, hides, and meat).

As observed by Silvetti (2012) in Cruz del Eje, mountain livestock grazing is extensive, relying on forage provided by shrublands and herbaceous vegetation of native forests. Extractivist livestock territoriality and mule-based transport were central to the *de-ecologization* of Indigenous communities in the Gran Chaco from the 17th to the early 20th century, as these communities ceased symbiotic living with the forest and

became subjected to fires, displacement, and incorporation as herders and caretakers on Jesuit estates and later land grants or ranches (Rosenzvaig, 1997).

Thus, bovinization predates the 1990s–2000s timeline proposed by Hocsman and Preda (2006). Its role in dispossession and land concentration can be traced to the advance of capitalism in extrapampas territories with the emergence of colonial estates and territorial disputes with Indigenous communities. Agrarian capitalism diversified its territoriality following the creation of the Argentine State and the Province of Córdoba, intensifying exploitation of mountain workers with the arrival of the railway in the late 19th century and driving population pluriactivity. Labor shifted from mule livestock production - largely replaced by railways, roads, and trucks - to forest extraction in the Gran Chaco and Serrano Chaco (logging molle, tala, algarrobo, and quebracho trees), and to mining expansion (lime kilns and marble quarries), resulting in the proletarianization of family labor formerly dedicated to livestock and now diversified into mining, logging, construction, and other increasingly urban trades.

As Rosa Arguello recounts:

las mujeres quedamos cuidando los animales cuando los hombres se iban a las canteras o al obraje como hacheros. Y nosotras carneábamos, ordeñábamos, cuidábamos las hijas, los hijos hacíamos las tareas del hogar, el queso, la leche, juntábamos yuyos, manteníamos la quinta, llevábamos carne y quesos al pueblo y lo vendíamos, como hacen hoy algunas pocas familias también. Las niñas y niños trabajaban en las verduleras (carros tirados por caballos) que pasaban comprando productos a nosotras y que los llevaban al mercado en Córdoba o en los centros turísticos para vender allí frutas, verduras, salames, quesos, aromáticas, mermeladas y demás. Los niños y niñas también trabajaban yendo a acomodar cajones y como vendedores. El oficio de los comerciantes móviles aún persiste tal y como lo hacía Don Chuni, Don Nando, Chacho Ochoa, El Trompa, Doña María y tantos otros con sus carros o rastrojeros que buscaban alimentos y traían otros para truequear (intercambiar) o vender”. (Entrevista del 17-01-2017, cursiva aclarada por los autores).

As Silvetti (2021) notes, livestock-based domestic products were commodified within a rich social exchange sustained by growing rural–urban pluriactivity. Unlike other extrapampas regions, a livestock–mining–urban landscape gradually emerged in the Sierras from the 19th century onward, giving rise to a bovinizing livestock territoriality that would later resist mining and urban expansion.

This territoriality - built of stone, adobe, and wooden posts - became a permanent landscape feature of morphoclimatic domains shaped by cattle and mule introduction since the 18th century and, more recently, home to thousands of dispersed rural families inhabiting the “mother mountain.” The first half of the 20th century was characterized by mountain territorial domains based on livestock production, with intensified cattle ranching and land concentration, yet under peasant control through mountain outposts and hamlets. This system relied on pluriactivity and commercial connectivity sustained by travelers in pickup trucks and horse-

drawn carts, linking dispersed rural families with urban centers and circulating food and household goods across regions.

2 LIVESTOCK HUSBANDRY IN KAMCHIRA

The Sierras Pampeanas region is a territory where bovine, equine, and mule livestock management has existed for at least 450 years. The livestock activity that still persists today developed in territories where pre-Columbian camelid herding shaped forms of encounter and collective labor among Indigenous peoples for roughly 800 years. From these livestock practices, the mountain landscape (*paisaje serrano*) emerged. The accounts of Florian Pauke (1749–1767), Martin Dobrizhoffer (1764), Martin De Moussy (1864), and Furlog (1935) constitute important records of observers who entered the territories of mountain livestock communities and described the presence of native animals that were part of communal capture practices and enclosures for the use of wool, hides, and meat. They also documented the violence and dispossession that, in colonial times, occurred through fires and massacres. These processes have been studied in the Sierras of Belén and Andalgalá by Jimenez-Escobar and Martínez (2019) and Raffino et al. (2015), who, drawing on biology and cultural anthropology, have shown that livestock management for transport purposes in mountainous and Andean areas enabled communication among peoples in Shinkal de Quimvil, Mutquin, Ancasti, and other mountainous territories, including those in present-day Córdoba. Clearly, when discussing wool, one is not speaking of cattle - still less of sheep - but of guanacos and llamas: American camelids that were widely present in Córdoba's Sierras, taking advantage of grasslands and the tender shoots of certain mountain vegetation. Today, these camelids remain only in piedmont areas of the Guasapampa ranges and the Salinas Grandes and Ambargasta in Córdoba Province; however, until 1860 they permanently inhabited the Sierras Chicas, Punilla, and Calamuchita (De Moussy, 1864).

Their presence was affected first by hunting, fires, and *pircados* (stone enclosures), and later by wire fencing. The extinction of these animals across a territory of roughly 300,000 km² occurred alongside the genocide and displacement of many Indigenous peoples - Henia-Camiare, Sanavirones, Rankulches, and mountain Diaguitas - who continue to struggle for their territory (Reyna, 2021). Many Indigenous inhabitants became *puesteros* (ranch outpost workers) on mountain estates or moved into sectors of the period's cities, such as La Toma (Palladino, 2018), Quisquisacate, Saldán, or Villa Allende in the city of Córdoba, where livestock keeping was practically restricted to the margins of the Suquía River or other tributary waterways.

The arrival of enslaved Africans (from Angola and the Congo), brought by ranch owners from Buenos Aires to Córdoba, Santiago del Estero, and Catamarca, altered mountain dynamics by gradually inscribing the Serranías with the practices they were compelled to perform: building stone enclosures to delimit land. The period from the 17th to the 19th centuries placed these enslaved workers at the center, as they were responsible for building and provisioning estates with food, alongside people from Chaco Indigenous communities (Mocovíes, Lules, Vilelas, Quilmes, Mbya, Sanavirones) who were displaced and brought to the Sierras with cattle to care for it and support its reproduction for trade (Celton, 1991; Rosenzvaig, 1997).

Mestizos and *criollos* were in charge of livestock management. The transport of animals in droves or groups of 500 or 1,000 cattle or horses - and, until the late 19th century, mules - was carried out by *arrieros* (drovers) who traveled dozens of kilometers daily between mountain outposts and hamlets. The animals' destination was hide production and shipment to the port of Buenos Aires, or provisioning of caravans toward the Littoral, Cuyo, or Upper Peru (Valdemarca, 2003; Tell, 2008).

Later, with the cadastral surveying of lands for provincial and national states, the eastern slope of the Sierras Pampeanas - closest to the Chaco-Pampean Plain - received expeditioners who came to describe its resources for exploitation. A new vector of development and dispossession imposed itself upon the region: the railway and industrial mining in lime kilns and quarries.

Soon, cadastral classifications baptized the mountain range as the Sierras of Lime, Marble, and Granite, and alongside them appeared other machines: gigantic kilns not meant for baking bread, but for producing lime and cement. At the beginning of the 20th century, livestock activity began to be restricted in certain towns that, together with mining, experienced another shift in their territorial, landscape, and morphoclimatic dynamics: tourism, reservoirs, forestry plantations with exotic species, and urban centers for curing diseases and pandemics originating in major cities (Buenos Aires, Rosario, Rafaela, Santa Fe, and Córdoba sought in the Sierras a cure for tuberculosis, malaria, meningitis, syphilis, and leprosy). Watercourses progressively saw a reduction in available water due to the increasing construction of reservoirs, dams, and intake structures to supply the lime and cement industry and to provide water to urban centers - generating severe impacts on family-based mountain livestock practices.

Gradually, livestock establishments turned into "European" landscapes, with conifer plantations, enormous mansions, and paddle and golf courts, while livestock suddenly "dirtied" the scene. From the 1940s onward, a process began in which agricultural establishments located near now-impounded waterways were lost, and, in parallel, urban growth flourished, consolidating tourist centers such as those that today dominate the valleys of the Sierras Chicas, Punilla, Paravachasca,

and Calamuchita. Here began what we have called *des-serranización*: the loss of mountain ecosystems, the leveling of hills through mega-quarrying, and rural depopulation - driven by an abrupt territorial and landscape transformation, simultaneously affecting flora and fauna and the built environment, propelled by mining companies, urban and tourism developers, and groups that speculate on environmental conservation while promoting “ecological” urbanizations without state authorization.

Comunas and municipalities emerged that enabled the hunting of native animals (peccaries, brocket deer, armadillos, birds), the capture of wild animals as pets (turtles, birds, certain reptiles), while horses, loose cattle, backyard chicken keeping, and livestock raising in urban areas were prohibited and “ordered” through a specific governmental body: the Instituto Superior de Agricultura. This process persisted until the 1990s with the arrival of gated communities (*barrios cerrados*) (Balmaceda; Deon, 2021).

Livestock came to symbolize rusticity or rebellion and was “useful” only as food purchased at the butcher shop. As Mereco Luna states:

entre comienzos 1950 y hoy los animales sólo llegan a las ciudades serranas en fiestas patrias o procesiones de patronas, vírgenes o santos. El resto del año queda relegada al monte. Sierra adentro, la gente no ve una vaca o un caballo ni ahí en la ciudad fuera de las fiestas patronales o de los festivales. Sino viaja sierra adentro o si no se le escapó alguien desde algún barrio popular, esos animales no los ves, y pensá que antes en el Polideportivo o la Plaza de Unquillo o Villa Allende tenías barrales y postes para atar el caballo, la mula o el burro al lado del banco donde te sentabas a charlas con amigos o podías ir a la costanera y llevar a pastar el animal ahí u ofrecerlo para pasear y ganarte algo de plata, pero ahora no te lo saca la policía y la municipalidad te cobra un multón. Pocos pueblos ofrecen ese servicio o dejan que la gente lleve a pastar sus animales al río. También es entendible el riesgo (Entrevista 16-01-2024).

From the 1980s onward, livestock began a steep decline as a central economic practice in the mountain range: municipal slaughterhouses and those of local small and medium enterprises (SMEs) closed. Horses were allowed only in summer for tourism purposes, and owners had to register as alternative tourism providers. More recently, such activities can be carried out only at attractive points far from town centers, and service providers must hold specific training and guide certification under provincial Law 8801 and local regulations. Thus, livestock gradually lost territorial presence in mountain life. At the same time, the population also lost territorial rootedness due to fires that, in the 1980s, burned 420,000 hectares (many of them more than five times). Watersheds suffered contamination from dead cattle in watercourses; wells and watering points were covered in ash; hoses were destroyed; corrals were lost; and, tragically, not only 89 dispersed rural homes were partially or totally affected, but also - according to journalistic reports of the time - 13 people died while

attempting, in different fires, to contain flames that threatened their livelihoods. These events increased male pluriactivity and heightened women's rural responsibilities, not only in caring for children but also for an increasingly aged rural population confronting both the right to remain and the right to migrate of younger family members seeking better living conditions and employment in the city. This dynamic contributed to women over 40 becoming the predominant dispersed rural population in the national censuses of 1980 and 1991, representing 56% and 61%, respectively. These women endured multiple forms of violence aimed at forcing them to definitively abandon the Sierras and their lands, under pressure from mining and real estate entrepreneurs and governmental agents who, through the 1986 Provincial Constitution, compelled mountain communes and municipalities to shrink their jurisdictions, limiting them to service-provision areas and excluding rural lands and their ties to dispersed populations. Rural schools closed; roads and waterways ceased to be maintained; and health, water supply, and public support for rural mountain areas declined - facilitating extractivist neoliberal urban and mining expansion in a new stage of *des-serranización*, with *desbovinización* at the center of the territorial dispossession of those who inhabit and work in Córdoba's Sierras.

2.1 The gradual deterritorialization of mountain livestock farming

Until the 1980s, every mountain town and city had one or more slaughterhouses and meatpacking plants - municipal or locally owned SMEs (Fratini, 2013; Deon et al., 2021) - that supplied local meat consumption. Whereas in 1980 the Punilla and Colón departments had 47 municipal and local SME slaughterhouses/meatpackers to supply approximately 135,000 inhabitants, by 1995 only 10 remained, and by 2020 only 3 supplied 380,000 inhabitants. This does not mean that people eat less beef; rather, capital concentration in Argentina's beef agro-food complex has increased nationwide and, indeed, globally (Villulla et al., 2019). While production and consumption were previously 100% local, today approximately 95% of beef is processed by transnational meatpackers located more than 200 km from the place of consumption, seriously affecting livestock production and local trade in these basic goods. This dynamic has also contributed to rising beef prices and, coupled with inflation and the political-economic crises of the last two decades, consumption has declined, with annual meat intake increasingly replaced by pork and poultry, which are produced closer to consumption centers and at lower cost.

The deterritorialization of mountain livestock has intensified not only since the arrival of the railway or the closure of slaughterhouses, but especially since the 1990s. In that decade, neoliberal

policies reduced the territorial power of local governments over rural spaces and facilitated the arrival of mega-quarrying and, subsequently, real estate and tourism ventures. Constitutional and provincial reforms that stripped municipalities and communes - previously exercising jurisdiction over wide territories - reduced their authority to service-provision areas alone, leaving rural lands exposed to capital.

In this way, territorial transformations were consolidated that relegated livestock to recreational-tourism uses or deterritorialized it as a family - and even community - agro-cultural practice. Livestock became an activity used to assert possession over large, uncadastrated areas or over properties whose livestock-keeping families, for various reasons, ceased to inhabit the land and either sold it or had it occupied by concentrated power groups who introduced cattle and employed non-resident, pluriactive workers - paid very low wages - to care for the herds in their spare time.

On one side, this process was driven by concentrated power groups acting territorially through intentional fires (Deon, 2022). On another, there was a growing commodification of certain popular festivities, which ceased to be spaces of gathering where families sold food and celebrated. In parallel, the purchase of meat and dairy derivatives became concentrated in multinational companies that imposed sanitary and legal restrictions on family producers, who had relied on selling food products at festivals, national celebrations, and popular gastronomic events - thus stripping them of economic power. This outcome was reinforced by another measure that harmed family livestock production: prohibiting farm animals in peri-urban areas and closing local municipal markets where families that slaughtered animals could sell or exchange cuts of meat, preserved foods, and charcuterie.

Consequently, territorial and population dynamics associated with family livestock are losing their spatialities due to continuous urban expansion and the gradual absorption of rural spaces (Sánchez, 2016; Valdez, 2013) and their agro-cultural practices. This phenomenon is driven by new patterns of urban growth, where real estate business advances through dispossession and severe environmental impacts via deforestation and the construction of landscapes imported from elsewhere, with downstream effects on watersheds. The “Miami-ization” and “European-ization” of landscape and leisure have negatively impacted watersheds, native forests, and mountain agro-cultural dynamics. Livestock has increasingly been confined to feedlots or corral-based systems, dependent on introduced species associated with these processes of “Europeanization” and “Miami-ization,” contributing to the spread of exotic landscapes. In response, a form of hardline environmental conservationism - combined with an ideal of uninhabited mountain ranges - pressures for the deterritorialization of family livestock and of those who inhabit the Sierras.

We thus witness a new set of territorial and morphoclimatic dynamics under construction, in which livestock no longer holds a central role and instead suffers deterritorialization amid fires, floods, and increasingly prolonged droughts, driven by altered hydrological regimes resulting from native forest loss and the uncontrolled consumption of water from watercourses and underground natural reservoirs.

For more than 300 years, livestock (first mules, then equines, and more recently cattle) has been the agrocultural practice that constructed the geographic and geomorphological dynamics shaping the mountain landscape of the Sierras Pampeanas in present-day Córdoba Province (Giberti, 1961; Arceo, 2017). Yet today, in the specific case of the urban–mining process unfolding in the Colón, Totoral, Punilla, Santa María, and Calamuchita departments - and expanding into San Alberto and San Javier in Traslasierra (Quirós, 2021; 2022) - mountain livestock is not necessarily the threat to mountain territories, as those who sought its deterritorialization in earlier centuries claimed, nor as current detractors suggest when invoking conservationist and real estate discourses to expel those who inhabit and work in the Sierras.

Accordingly, *des-serranización* has met with growing resistance since the 1980s, and more strongly since the 1990s, through neighborhood assemblies and collectives such as the Association for the Protection of the Mountain Environment, rural neighborhood councils, and new communes that have emerged or been strengthened across the Sierras (El Manzano, Cerro Azul, Amancay, Cabana, Calmayo, among others). In this way, communal and municipal hydrological and natural reserves have been promoted to gradually recover mountain territoriality in the watersheds that supply settlements with water (Páez et al., 2017).

Fortunately, mountain livestock and families who practice it still exist. But how is this re-existence sustained?

3 CARNEADAS, FERIAS, PEÑAS, CARRERAS CUADRERAS, THE JUNTADAS THAT SUSTAIN SERRANO LIFE

We have called it *family-based serrano livestock raising* throughout this paper because, across the entire Sierras Chicas region, only about 16 establishments concentrate roughly 82,000 head of cattle and are owned by large companies dedicated to cattle breeding, while the remaining 175,000 head of bovine cattle are distributed among approximately 1,025 livestock establishments across the five departments, with management shared among members of the same family and neighboring families. All of them operate extensive production systems and, in many cases, community-based

ones (not specifically quantified or recorded) in which they share grazing lands and the care of animals that use natural pastures, alongside equine, caprine, and ovine livestock.

This feature is central because, even though localities no longer have their own slaughterhouses, they still have one or more families who slaughter and share, exchange, or sell meat. It is important to note that when we consulted SENASA personnel about the legality or recognition of this practice, they clarified that:

todos los establecimientos ganaderos y todo el ganado bovino están registrado y posee un código, los vacunadores somos responsables junto a las familias o personas dueñas de los animales de la zoonosis de los mismos, por ello no podemos limitar esos intercambios o comercializaciones de carnes, aunque tampoco los alentamos, porque sabemos que están basados en la confianza mutua y el compartir que son la base misma de la agricultura y la ganadería al igual que de las festividades. Lo que siempre, una y otra vez que visitamos a los productores, insistimos es en el mantener la higiene y el aviso de cualquier situación de enfermedad, mordedura de murciélago, mortandad por razones desconocidas y actualización en las vacunaciones. Por suerte la gente es cuidadosa, creo que sabe que de ello también depende su salud y economía. En la zona rural de Villa Allende, por ejemplo, recibimos la denuncia de un productor respecto a la muerte de muchas vacas. Cuando fuimos constatamos que estaban todas vacunadas pero se trataba de un problema de zoonosis ocasionada por unos murciélagos que tuvimos que controlar con la ayuda de especialistas. En Río Ceballos tuvimos que trabajar mucho para determinar que un problema de enfermedad de varios animales se debía a que estaban comiendo mucho siempre verde, una especie de árbol introducida para parquización que las vacas y caballos la ingieren ante la falta de pasturas causándoles problemas intestinales y ocasionando también la expansión más acelerada de esta y otras especies exóticas. En este caso tuvimos que lidiar con una Asociación Civil conservacionista que tiene a cargo los campos que se excusa en la necesidad de tener los animales para evitar incendios, algo inentendible porque están intoxicando animales que a la vez expanden los bosques invasores que dañan las cuencas hídricas y otros establecimientos ganaderos próximos parte de la economía familiar campesina. (Entrevista a vacunador del Senasa, solicita se resguarde su nombre. 11-01-2014).

Recent studies have highlighted the advance of exotic and invasive plants⁴, largely caused by human activity stemming from the Europeanization of landscapes in the Serrano Chaco and by the presence - planned or not - of livestock that ingest these plants (fruits, stems, and leaves) and, through digestion or by having fruits or propagules adhere to the animal's body, disperse them into new areas. The Colón Department and sectors of Punilla, Calamuchita, Santa María, Ischilín, and Totoral are among the most

⁴ According to Bernardello et al. (2025), *exotic plants* are understood as those whose presence in a given territory is due to accidental or intentional introduction resulting from human activity, or that have arrived—without human assistance—from another area where they are native. This category includes *adventitious plants* (exotic species that do not form persistent populations and require repeated introductions to persist) and *naturalized plants* (exotic species that maintain populations over several generations without direct human intervention). These are indicated in the respective descriptions by a black circle placed before the scientific name. On the other hand, *invasive plants* are naturalized plants that produce new reproductive individuals—often in large numbers—at a certain distance from the parent plants (>100 m in <50 years for taxa dispersed by seeds and other propagules; >6 m every three years for species reproducing via roots, rhizomes, stolons, or creeping stems) and have the potential to spread over a large area. Many exotic plants that are not currently classified as “invasive” because they do not meet these criteria may become so in the future. In this sense, invasive plants are those naturalized species that spread autonomously in natural or semi-natural habitats, inducing significant changes in the structure, composition, or functioning of ecosystems (Bernardello et al., 2015:44).

invaded. This generates severe impacts on watersheds, on water availability and quality, and on biodiversity loss, with consequences for peasant economies and serrano agro-cultural landscapes. There is intense debate in scientific and political-environmental arenas about whether or not to control these plants and livestock management in areas where exotics and invasives are present (Zak, 2019; Cingolani, 2008). Other studies have shown that, in territories where livestock has been removed and conservation plans financed by international or provincial forest-recovery funds have been established, processes of tourism expansion - through cabins, undeclared subdivisions, works such as retention ponds, motor-sport circuits, “sustainable quarry mega-mining,” among other uses - are accelerating the destruction of native forests more than the presence of exotic species and livestock (Martina et al., 2021; Deon; Díaz, 2021; 2025).

As exotic species advance, rural serrano landscapes are transformed into new “natures” that destroy ecological stages and food processes for serrano inhabitants, while also creating new risks for watersheds and for consolidated urban centers that demand this vital element - water - which in Córdoba is increasingly brought from basins farther away than those of the cities themselves.

Thus, from the standpoint of landscape, a new stage of *serranización* is underway - i.e., a renewed society-nature connection in the Córdoba ranges. Here, mulberries, grapevines, fig trees, poplars, *talas*, willow groves, and ancient carob stands form part of a vast “yard” where people plan how to control species such as elms, *siempre verdes*, “Spanish flags,” ash trees, and other invasive exotics that are harming water supply while creating a newly Europeanized landscape. On those workdays, a guitar also plays; technicians, biologists, and park rangers talk; the vaccinator has just finished his work with cows and sheep, and the meal is prepared - a barbecue, with sandwiches and/or salads. The vaccinator treats a cow bitten by a bat and takes a blood sample to rule out rabies. Laughter may be coming from the river by the previous house, where a family birthday is celebrated in a wide gallery bordered by a *molle* with an asado, or it may be coming from the corral where children play hide-and-seek. It is a day of *juntada*. They hurry the slaughter. They send the children and those who might be squeamish to fetch firewood, or to cut *siempre verdes* with the park rangers, to play, or to sharpen knives and machetes. Don Loza plays the guitar louder. People from the mountains want to keep living and sharing there; that is why they do so with the solidarity of those who want to help them - and of those whom they, in turn, can help.

A silence followed by a loud animal moan gives way to the final thrust. “Collect the blood... collect it so we can make blood sausages,” says Doña Betty. They hang the animal from the hook that drops from the largest branch of the four-hundred-year-old carob tree (as Doña Ochoa calls it). “...They asked me in secret; in secret I will give it...” sings the guitarist, and people appear with dish towels to dance. From the end of the table, Don Pelayo calls us:

'mire mijo', me dice, esto no lo van a romper, menos aún lo van a incendiar... esto es las Sierras, no es solo cerros agua y hoteles, tampoco son las motos haciendo ruido y rompiendo todo, menos aún es canteras, por más que sean las que plata y trabajo a veces nos dan o los que cada tanto nos compran una vaquillona. No, estas son las Sierras, es la gente que comparte, la familia, las solas, los solos, los amigos, los que se arriman como Ustedes con respeto, que vienen a ayudar y compartir con su familia, a comer, que traen algoito, que comparten. Usted preguntaba si creemos que la ganadería familiar serrana está perdiéndose, yo creo que sí, mire, ahí está la tapera de Carmen Ochoa, más arriba Usted y su familia conocieron a Don Luna, sus abuelos y tíos los Deon vivían en el obrador y hoy está todo demolido, Ustedes conocieron a Don Abelino Gonzalez ('El Brujo'), como desalojaron a los Caresani en La tranquerita⁵ y del otro lado, en la Cañada de los Lions en Cosquín a las 5 familias que vivían ahí, le puedo nombrar muchísimos, si, nos están sacando... Pero también acá estamos de fiesta, no porque nos quieran sacar sino porque estamos vivos, con el cuchillo al cuello como el ternero, pero no podrán matarnos porque hay muy mucha gente que ahora está con nosotras, las gentes de las Sierras (Pelayo Loza, 14-01-2024).

Fig trees, patios, *talas*, flowers, guitars, and drums remain and keep growing. There may be no slaughterhouses, but the rotating monthly slaughtering days allow people to share meat among those who live in Cabana with the Tarditti family whenever a calf or a heifer is butchered. There may be no local cold-cut factories, but the Falchini family, with María and Amado, still make *Salames Allende*. Juanchi already sells his *chorizos criollos* and mixed links at the agroecological fair in Villa Allende. Don Ángel enlarges the *locro* each year in Barrio Español, and the pig and Becerra's meat arrive. Mereco holds the Virgin's celebration every July 6, but on the 5th he has already slaughtered a sheep and stocked several refrigerators with meat for the barbecue in the Parish Hall. And Dani's *Locro* has already surpassed 1,000 people, and each ingredient is thoroughly Unquillense. Not to mention the empanadas from Rancho Tucumano made by Delia, or the collections organized by the firefighters of Mendiolaza or Villa Allende, who receive meat and vegetables from families across the region. As Gloria recounts at the Río Ceballos fair:

Irupé hace los mejores alfajores con frutos del monte, pero su madre los mejores panes rellenos con queso casero de vaca o con chicharrón de las carneadas de Colanchara (Entrevista 07-01-2023).

"Y los Torres", agrega Isabel, (...) no dejan ganado en pie con sus 4 carnicerías de la familia, carne propia del monte y las Sierras, carne riquísima, cría buenísima, montes muy cuidados, ríos sanos donde las familias y veraneantes disfrutan el agua y el río sin que nadie los corra. Un ejemplo de producción local que resiste, gente que produce hace décadas que nos comparte la carne recién bajada del Alpatauca, aclara Don Luis en Agua de Oro en la carnicería (Entrevista del 07-01-2024).

⁵ This is how Victor Valente presents the case of the eviction of the Caresani family in *La Unión Regional* (2020). In 2012, the Caresani family was evicted from the place where they were born, raised, and had built their lives. The machinery of the company El Gran Ombú demolished their homes. As if that were not enough, a dispossession lawsuit was initiated against them, which they lost, and they are now required to pay nearly one million pesos. Available at: <https://www.launionregional.com.ar/el-extrano-desalojo-de-la-tranquerita/>.

Summarizing, in a few paragraphs, an enormous network that sustains family-based serrano livestock raising is difficult, but we will try. Of 23 small butcher shops (excluding supermarkets and shopping centers) surveyed in the Colón and Punilla Departments, 21 produce meat locally. According to trade and industry data for those departments, there are about 183 butcher shops; of the remaining ones we did not obtain responses, so we focus on these. While most butcher shops remain to be surveyed, the visits to the 64 selected provide relevant evidence that they stock meat from the region, purchased from local families or produced by the shops themselves. Of the remaining 119, around 20 belong to regional chains of slaughterhouses or regional and national meat distributors. The remaining 99 purchase from private departmental slaughterhouses such as La Superiora of Villa Allende, Novara and Río Segundo, San Antonio, Bustos and Beltrán, and Qualita - medium-sized companies that buy live cattle from family producers in the hills and piedmont areas where agriculture is not possible due to geographical conditions.

In addition, it is important to highlight that local festivities not organized by large municipalities such as Villa Carlos Paz, La Calera, La Falda, or Alta Gracia have agreements with local producing families for the supply of various meats (kid goats, suckling pigs, chickens, bovine meat, etc.). Moreover, there are municipalities with regulations that reduce taxes on events that consume food produced in the same locality (Colonia Caroya, Salsipuedes, Cosquín, Río Ceballos, Huerta Grande, Capilla del Monte, among others).

Carreras cuadreras and *peñas* are festivities where a lot of barbecue is shared, as Eduardo recounts:

en ellas quienes organizan se encargan siempre de darle un espacio a los productores o productoras y que cuenten donde viven, qué hacen, cómo trabajan los animales y suelen ser después los receptores de alguna otra juntada, es una tradición que en algunos pueblos quedó como tradición el rotar casa en casa. Algunos dicen que en la zona de Guiñazú, General Paz, Caroya y otros pueblos se hacía cuando se juntaban los acequeros y compartían comida mientras decidían cosas comunes. Otros dicen que son costumbres de fiesta para sentirnos mejor. Otros sabemos que ahí siempre salen cosas lindas. Por ejemplo en una juntada en San Esteban hace unos años decidimos ir a participar toda la paisanada a la marcha para defender el monte y allá fuimos pusimos 60 caballos y un par de vacas y nos fuimos a la marcha, tuvimos que hacer un lío bárbaro, pero fuimos a Colón y General Paz, pleno centro de la segunda ciudad argentina, y allá fuimos en caballo, tirando mierda para todos lados pero firmes ahí acompañando a la hippitada para que no nos destruyan el monte donde vivimos y donde tenemos los animales (Entrevista del 10-01-2014).

The family livestock web is sustained through self-managed practices that do not find a clear channel in specific governmental or institutional policies; indeed:

renegamos mucho de las asociaciones ganaderas, los clubes de equitación o las sociedades rurales porque ellos manejan todo como si fueran grandes empresas y nosotros por ahí para pagar los impuestos del campo carneamos una vaca, para pagarle al abogado para que nos

ayude con la posesión, carneamos un ternero, para festejar un cumpleaños compartimos un asado y para cuidar a los animales pasamos con ellos nuestra vida, no queremos más que seguir aquí. (Cuenta A. F. en lo alto de las Sierras entre Unquillo y Molinari E. 18-01-2024).

As Bustos Mantovani (2024) argues, serrano landscapes are re-signified through walking and sharing within the mountains themselves. This occurs on both sides of the Sierras Chicas and is replicated whether we speak of meat and family livestock production or of the growing agroecology in backyards or fairs. Resistances are not only flags and marches; they are also, as Pelayo Loza says:

en las casas en fiestas y carneadas, al vera de las taperas de quienes se fueron, en las puertas y patios de escuelas que ya cerraron o que encuentran a los vecinos a resistir a una minera o a un loteo como en Candonga o en La Calera. Por eso nos ayudan cuando un incendio viene por nuestro territorio, estamos muy agradecidos a que hay cientos de jóvenes que se plantan apagando los incendios con nosotros, que después hacen colectas de comida para los animales, que consiguen dinero para que volvamos a tener agua en las casa y en los bebederos de los animales, para que vengan veterinarios a curar a los que se quemaron o lastimaron y mas que nada para que nosotros sigamos viviendo y produciendo cuidando el monte y compartiendo las Sierras con ellos. (Entrevista, 11-05-2011).

Quiros (2020) points to the economic, political, and cultural importance of sustaining rural life in Traslasierra, Córdoba. Although she offers the example of a raffle organized by a family to buy tickets to take their daughter to the doctor in Córdoba, she proposes seeing how this practice, which mobilizes the whole family, also mobilizes the community, and also functions as a very common mechanism through which communities of serrano inhabitants place personal needs on the political agenda - needs that cannot be covered through selling food such as meat or a calf - when facing an urgent situation or a demand that must be addressed quickly and that the state often does not help with. As the author suggests, many times, disputes and tensions with governmental agents are at play in the actions of serrano inhabitants - agents who disregard or ignore them and who impose territorially and socially unjust policies on local populations.

In the case of the problem, we analyze here regarding family livestock raising in Sierras Chicas, we see that these unjust and violent policies are depopulating the mountains and gradually destroying the bonds of local communities that seek to sustain themselves with animals, people, and meat in the Sierras. It is necessary and urgent to enable collective strategies that do not violate this population and these territories, since they continue to feed the broader population safely - whether with herbs, fruits, or meats - and to safeguard the watersheds that supply the urban centers of the Córdoba Metropolitan Region and other localities.

Currently in Sierras Chicas, both on the eastern slopes of departments such as Colón and Santa María and on the western slopes in Punilla, some 45,000 hectares of serrano forests - with the people who inhabit them and their livestock - are at risk due to plans for real-estate and mining

expansion promoted by the Provincial Government through Laws 10004 and 9841. In addition, Decree of Necessity and Urgency No. 70/2023 and Law 27.742, approved by the National Congress in 2024, and other proposals advanced by Milei's National Government, seek to roll back laws that prohibit changes in land use after fires; they also seek to repeal animal health laws and regional commercialization rules that benefit small producers and regional economies.

While territorial urgency has been addressed by the mobilized community, we also see another urgency: that of capital advancing by making invisible unjust geographies, landscape-sad violences made of abandoned homesteads, dispossession, clearing, and socio-environmental damage.

Fortunately, amid these multiple "territorialities of urgency" for capital, "there are community actions responding with meat and soul" (interview 11-08-2024). For it is in family and neighborhood gatherings - *peñas*, *juntadas*, assemblies, and fairs - that new community orderings are slowly woven: spaces such as water and cultural reserves, Indigenous territories, family livestock territories, sacred and community heritage sites - such as in Villa Cerro Azul, Agua de Oro, Río Ceballos, Villa Allende, Dique Chico, Anizacate, Cosquín, Villa Ciudad Parque, Santa Rosa de Calamuchita - wherever it is possible, resistances and re-existences are being reassembled. A quiet uprising and territorial sustenance maintained between those who inhabit and defend the woodland and those who defend the commons while living in the city, yet aware that food and water come from territories inhabited by people who need support to move forward in the face of each dispossession.

As Mabel Vekik stated, raising a tin cup in the little rural school of San Fernando up in the Sierras in 2022 on the patrimonialization of serrano agro-livestock territories:

acá estamos las serranas, los serranos, baqueanos, hippies y guardaparques, maestras y carniceros, bebiendo del arroyo como el ternero, con el cobijo de las rocas como el carnero, compartiendo entre todos, para defender todo lo común que con el monte tenemos. (Palabras en conmemoración del aniversario y patrimonialización de la escuelita rural de San Fernando 21-08-2021).

As Sara lowers her cup, she raises her own:

Acuerdo con vos Mabel en tan lindas palabras. Y me duele tener que sumarle que me avisó recién Roberto que otra vez encontró vacas baleadas, dos muertas y tres heridas echadas, son las últimas que nos quedan. Desde que la minera supuestamente compró las 1100 hectáreas donde vivimos las 3 familias que quedamos de las 7 que eramos en el campo, sólo han hecho circuitos de enduro, han incendiado y nos han matado las vacas, las ovejas y caballos. ¿Cómo nos defendemos? Ya fuimos a la justicia y nada. A la policía y nada. A seguridad ciudadana y nada. NO es llamativo que pase esto acá y también en Berrotarán donde otra minera está cerrando caminos públicos y maltratando a los habitantes serranos y los animales, o en San Agustín donde una cantera está haciendo lo mismo con los animales y silenciando a un pueblo entero que respira cal y cuyos jóvenes se van hartos de lidiar con un progreso tóxico y contaminante del aire (Palabras en conmemoración del aniversario y patrimonialización de la escuelita rural de San Fernando 21-08-2021).

4 QUARRY MEGA-MINING AND MEGA-GATED SUBDIVISIONS, MEGA-RESISTANCES ON THE MOVE

Since the mid-2000s, mining projects and land subdivisions for gated communities have expanded dramatically due to changes in the mining code and the provincial cadastre law that enabled the continuation of extraction in new operational fronts with laxer environmental controls, following Decree 2131/2000 and the Interdisciplinary Technical Committee of the Secretariat of Environment - largely staffed by business-sector representatives within the state. In this period, a new stage began in the attempt to “de-mountainize” (*des-serranización*) the region, marked by large fires (Argañaraz et al., 2021; Deon, 2022; Cicolani et al., 2022) and by mega-works that facilitate water grabbing on private properties through retention ponds and projects to privatize the margins of reservoirs and rivers. This, combined with the fencing of watercourses, has mobilized residents in localities of the Calamuchita, Colón, Punilla, and Santa María Departments (Martina et al., 2020).

The case of Minera El Gran Ombú in Villa Allende is among the most violent, together with the La Deseada subdivision in La Calera. In the serrano livestock territories of Sierras Chicas, tensions with mining companies - or with real-estate firms such as SADE S.A.⁶, and Landsur, in Alta Gracia, Cosquín, or Río Ceballos - follow the same pattern of action and even extend beyond provincial borders. And when it is not private companies, it is the provincial state that, without prior notice, launches highway works and crushes houses, corrals, and animals with expressways, as in the San Roque Commune or in Bialet Massé.

Territorial tensions and disputes continue to drive desterritorialization in Córdoba, and it is rural inhabitants, popular peri-urban neighborhoods, and livestock-raising families who continue to resist.

The accelerated metropolitanization that Córdoba is undergoing - driven by speculative real-estate capital and by the mining advance carried out by extractive companies - threatens not only livestock raising but also the ecosystem processes that livestock and its population help sustain. We refer to the ensemble of serrano landscapes and their morphoclimatic domains that combine native and introduced species, forming mixed forests of mulberries, fig trees, elms, *chañares*, carob trees,

⁶ Some notes on fraud involving the sale or implementation of real estate developments in mountain territories can be found at: <https://www.opencity.tv/rio-ceballos-la-municipalidad-dio-detalles-del-emprendimiento-denunciado-por-vecinos/> or <https://infodelestero.com/2025/05/26/sade-desarrollos-la-empresa-cordobesa-que-prometio-barrios-cerrados-y-dejo-a-700-familias-santiaguenas-con-terrenos-sin-servicios/> or at <https://www.lavoz.com.ar/regionales/reabren-causa-judicial-por-aval-un-emprendimiento-turistico-serrano/>.

molles, *espinillos*, cattle, foxes, pumas, dogs, and so much other diversity - high-elevation woodlands built in the arrieros' hamlets that have existed for centuries on mountain ridgelines.

Small groves in ravines, where houses of stone, lime, adobe, and wood sustain ways of life with fruit trees, farm animals, and spaces for community gatherings, embody knowledge shared daily with school students, hikers, and neighbors from the next field over.

The advance of capital's territoriality threatens all of this - and much more - while offering only a great deal of money to a very few people. Too much destruction in order to impose morphoclimatic control through dispossession, catastrophe, and permanent risk. Is such a scale of destruction what capital needs today for its reproduction?

"An asado belongs to no one and belongs to everyone" is a historic phrase attributed to Jorge Cafrune, an Argentine musician. Yet, more recently, the asado has also become a mechanism of collective encounter and celebration, but likewise of agreement-making and the co-optation of interests by the mining and urban-development sectors. Subdivisions are not decided only in offices or on golf courses, as we analyzed in previous work (Deon, 2024). As one interviewee - who took part in those asados where subdivisions and mining projects are approved - puts it:

los asados de la familia Lugón, propietaria de la minera El Gran Ombú S.A. y de Cantera Diquecito o los asados de empresarios como los judicializados de empresas como Euromayor, SADE, Landsur, Proaco, entre otras, han sido motivo de encuentro entre políticos, empresarios y técnicos que buscan autorizaciones ambientales para sus proyectos pretenden hacer legales en territorios donde son ilegales. Muchos políticos y técnicos tienen tablas y cuchillos de estas empresas de recuerdo de asados donde se 'cocinaron' proyectos inviables legalmente. Proyectos que se concretaron tras un convencedor y ensobrado asado, como dice Daniel Moyano en su libro *Los Pájaros Exóticos*, y sí ahí los del comité técnico interdisciplinario se iban con tablita, cuchillo y sobre con dinero bajo el brazo y los empresarios se quedaban con la garantía de un nuevo proyecto minero aprobado o un nuevo loteo. Esto ha sido investigado denunciado y hasta judicializado en la causa de Ticupil S.A. en Candonga, por ejemplo⁷ (Entrevista a S.C. del 18-09-2019).

These asados are also an example of resistance in the Villa Allende area:

Antes la minera nos compraba un ternero para asados frecuentes, pero cuando conocimos que ellos mandaban a baearnos los animales o nos incendiaban los campos para desalojarnos, no sólo les dejamos de vender, los denunciábamos y nos sumamos a las marchas contra ellos, hace poco quisieron comprarnos unos caballos para un centro de equitación que hicieron llamado

⁷ The case of Ticupil S.A. is central, as it involves a lawsuit that has been ongoing for ten years following a complaint filed by the Chavascate Neighbors' Assembly regarding a real estate development carried out in a protected area, involving the burning of territories belonging to agro-livestock families and carried out with the acquiescence of the former Secretary of the Environment, who has been charged as an accomplice: <https://latinta.com.ar/2025/08/01/candonga-conflicto-fallo-judicial-ordena-paralizar-loteo-zona-protegida/>. The case of El Gran Ombú has been analyzed in Deon (2019) and addressed in several journalistic reports: <https://difusionnoticias.com.ar/la-empresa-el-gran-ombu-es-la-responsable-de-un-proyecto-extractivista-en-villa-allende/>. And <https://elresaltador.com.ar/megamineria-en-villa-allende-la-reserva-natural-esta-en-peligro/>

La Granja del Sr. Brito, un predio que se lo clausuró policía ambiental 3 veces por desmonte, les dijimos que no al saber que ese centro ‘educativo’ no fue autorizado y además ellos lo presentan como una remediación del impacto social que generan con la minera. Por eso volvimos a la calle a manifestarnos y decir: Fuera Minera El Gran Ombú de las Sierras⁸ (Entrevista a G.R. del 11-09-2023).

These state “facilities” for the territorialization of mining capital and the urban-development business have become a normative framework in the serrano region of the departments addressed here (with the exception of Totoral), through the actions of the Córdoba Metropolitan Area Planning Institute since 2010, with Laws 9841 and 10004, and more recently through Provincial Law 10936 on Integrated Management Consortia for Agricultural Watersheds and the Environmental Policy Law 10208, which complements National Law 25.675. These regulatory frameworks facilitate the construction of private waterworks benefiting agribusiness in lower basins and tourism and mining in the mid- and upper-basin serrano areas. Such laws, and renewed advances of capital after the 2021–2022 fires, have activated new expressions of struggle and resistance by serrano livestock-raising families together with local assemblies and the Córdoba Environmental Forum, which throughout the 2020s have filed petitions with the state and brought lawsuits against new subdivisions and mining expansion.

Indeed, these subjects of struggle have joined collective spaces that, in solidarity and with a feminist and gender-conscious orientation, act against *des-serranización* through the implementation of municipal and communal management councils for Water and Nature Reserves, Indigenous sacred territories, heritage sites, territorial or socio-environmental assemblies, and community forest brigades, among other initiatives that seek to assist serrano individuals and families affected by fires. In reciprocity with these acts of struggle, rural inhabitants have opened their territories to collective university practices involving park rangers, geographers, agronomists, technicians, artists, and a wide range of agents who contribute to the re-existence of those who, through low-scale livestock raising, safeguard serrano watersheds, fight for healthy food, and recover ancestral sites still used for food production, spiritual practices, health, science, and education at all levels.

In parallel, short circuits of agroecological food production face disputes within the socio-environmental field itself, challenged by veganism and by an “ultra” conservationism that largely envisions Sierras without people and without livestock. In this context, the most recent debate in agroecological nodes, networks, and fairs raises doubts such as: Should the production of meat and

⁸ For further reading, see: <https://www.laizquierdadiario.com/Este-11-de-diciembre-tambien-marchamos-contrala-megamineria-que-destruye-nuestros-bosques>.

animal-derived products be incorporated into agroecological and organic networks? How can we continue to accompany and sustain life in the Sierras beyond the risks brought by fires?

The answers lie in these very collective activities - during locros, asados, communal kitchens, agroecological networks, festivities, and walks - by sharing the Sierras and the food produced within them.

5 CONCLUSIONS

The ongoing process of de-bovinization has encountered resistances and re-existences that oppose it and place a brake on a new phase of *des-serranización* currently underway.

What is at stake is neither meat nor livestock per se, but rather land and water within the watersheds of this portion of the semi-arid Serrano Chaco. The voices of local struggles expressed here articulate a territoriality under construction from family-based livestock raising, from sharing, dancing, and collectively defining a common course of action: defending the mountain region as a common good.

Recent political developments in Argentina, marked by the arrival of fascism at the national level of the state, have done nothing more than legalize dispossessions that were previously “cooked” at asados among certain politicians, aligned technicians, and business interests, advancing the miamization and Europeanization of serrano landscapes.

The province of Córdoba, paraphrasing Horacio Guaraní, raised from a foal the national dispossession that is today institutionalized under the Milei government. Yet the hands of the *pirquero* from the hills, of serranas and serranos engaged in pluriactive livelihoods - food production, herb harvesting, masonry, fencing, clearing - along with festivities filled with songs, dances, poetry, and voices resonating like cowbells through the mountains, stand as the animal cry after the capital’s blow. They are the burning expression of serranas and serranos who resist, both judicially and through mobilization in the streets, the enclosure and grabbing of the Sierras.

Commercial butcher shops may have expanded, but the loss of local slaughterhouses and meatpacking facilities, along with the closure of family livestock establishments, has gradually depopulated the serranía. Fortunately, paths, stream banks, stone fences (*pircados*), corrals, abandoned homesteads (*taperas*), and ruined schools are once again becoming sites of encounter, patrimonialization, and struggle to prevent the total rural depopulation of the serrano region. This is the will - and the achievement - of mountain guides, scouts, teachers, park rangers, fire brigadists,

peri-urban residents, cyclists, and countless others who care for these territories by cohabiting with the forest, its people, and its animals.

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THE FEMALE REPRESENTATION IN ELECTIVE POSITIONS AND ITS CONSEQUENCES IN THE DEMOCRATIC QUALITY OF THE STATE OF BAHIA

**A REPRESENTATIVIDADE FEMININA EM
CARGOS ELETIVOS E SEUS DESDOBRAMENTOS
NA QUALIDADE DEMOCRÁTICA DO ESTADO DA
BAHIA**

**LA REPRESENTACIÓN FEMENINA EN CARGOS
ELECTIVOS Y SUS CONSECUENCIAS EN LA
CALIDAD DEMOCRÁTICA DEL ESTADO DE
BAHIA**

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ABSTRACT

The present work started from the analysis of 102 samples collected through a virtual research questionnaire, which made it possible to analyze distinct variables that, in line with the literature review, make it possible to identify both the profile of the Bahian electorate and the state representatives, elected in the 2018 and 2022 ballots. Based on this, it was possible to investigate the female representation in elective positions, its consequences in democratic quality and the effects of the policy of care on female participation in politics. In the meantime, it was evidenced that this current hinders the realization of the expectations of

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voters about their own representatives in their concrete performance, because they place parliamentarians in a symbolic political position. That said, it is relevant to debate publicly about the effectiveness of female representation in the Bahian scenario and its consequences for democratic quality, especially from the perspective of the electorate. The research used a hypothetical-deductive methodology, of a qualitative and quantitative nature, using historical, documentary, and bibliographical procedures, applying a closed questionnaire to the research participants.

Keywords: Democracy. Women. Representation. Politics.

RESUMO

O presente trabalho partiu da análise de 102 amostras coletadas por meio de um questionário virtual, o qual possibilitou analisar variáveis distintas que em consonância com a revisão bibliográfica, possibilitam identificar tanto o perfil do eleitorado baiano quanto as deputadas estaduais, eleitas no escrutínio de 2018 e 2022. Com base nisso, foi possível investigar a representatividade feminina em cargos eletivos, seus desdobramentos na qualidade democrática e os efeitos da política do desvelo na participação feminina na política. Neste íterim, evidenciou-se que tal corrente obstaculiza a concretização das expectativas dos eleitores sobre as suas próprias representantes em sua concreta atuação, pois colocam as parlamentares em uma posição política simbólica. Posto isto, é relevante debater publicamente sobre a efetividade da representatividade feminina no cenário baiano e seus desdobramentos na qualidade democrática, em especial na ótica do eleitorado. A pesquisa utilizou metodologia hipotético-dedutiva, de caráter qualitativo e quantitativo, recorrendo aos métodos de procedimento histórico, documental e bibliográfico, aplicando-se um questionário fechado para os participantes da pesquisa.

Palavras-chave: Democracia. Mulheres. Representatividade. Política.

RESUMEN

Este estudio analizó 102 muestras recopiladas mediante una encuesta virtual. Esto permitió el análisis de distintas variables que, en consonancia con la revisión bibliográfica, permiten identificar tanto el perfil del electorado bahiano como el de los representantes estatales electos en las elecciones de 2018 y 2022. Con base en esto, fue posible investigar la representación femenina en cargos electivos, su impacto en la calidad democrática y los efectos de las políticas de cuidado en la participación femenina en política. Asimismo, se evidenció que esta tendencia dificulta el cumplimiento de las expectativas de los votantes respecto a sus propios representantes en sus acciones concretas, ya que coloca a los parlamentarios en una posición política simbólica. Por lo tanto, es importante debatir públicamente la efectividad de la representación femenina en Bahia y su impacto en la calidad democrática, especialmente desde la perspectiva del electorado. La investigación utilizó una metodología hipotético-deductiva, de carácter cualitativo y cuantitativo, utilizando procedimientos históricos, documentales y bibliográficos, aplicando un cuestionario cerrado a los participantes de la investigación.

Palabras clave: Democracia. Mujeres. Representación. Política.

INTRODUCTION

Starting from the understanding that the consolidation of the Brazilian Democratic Rule of Law has deep roots in the Federal Constitution of 1988, it is imperative to delimit that citizenship and

the dignity of the human person have the fundamental objective of building a society in “becoming,” given that legal norms vary throughout history (Cunha Júnior, 2019).

To reduce inequalities, it is essential to discuss the expansion of the catalog of fundamental rights – to include therein broad and equal political participation, considering gender parity, considering that, despite the existence of normative incentives for the inclusion of women in politics, aimed at providing greater equality in this scenario, women’s participation is still below expectations.

The effectiveness of political agendas related to gender claims and the maturation of democracy are directly associated with greater female representation in the political sphere (Gomes et al., 2018). Patriarchy becomes a means of hindrance to ending this inequality. This social organization explains why women continue to be marginalized in politics, in a cause-and-effect relationship. In this way, they are perceived as less fully citizens (Biroli; Miguel, 2014).

Thus, the primary objective of this research revolves around the state political sphere, its discussions regarding female representation in elective offices, and its ramifications for democratic quality. To achieve this purpose, the study examines the exploration of democratic quality through the significance of representative and participatory democracy in the State of Bahia and the effect of symbolic and substantive representation of elected female state candidates, based on the results obtained.

At first, before delving into the implications of the topic, it is important to distinguish two concepts: representation versus representativeness, which, although related, hold relevant conceptual differences. This issue is debated in the sphere of participation in political parties and/or decision-making processes embedded within the institutional context.

Thus, representativeness is a broader concept and serves as an intersectional examination committed to critical analysis. From this perspective, it is not enough to merely affirm female representation and point out that women currently occupy only 18% of elective offices in Brazil, while more than half of the Brazilian population (51.7%) is female, and they represent 53% of the electorate (Tribunal Superior Eleitoral, 2022).

Despite recognizing the importance of affirmative gender policies that correct this electoral/political inequality between men and women, only the discussion and encouragement of symbolic female representation can shift the figure from the collective to the individual, as the main tool of social transformation. In this way, the relevance of this research lies in tracing the profile of both the electorate and female representatives in elective offices in the State of Bahia, in order to investigate pre-established inequalities, the disproportionality in what the laws have established, and the reality to which these candidates are subordinated.

This study has a quantitative and qualitative nature, as the research analyzed data collected through a questionnaire, made available via the Google Forms platform, which theoretically analyzed the results in order to deepen the vision of representative democracy among Bahian voters regarding their elected parliamentarians in the years 2018 and 2019, and their ramifications for democratic quality.

In the case of this research, the pre-analysis consisted of selecting books, journals, and articles to support a better understanding of the object of study in focus. Thus, the descriptive qualitative exploration did not consist solely of the approach, but rather of the process and its meaning, that is, the main objective is the interpretation of the phenomenon under study (Silva; Menezes, 2005).

Similarly, data collection was carried out through questionnaires presenting distinct variables, whose analyses are presented within the scope of this study and through tables (Fachin, 2003). This method is regularly applied in descriptive studies, which seek to discover and classify the relationship between variables, proposing to uncover the characteristics of a phenomenon. In this type of research, specific variables that may be important are first identified, to later explain the complex characteristics of a problem (Richardson, 1999). Therefore, the samples of the results obtained in measurable data and statistical analysis techniques generally allowed extrapolation of the results to the entire population under study (Bryman et al., 2011).

1 ANALYSIS OF THE RESULTS OBTAINED THROUGH THE QUESTIONNAIRE ON FEMALE REPRESENTATION AMONG STATE DEPUTIES OF BAHIA (ELECTIONS 2018 AND 2022)

Female suffrage began in 1932, and despite this movement to promote the inclusion of women in politics, regarding the recognition of this formal equality between men and women under Article 5, item “I,” of the 1988 Federal Constitution, and the historical struggles in pursuit of gender parity in the National Congress aimed at promoting policies favorable to both genders, such measures still only partially reflect the reality presented by the data.

The Brazilian political landscape in terms of representation is predominantly marked by a political elite, resulting from a historical legacy formed almost exclusively by men. The same logic does not apply to women, as according to the TSE – Superior Electoral Court (2022), despite currently representing 53% of the Brazilian electorate, that is, the majority, these women hold a small number of positions as parliamentarians, occupying less than 18% of elective offices.

In Bahia, the situation is even more disproportionate. In 2018, out of 63 seats for State Deputies in the Legislative Assembly, only 9 positions were occupied by female parliamentarians, approximately 14%, according to data obtained from the TSE Portal. In 2022, this percentage dropped to 13%, considering that the number of female state deputies decreased to 8 parliamentarians (Tribunal Superior Eleitoral, 2022). Presenting these results is of utmost importance for the development of this study, given that the analysis of the low female political representation in elective offices explains the pre-established inequalities, the disproportionality in what the laws have established, and the reality to which these candidates are subordinated. Evident in this context is the issue of female underrepresentation in politics:

The various theoretical interpretations for the under-representation of women in politics point to several causes - one of which is cultural patterns supported by the prevalence of patriarchy, associated with economic elements rooted in the sexual division of labor; another cause relates to the foundations that gave rise to liberal democracy and influence the ways political institutions are organized. The combination of these elements has contributed to the construction of convictions - which guide practices - that politics is an inherently male sphere. The fact remains that the convergence of so many obstacles makes dismantling gender inequalities a complex task (Ferreira, 2021, p. 83).

In order to enable a better understanding of democratic quality and how the electorate behaves in relation to the existing political scenario in Bahia, a sample was conducted through the collection of opinions and responses from 102 participants from different regions of the State of Bahia, namely: Southwest, Center-South, North, West, Central-South of Bahia, and the metropolitan region of Salvador. The results obtained show that the vast majority, approximately 77% of the sample population, reported being from the Southwest Region of Bahia (Table 1, item 3).

Considering that the objective of this study was to explore democratic quality through the significance of the symbolic and substantive representation of elected state candidates, the interpretation of the results obtained through this research helped evaluate the profile of both the electorate and the female parliamentarians of Bahia.

Table 1. Results of the questionnaire on the symbolic and substantive female representation of state deputies of Bahia (Elections 2018 and 2022)

QUESTION	PERCENTAGE RESULT OF THE MAJORITY OF RESPONSES	PERCENTAGE RESULT OF OTHER RESPONSES
01 – Gender:	Feminine – 53 (52,5%)	Masculine – 48 (47,5%)
02 – Age range:	25 a 34 years – 48 (48,5%)	16 a 24 years – 23 (22,8%) 35 a 45 years – 21 (20,8%) 46 a 54 years – 5 (5%)

		Over 55 years – 3 (3%)
03 – Which region of Bahia do you live in?	Southwest – 77 (77%)	Center-South Bahia – 7 (7%) North of Bahia – 2 (2%) Metropolitan Salvador – 12 (12%) Extreme South – 2 (2%)
05 – Did you vote in the last elections?	Yes – 89 (88,1%)	No – 12 (11,9%)
06 – What criteria do you use to choose a state deputy?	I choose the candidate whose party profile, ideas, and proposed programs I identify with – 87 (86,1%)	I choose the one who can bring me some benefit – 5 (5%) I don't know how to choose, I follow family or friends' suggestions – 4 (4%) I choose the candidate I like and feel grateful to – 3 (3%) I don't usually research the projects, I vote for the first candidate I find – 2 (2%)
07 – Have you ever voted for a female candidate? If yes, how many times?	Yes, 2 or more times – 55 (54,5%)	I haven't voted – 23 (22,8%) Yes, only once – 22 (22,8%) I only vote for female candidates – 1 (1%)
08 – How do you evaluate the performance of female State Deputies in Bahia elected in 2018?	I am indifferent – 46%	I feel represented by the elected candidates – 23% I do not feel represented by them – 17%
		I do not follow / do not know any / do not research – 7%
09 – Regarding female State Deputies elected in 2022 in Bahia:	I am indifferent – 52,5%	I feel represented by the elected candidates – 29,7% I do not feel represented by them – 17,8%
10 – When choosing a female candidate, which of these factors do you consider most important in your decision-making? (Select up to two options)	Projects relevant to society – 87.8%	Party platform – 21,4% Political alliance – 18,4% Long political trajectory – 14,3% Charismatic – 5.1%
12 – Regarding policies and bills developed by State Deputies within the Legislative Assembly of Bahia (ALBA), mark those you were already aware of:	Creation of the Maria da Penha Social Grant – 43.4% I didn't know any, but I agree with them – 28.3% Development of statistics on violence against the LGBTQIA+ population and the Black population in the State of Bahia, among other measures – 19.2% Guarantee for pregnant women to reschedule the physical fitness test in public competitions held by the State of Bahia – 18.2% I know some, but I disagree with some – 14.1% Guarantees the constitutional freedom of those who do not want to participate in COVID-19 vaccination campaigns or any of its variants – 9.1% I don't know, but I disagree with some – 9.1% Declaration of Public Utility of MovimentAiyê Ibecdh – Brazilian Institute of Education, Culture, and Human Development – 2%	

Source: Collection of the Researchers, 2025.

Thus, based on the analysis of item 5 (Table 1), it was possible to verify how democratic quality is reproduced in the state of Bahia. In this regard, the responses obtained through the questionnaire show that 88% of respondents declared that they voted in the last elections, while only 12% of individuals stated that they did not exercise their political right to vote.

Through this research, it was observed that when respondents were asked: “Have you ever voted for a female candidate? If so, how many times?”, 54.5% reported having voted two or more times; 21.8% stated they had voted only once, while 22.8% stated that they had never voted for a female candidate (Table 1, item 7).

Next, when asked about how they evaluate the performance of elected female deputies in Bahia in the last two legislative terms, approximately 46% of respondents stated that they were indifferent regarding the performance of the deputies in 2018 (Table 1, item 8). Later, about 52% of respondents also indicated indifference regarding the sense of representation in relation to the female State Deputies elected in 2022 (Table 1, item 9).

Reflecting on the responses to items 8 and 9, we were able to understand the perspective of this electorate regarding the phenomenon of individual consciousness when exercising their political right to vote. It was noted that symptoms such as apathy and indifference were externalized in a collective consciousness. Thus, it became necessary to analyze the impact of this signal concerning the existence of a quality democracy or the lack thereof in the State of Bahia.

At the state level, voters in Bahia number 11,291,528, of whom 5,927,765 are women – equivalent to 52% of the Bahian electorate (Regional Electoral Court, 2022). Furthermore, this research analyzed that among the 102 collected responses, the majority were female, i.e., 53% (Table 1, item 1). When correlating these data, the following question emerged: how can the results of items 8 and 9, regarding the electorate's indifference to the performance of their own representatives, be justified? What are its roots?

Consequently, it was found in items 6, 10, and 12 of the questionnaires that the electorate holds expectations regarding the political performance of female parliamentarians in the state government. Examples include: projects relevant to society, criteria of identification with party ideas and proposed programs (Table 1, item 6).

It is worth clarifying that, broadly speaking, democracy can be considered of quality when it possesses the legitimacy and satisfaction of citizens concerning their expectations regarding government performance – quality in terms of results (Silva, 2012). Therefore, the relevance of this debate is evident, since the absence of discussion on democratic quality stems from the effect of the “politics of indifference” – a current which leads one to believe that changes in political behavior patterns will naturally result from gender parity in decision-making forums (Miguel, 2001).

This current hinders the fulfillment of voters' expectations regarding their own representatives in their effective performance, as it places parliamentarians in a symbolic political position. Therefore, it is relevant to publicly debate the effectiveness of female representation in the

Bahian context and its implications for democratic quality, particularly from the perspective of the electorate.

2 APATHY AND INDIFFERENCE: TWO SYMPTOMS REVEALED IN FEMALE REPRESENTATIVE DEMOCRACY IN BAHIA

One of the most evident and significant effects collected in the research, conducted through the questionnaire, was the translation of individual consciousness into a collective consciousness among the surveyed population. First and foremost, it is crucial to emphasize that the State, the Federal Constitution, and democracy are constructions of the human spirit that depend on being recognized by a community of subjects, products of their individual consciousnesses.

The very organization of the State presupposes the collective adoption of a model for structuring society based on a body of legal norms derived from a minimum consensus among its members. The aim is not to create a legal regime originating from uniform and homogeneous ideas; the undeniable plurality of thought, therefore, resorts to the instrument of the majority rule (Tocqueville, 2000; Bobbio, 2005) to reach decisions regarding the institutional regulation of the State.

With the numerical growth of the population in the States, it became empirically necessary to adopt a representative democracy model, given that collective decisions on each specific issue would require enormous institutional effort to collect and discuss every individual opinion. Direct deliberation spheres, such as those in the famous Greek “polis” (Menezes, 2010), do not constitute viable formats for collective decision-making in the modern context.

However, the contemporary situation established in political representation systems shows evident deficiencies that significantly hinder the achievement of the democratic ideals of the population. In this sense, the research traced the path of this phenomenon of individual and collective consciousness to the point where the development of social conjecture suggests the possible existence of democratic quality in voters’ participation in choosing popular representatives, specifically female representatives in the Legislative Assembly of Bahia.

Thus, according to the results extracted from items 8 and 9 of the questionnaire, although 54.5% of respondents reported having voted two or more times for female candidates, approximately 46% of them were indifferent regarding the performance of the state deputies elected in 2018, and 52.5% also showed indifference toward the sense of representation regarding the state deputies elected in Bahia in 2022, respectively (Table 1, items 8 and 9).

The highlighted scenario reveals a generalized disinterest among a significant portion of the Bahian population regarding the political actions and practices led by those who should be their representatives before the State. Although there is voting and the consequent election of popular representatives to participate in political deliberation, a large portion of the population neither follows nor demands from their representatives the necessary performance to advance their individual and collective agendas.

To understand the dynamics of this issue, it is necessary to analyze the representative democracy model established on the foundations of a liberal-individualist economy. The neoliberal political management format relies exclusively on voting as the citizen's sole praxis of political rights, in a State marked by the delegation of responsibility so that elected representatives exercise their respective positions autonomously (Marques, 2008). There are, certainly, explicit vicissitudes in this context.

The economic scenario of labor exploitation of the majority of the population – considering the concentration of wealth and means of production in the hands of a financial elite – places such subjects in a context of daily survival struggle. They have very limited possibilities to dedicate their scarce time to monitoring the political performance of their representatives. Furthermore, the mass-consumerist and individualist culture propagated by capital-driven media is internalized by oppressed groups, preventing them from perceiving the socioeconomic chains in which they are embedded – in an intense process of alienation and exclusion (Freire, 1979).

Thus, a cycle of collective conformity forms, in which exploited layers find no alternatives to overcome their oppression, being affected by the structural mechanisms that maintain the status quo of hegemonic groups. Generalized apathy, manifested through political passivity (Santos, 2007) – given that efforts of participatory democracy are not identified among the majority of the population – provides fertile ground for consolidating spurious ideals of State appropriation by power groups at both the national and Bahian levels.

From this perspective, the indifference and disinterest observed regarding female participation in the Legislative Assembly of Bahia are symptoms of the lack of collective preparation for practicing models of participatory democracy in the state by a large portion of the Bahian population. This highlights the need for the implementation of pedagogical proposals aimed at developing individual and collective consciousness, fostering participation in the democratic and political process to promote the collective emancipation of oppressed subjects.

There are projects that invest in this perspective. We cite here popular legal education projects, developed by national and Bahian entities, which aim to disseminate critical knowledge to

stimulate the sociopolitical struggle of historically excluded subjects from decision-making arenas. Through a proposal of “de-castelation” of legal knowledge (Nunesmaia Jr.; Rocha, 1998), via critical and libertarian education, popular legal education projects seek to engage oppressed populations in building collectively useful knowledge for their autonomous and feasible collective emancipation.

Within this movement, it is possible to identify entities whose activities are specifically directed toward women’s rights. This is the case of the *Promotoras Legais Populares* (Duque et al., 2011), which offer training courses on women’s rights to support feminist struggles and combat gender-based violence. These collectives operate in a dialogical and horizontalized manner to foster the construction of knowledge designed to be effective for all women, without distinction, and to assist in forming collective protection networks (Fonseca, 2012). In this sense:

For a long time, civic participation has been synonymous with merely fulfilling one’s electoral obligations: the role of citizens is consumed in the act of voting every two years, electing their representatives to decide the course of the State without any popular interference. [...] Countering this scenario of popular political disengagement, the training projects of *Promotoras Legais Populares* aim to engage the female population targeted by the program in participation within the governance of the country, across its various spheres. Women are encouraged to intervene both in governmental spaces themselves - through the election of their own representatives or by participating in councils and other institutions created for this purpose - and in non-governmental spaces - through petitions, marches, demonstrations, and so on (Rotondano, 2016, p. 267).

From this perspective, the indifference of voters regarding the performance of the state deputies elected in 2018 and 2022 to the Legislative Assembly of the State of Bahia, as reflected in the percentages evaluated in the questionnaire, contributes to the reinforcement of the liberal-elitist political system, which strengthens infrastructures that exclude groups discriminated against within the Brazilian democratic State, especially women. Proposals to combat this scenario, such as the *Promotoras Legais Populares*, constitute viable solutions to political passivity and indifference, fostering greater female protagonism in public representation spaces.

Therefore, overcoming the political apathy of the majority, through the preparation of individual consciousness for subjects to assume political and historical responsibilities within the perspective of a participatory democracy model and counter-hegemonic theoretical experience, is also a central point of this discussion. In addition to promoting democratic quality through the spirit of collective consciousness, such a measure would directly challenge the predominance of male composition in spaces of political power at both the national and Bahian levels.

3 POLITICS OF CARE: FEMALE REPRESENTATION AMONG STATE DEPUTIES OF THE LEGISLATIVE ASSEMBLY OF BAHIA

In the present research, the data obtained through item 6 of the applied questionnaire indicate that 86.1% of the respondents use identification with the party profile, ideas, and proposed programs as a criterion for choosing a state deputy. In turn, in item 10 of the questionnaire, approximately 87.8% of the population considers projects relevant to society as an important factor in deciding which female candidates to vote for.

In this context, it becomes evident that the electorate seeks to determine which of their characteristics they wish to express in the political arena, that is, the self-identification of their interests that results in the formation of collective consciousness. Predominantly, the selection of women to exercise political representation is based on proposals and actions they can carry out during their terms, according to the responses provided. However, it is necessary to discuss the social, ideological, and political barriers that women face in their parliamentary activities.

Here, a theoretical current is highlighted, which characterizes the patriarchal effort to, illusorily, configure a subordination of women in the political sphere through a supposed male moral superiority. This thesis can be termed the “politics of care” or “maternal thinking” (Biroli; Miguel, 2014). This theoretical perspective argues that women can bring a differentiated contribution to public life because they are accustomed to caring for others and safeguarding the most defenseless. Thus, with a more expressive female presence in power spheres, the aggressive nature of political activity would be softened (Biroli; Miguel, 2014).

Women would bring to politics a valuing of solidarity and compassion, as well as a genuine pursuit of peace; areas currently neglected in political debates such as social support, health, education, or the environment. Female presence would enable the overcoming of “interest-based politics,” selfish and masculine (Biroli; Miguel, 2014). Consequently, this mechanism transforms into a form of segregation of women into subordinate political positions. Indeed, in the parliamentary sector, female candidates often end up focusing more on issues considered “social” rather than on hard politics, such as public administration, economic policy, and international relations (Miguel, 2001).

Thus, the challenge for women’s inclusion in politics was that, to become full citizens, they would need to adapt beforehand to the traditional stereotype created by the patriarchal society regarding their political functions. Consequently, this dangerous appeal fosters the naturalization of identities that emerge from historical processes of gender domination. In this sense, the research confirmed this maternalist social bias in item 12 of the questionnaire when relating some of the Law Projects proposed by the State Deputies of Bahia, such as the following examples:

Table 2. Law projects discussed by the State Deputies of Bahia

Creation of the Bolsa Social Maria da Penha, providing financial assistance to women in Bahia in situations of social vulnerability, who are threatened or have been victims of domestic, family, or gender-based violence, in order to guarantee the right to a dignified life, especially when protective measures require removal from the home and family nucleus.
Guarantees the constitutional rights to freedom for those who do not wish to participate in vaccination campaigns against COVID-19 or any of its variants.
Provides for the development of statistics on violence against the LGBTQIA+ population and against Black populations within the State of Bahia, and establishes other provisions.
Guarantees pregnant women the right to reschedule physical aptitude tests in public examinations conducted by the State of Bahia.
Declaration of Public Utility of MovimentAiyê Ibcdh – Brazilian Institute of Education, Culture, and Human Development.

Source: Data from the questionnaire applied by the researchers in 2022.

It can be observed that there exists a moral imperative underlying the central theoretical current discussed, which is similarly embedded in the Legislative Assembly of Bahia, shaping the actions of the state deputies. Issues such as culture, health, child and women protection, and social support for groups considered vulnerable within the social context are framed in the notion that women possess greater sensitivity to the needs of others, which supposedly contrasts with the pragmatic masculine approach. Consequently, this situation may reinforce merely symbolic representation of Bahia's female state deputies, perpetuating gender stereotypes, and hegemonic performances of masculinity.

In this light, the ascent of women to power in a state structured under patriarchal norms⁴ becomes, in the symbolic-political spectrum, an assertion that, although women may occupy positions of authority, their voices are constrained by a veil of subordination, as they are not considered "capable" of addressing and acting effectively in other public spheres. Supposed innate characteristics of women condition them toward functions and practices deemed sensitive and nurturing, where political debate and the confrontation of ideas are considered inappropriate.

The discourse of "maternal politics" or "politics of care" isolates women in their fictitious niche of dependence and assigns men the socially most valued tasks (Miguel, 2001). Consequently, the attribution of caregiving roles to women is naturalized, especially within the family, where men rarely assume responsibilities (Vasconcelos, 2009). In this scenario, it becomes necessary to construct

⁴ According to Carole Pateman (1992, p. 57), "patriarchy asserts that, from the natural characteristics of men and women, hierarchical relations of subordination necessarily follow." Furthermore, "it is based on the appeal to nature and on the argument that the woman's natural function to procreate prescribes her domestic and subordinate place in the order of things" (Pateman, 1992, p. 62). In addition, "The essential feminist argument is that the doctrine of 'separate but equal' and the ostensible individualism and egalitarianism of liberal theory obscure the patriarchal reality of a social structure of inequality and the domination of women by men" (Pateman, 1992, p. 57).

an ethics of care that recognizes care as a human necessity, with the State playing a vital role in promoting public policies to ensure its full fulfillment (Mello; Nuernberg, 2012).

Citizenship requires qualities of openness and inclusivity, whereas this “maternal” politics seeks intimacy and exclusivity, which is particularly unsuitable for public life (Miguel, 2001). Given this issue, the familism proposed by “maternal thinking,” by privileging private union ties, erases references to the common good and dissolves society into a proliferation of particularisms.

The manifestation of this consciousness reveals the vertiginous space into which the idea of maternalism and familism, promoted by the politics of care, can spill into the public sphere. Indeed, the conception remains crystallized that the construction of the Brazilian state’s national identity, at an institutional level, is incapable of distinguishing public from private.

It is noteworthy that Brazil has had only one female President in the entire history of its democracy (Devulsky, 2016). Spaces of political representation and representativity remain largely closed to women - especially those corresponding to high-ranking positions. This scenario becomes even more severe when considering that the only female President of the country was illegally and illegitimately removed from office by a predominantly male political elite (Souza, 2016; Braz, 2017; Costa; Lima, 2023).

The misogynistic nature of the 2016 parliamentary coup against then-President Dilma Rousseff must be discussed (Vieira, 2022), as she was removed under the pretext of committing “fiscal pedaladas”. While gender was not the sole factor motivating the spurious organization of the Brazilian hegemonic elite to depose the President, it undoubtedly played a significant role. Accordingly, “the 2016 impeachment was a parliamentary coup orchestrated with strong gender dimensions, as opposition efforts combined prejudices and sexist stereotypes to delegitimize Dilma’s image” (Carniel; Ruggi; Ruggi, 2018, p. 254). This conclusion is further reinforced by the fact that the Federal Regional Court of the 1st Region (TRF-1) upheld, on August 21, 2023, the dismissal of the Administrative Misconduct Action regarding practices attributed to Dilma Rousseff and others during the impeachment (Richter, 2023).

Regarding the state of Bahia, the respondents in item 6 primarily use identification with the party profile, ideas, and proposed programs as a criterion for choosing a state deputy, and in item 10, they consider projects relevant to society as important for deciding on female candidates. Nevertheless, the “politics of care” obstructs the realization of voters’ expectations regarding the deputies. Moreover, it reinforces a vague and weak symbolic representation, as not all female deputies will be able to act on public policy agendas that address the population’s socioeconomic needs to achieve social justice.

Thus, representation does not always align with representativity, as previously discussed. This highlights the necessity of shifting the individual dimension of the “politics of care” phenomenon toward a collective citizen perspective as a principal tool for social transformation through participatory democracy. It is essential to invest in transcending symbolic representation beyond the private sphere of “politics of care” to achieve a profile of concrete representativity in deputies’ political actions.

Therefore, it is imperative to construct alternatives that both challenge the “politics of care” regarding women and develop political instruments capable of legitimizing the expression of interests from both the electorate - solidifying their political satisfaction - and from female deputies in their concrete political actions, enabling women to exercise their representation fully and unhindered.

4 FINAL CONSIDERATIONS

The analysis of the results obtained in the present study aimed to explore democratic quality and its ramifications in Bahia’s politics. This work demonstrates not only the transversality and multidimensionality encompassed in the study of women’s participation and consequent representation in Bahian politics but also the importance of discussing democratic quality as the effective attainment of gender equality.

Firstly, the study revealed a discussion of apathy and indifference as collective symptoms, identified through the quantitative analysis of data obtained via questionnaires applied to the population of the State of Bahia. In this sense, the research addressed the phenomenon of collective consciousness within the social context, reflecting how the intersubjectivities of these subjects are intertwined with the choice of their representatives.

Thus, it was found that the hegemonic liberal-individualist ideology exerts significant influence over the established model of representative democracy, constructed on foundations that limit active societal participation in the political sphere. Consequently, there is a clear need to overcome disbelief regarding popular participation in political representation, which would promote dialectical processes of consciousness and social transformation toward the construction of a society in “becoming.”

Although some historical efforts have been made to include women in politics, from the perspective of the so-called “politics of care,” this inclusion often requires women to occupy only the space of a dominant symbolic discourse. Consequently, from a theoretical viewpoint, this approach

reinforces the naturalization of gender-stereotyped identities in society, supporting the maintenance of hegemonic performances of masculinity and femininity.

In this regard, the ascent of women to political power, structured within patriarchy, remains constrained under the veil of subordination, as numerous barriers are erected that limit these parliamentarians' full autonomy to act within the democratic order. Accordingly, much remains to be done; viable alternatives must be pursued to increase the number of women in politics, as well as to create social and political openings for the exercise of female political representation in its full potential, without falling into discriminatory and limiting patriarchal rhetoric.

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**MULTI-PARENTING AND NEW FAMILY
CONFIGURATIONS: REFLECTIONS ON
PARENTAL DYNAMICS AND CONFLICTS IN
LIGHT OF CIVIL LAW DOCTRINE AND
BRAZILIAN JURISPRUDENCE**

**MULTIPARENTALIDADE E NOVAS
CONFIGURAÇÕES FAMILIARES, REFLEXÕES
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**MULTIPARENTALIDAD Y NUEVAS
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SOBRE LAS DINÁMICAS Y CONFLICTOS
PARENTALES A LA LUZ DE LA DOCTRINA
CIVILISTA Y LA JURISPRUDENCIA BRASILEÑA**

**LAURA NUNES DOS SANTOS¹
ISABELLA CHRISTINA DA MOTA BOLFARINI²**

ABSTRACT

This article aims to analyze the evolution of the concept of family in Brazilian law, with an emphasis on multi-parenthood, parenthood, and socio-affectivity. Since the promulgation of the Federal Constitutions from 1824 to 1988, with emphasis on the 1988 constitution, where it was possible to observe the rupture of the traditional family model, opening space for new arrangements based on affection, coexistence, and parental relationships. The valorization of the dignity of the human

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person and the recognition of affection as a legal basis have driven the protection of various family structures. Based on legislation, provisions of the CNJ and doctrine, jurisprudence, especially of the STF, the work argues that Family Law should reflect the plural reality of contemporary society and ensure the legal protection of legitimately constituted emotional bonds.

Keywords: Contemporary Family. Multiparenthood. Socio-affectivity. Brazilian Federal Constitution. Supreme Federal Court. CNJ.

RESUMO

O presente artigo visa analisar a evolução do conceito de família no Direito brasileiro, com ênfase na multiparentalidade, parentalidade e socio afetividade. A partir da promulgação das Constituições Federais de 1824 a 1988, com ênfase na constituição de 1988, onde foi possível observar o rompimento do modelo tradicional de família, abrindo espaço para novos arranjos baseados no afeto, na convivência e nas relações parentais. A valorização da dignidade da pessoa humana e o reconhecimento da afetividade como fundamento jurídico têm impulsionado a proteção a diversas estruturas familiares. Com base em legislação, provimentos do CNJ e doutrina, jurisprudência, especialmente do STF, o trabalho defende que o Direito das Famílias deve refletir a realidade plural da sociedade contemporânea e assegurar a proteção jurídica de vínculos afetivos legitimamente constituídos.

Palavras-chave: Família Contemporânea. Multiparentalidade. Socioafetividade. Constituição Federal de 1988. STF. CNJ.

RESUMEN

Este artículo analiza la evolución del concepto de familia en el derecho brasileño, con énfasis en la multiparentalidad, la paternidad y la socioafectividad. Desde la promulgación de las Constituciones Federales de 1824 hasta 1988, con especial énfasis en la Constitución de 1988, se observó la ruptura del modelo familiar tradicional, abriendo espacio para nuevas estructuras basadas en el afecto, la convivencia y las relaciones parentales. La valoración de la dignidad de la persona humana y el reconocimiento del afecto como fundamento jurídico han impulsado la protección de diversas estructuras familiares. Con base en la legislación, las disposiciones del CNJ, la doctrina y la jurisprudencia, especialmente del STF, el trabajo argumenta que el Derecho de Familia debe reflejar la realidad plural de la sociedad contemporánea y garantizar la protección jurídica de los vínculos afectivos legítimamente constituídos.

Palabras clave: Familia Contemporánea. Multiparentalidad. Socioafectividad. Constitución Federal de 1988. STF. CNJ.

INTRODUCTION

The family is a social institution that is in constant transformation, influenced by the cultural, political, and legal changes of society. In Brazil, beginning with the Federal Constitution of 1988, the concept of family was expanded, breaking with the patriarchal models previously in force. This new model values human dignity, affection, and equality as the foundations of family relationships.

In this context, new forms of parenthood have emerged, such as socio-affective parenthood and multiparenthood, recognizing that bonds of affection may be as relevant - or even more so - than biological ties. The case law of the Supremo Tribunal Federal (STF) plays a central role in this process, consolidating understandings that recognize the legal value of affection.

This study aims to analyze the evolution of the concept of family in Brazilian law, with an emphasis on multiparenthood, parenthood, and socio-affectivity, addressing historical, doctrinal, normative, and jurisprudential aspects. For this purpose, it draws on the analysis of legislative sources, statistical data, and renowned Family Law scholars, such as Maria Berenice Dias, Rodrigo da Cunha Pereira, Paulo Lôbo, and Luis Edson Fachin, among others.

The article adopts a qualitative methodology, of an exploratory and descriptive nature, based on bibliographic and documentary review. To that end, it analyzes national legislation (such as the CF/88, Civil Code of 2002, and CNJ Provisions), landmark decisions of the STF and STJ, as well as specialized doctrine (Maria Berenice Dias, Rodrigo da Cunha Pereira, Paulo Lôbo, Rolf Madaleno, among others). The study also uses statistical data extracted from official sources, such as the IBGE Demographic Census (2022) and CNJ reports (2023), in order to contextualize the research within the Brazilian empirical reality.

Considering the normative evolution and the complexity of new family configurations, the central problem guiding this research is to analyze the legal criteria adopted by the Brazilian legal system to legitimize multiple affective family ties, with special attention to multiparenthood and the “posse do estado de filho.” It seeks to understand how the Federal Constitution of 1988, the rulings of the STF and STJ - especially those reported by Justice Nancy Andrighi - and CNJ Provisions No. 63/2017 and No. 83/2019 substantiate the recognition of socio-affective parenthood.

The central hypothesis of this research starts from the premise that parenthood in Brazil is no longer restricted to consanguineous ties, making it legally possible and legitimate to recognize multiparenthood and socio-affective filiation, if there is evidence of “posse do estado de filho” and stable affective coexistence. It also assumes that the case law of the STF and the CNJ Provisions have consolidated a new legal paradigm, based on human dignity and the best interests of the child, in accordance with constitutional principles and the plural reality of Brazilian families.

This research is legally justified by the need to understand the adaptation of Family Law to the constitutional values of human dignity (art. 1, III, CF/88), equality of filiation (art. 227, § 6), affection, and the full protection of children and adolescents (art. 227). The social justification lies in the growing demand for recognition of new family structures - such as same-sex families, blended families, single-parent families, and multiparent families - that break away from traditional models

and require inclusive, effective, and coherent responses from the legal system in line with the fundamental rights of those involved, especially children and adolescents in situations of affective vulnerability.

1 THE CONTEMPORARY FAMILY: EVOLUTIONARY ANALYSIS OF THE BRAZILIAN CONSTITUTIONAL AND INFRA-CONSTITUTIONAL NORMS AND THEORETICAL FOUNDATIONS OF THE TRADITIONAL FAMILY AND PATRIARCHY

The family is a dynamic institution, whose forms of constitution and recognition follow the social, political, and cultural transformations of each era. In Brazil, the legal concept of family has undergone profound reformulations from the Constitution of 1824 to the current Constitution of 1988, reflecting a continuous process of normative evolution. It is observed that, throughout the various Constitutional Charters, there have been significant changes regarding family structure, its legal foundations, and the expansion of the rights of its members.

The Constitution of 1824, still under the imperial regime, understood the family in light of Catholic doctrine, prioritizing religious marriage and patriarchal authority. Article 5 recognized Catholicism as the official religion, admitting other forms of worship only in a restricted manner, while Article 179, section XXIX, addressed the civil rights of the family in a generic way. With the Constitution of 1891, during the First Republic, the secularization of the State occurred and exclusive recognition was given to civil marriage, as provided in Article 72, § 4. This Charter also guaranteed the civil rights of illegitimate children and equality in marriage (Article 72, § 6), beginning the disassociation between family and religion.

The subsequent constitutions deepened the role of the State in family protection. The 1934 Constitution highlighted the importance of marriage as the foundation of the family (Article 144) and provided protection for motherhood, childhood, and women (Articles 124, item “f,” and 121, § 4). The 1937 Constitution, under the authoritarian *Estado Novo* regime, maintained a traditional conception of family, valuing hierarchy, and conservative morality (Articles 124 and 125). In 1946, during the process of redemocratization, the family was recognized as the foundation of society (Article 163), with protective norms for motherhood and youth (Articles 157, IV and VII), as well as the recognition of civil marriage (Article 168).

During the military regime, the Constitution of 1967, reinforced by Constitutional Amendment No. 1 of 1969, reaffirmed marriage as the foundation of the family (Article 175) and provided protection for motherhood, childhood, and adolescence (Article 165, sections IV and VII), although within a conservative model. Finally, the Federal Constitution of 1988, known as the

“Citizen Constitution,” broke with traditional paradigms and adopted a plural and inclusive conception of family. Article 226 recognizes various forms of family entities, such as stable unions and single-parent families, in addition to guaranteeing equality between spouses and protection of filiation without discrimination. Articles 227 to 230 complement this framework, assigning to the family, society, and the State the duty to ensure the rights of children, adolescents, young people, and the elderly, based on the principles of human dignity, solidarity, and affection.

The traditional conception of family, consolidated by the Civil Code of 1916, was based on a patriarchal model, inherited from Roman Law, in which the father exercised power over all family members. Such a structure reflected a hierarchical, authoritarian, and exclusionary logic. Within this context, women occupied an inferior legal position, restricted to the private sphere and deprived of legal autonomy (Dias, 2022).

Moreover, filiation was rigidly regulated: only children born within marriage were considered legitimate, while children born outside of it were discriminated against, including regarding inheritance rights. Families formed outside marriage, such as free unions, single-parent families, or same-sex families, were legally marginalized (Venosa, 2023).

Some authors, among them Maria Berenice Dias, denounce this structure as exclusionary, patriarchal, and incompatible with the principles of human dignity and equality. For the author, the traditional model of family is selective and incapable of encompassing the complexity of contemporary human relationships (Dias, 2022). Similarly, Rodrigo da Cunha Pereira argues that traditional Family Law legitimizes relations of power and domination, rather than relations of affection and solidarity (Pereira, 2019).

Considering the social and cultural transformations of the twentieth century, such as female emancipation, the recognition of gender equality, and the appreciation of affectivity, the concept of family underwent profound doctrinal and jurisprudential revisions. Authors such as Paulo Lôbo and Silvio de Salvo Venosa identify a paradigmatic transition, where the legal family bond came to be founded not only on marriage or consanguinity, but also on affection and family coexistence - values that came to be legally recognized (Lôbo, 2011; Venosa, 2023).

Historically, Family Law was tied to a patriarchal conception, centered on male authority and the formality of marriage, assigning to women a subordinate role and disregarding family bonds that did not conform to the heteronormative, matrimonial, and biological pattern (Farias; Karvat, 2024). This reductionist view, as highlighted by various scholars, does not reflect the plurality of family arrangements present in current Brazilian social reality. Criticism of the traditional model has

emphasized its inadequacy in light of fundamental rights, especially about the recognition of family diversity and the appreciation of affective relationships as legitimate legal elements.

In this context, the evolution of Brazilian constitutions shows a gradual movement to overcome the traditional view of marriage and family. Initially, over the years, new constitutions expanded the legal recognition of different forms of family constitution, as evidenced above. The Constitution of 1934 allowed, for the first time, religious marriage to produce civil effects, provided legal requirements were met, while Constitutional Amendment No. 9/1977 instituted divorce, breaking with the idea of the indissolubility of the marital bond. Finally, the Constitution of 1988 consolidated previous advances and innovated by expressly recognizing stable unions and single-parent families as family entities, in addition to establishing equality between spouses and children, regardless of origin.

Thus, the 1988 Charter represented a paradigmatic rupture by incorporating democratic and inclusive values into Family Law, emphasizing affective relationships and the diversity of family arrangements. As Costa (2006) observes, although civil marriage continues to be the full form of family constitution, the inclusion of stable unions and other nonconventional forms demonstrates the adaptation of the legal system to contemporary social complexity, in line with the constitutional principles of human dignity and equality.

The enactment of the 1988 Federal Constitution marked a milestone in the legal recognition of the plurality of family entities in Brazil. Article 226 of the Federal Constitution enshrined the family as the foundation of society but innovated by not restricting this protection to civil marriage. Stable unions (art. 226, §3º) and single-parent families (art. 226, §4º) came to be recognized as family entities, establishing a new paradigm of inclusion and pluralism.

Moreover, Article 227 of the Federal Constitution granted special protection to family coexistence as a fundamental right of children and adolescents, reinforcing the centrality of affection in parental relationships. This emphasis on affective coexistence provided the basis for the recognition of socio-affective parenthood, multiparenthood, and adoption based on affection, detached from exclusively biological parentage (Madaleno, 2021).

The constitutionalization of Civil Law, as advocated by Gustavo Tepedino, introduced a new hermeneutic for Family Law, guided by constitutional principles such as human dignity (art. 1º, III), gender equality (art. 5º, I, and art. 226, §5º), and pluralism (art. 1º, V) (Tepedino, 2004).

Affectivity, although not explicitly expressed as a constitutional norm, came to be recognized as a legal value by doctrine and jurisprudence, assuming a relevant role in the construction of family legal bonds (SCHREIBER, 2008). Such recognition was consolidated by the Supreme Federal Court,

particularly in the decisions affirming same-sex unions as family entities (STF, ADI 4277 and ADPF 132).

Luis Edson Fachin, in addressing the constitutional family, argues that the family nucleus must be understood as a space of dignity, solidarity, and affection, and not merely as an economic or reproductive unit (Fachin, 2003). Thus, Family Law adapts itself to social reality, and not the other way around, guaranteeing legal protection to all types of family arrangements that promote the dignity of their members.

Based on this broader and more inclusive conception, it is observed that the Brazilian legal system has gradually kept pace with social transformations regarding the structure and function of the family. The Civil Code of 1916 reflected a patriarchal and hierarchical model, centered on male authority and legitimacy conferred solely by marriage, disregarding affective bonds or arrangements outside the matrimonial standard. In this context, women occupied a position of subordination, and extramarital relationships were stigmatized and legally unprotected.

The overcoming of this view began with normative milestones such as the Divorce Law (Law No. 6.515/1977), which broke with the indissolubility of marriage and allowed new family configurations, and was deepened with the Civil Code of 2002, strongly influenced by the 1988 Constitution. This new code enshrined equality between spouses and children, recognized the stable union as a family entity, and broadened legal protection to parenthood regardless of its origin. Norms such as the Child and Adolescent Statute (1990) and the Elderly Statute (2003) reinforced the protective function of the family, emphasizing affective bonds and intergenerational care.

Furthermore, initiatives such as the Family Statute Bill (PLS 470/2013) reflected the legislative effort to consolidate a more pluralistic approach, capable of encompassing different forms of family coexistence, including those not contemplated by the traditional model. Although archived, this bill reaffirms the need for a Family Law committed to human dignity, in line with the understanding of Fachin (2003), for whom the family must be recognized as a space of affection, solidarity, and mutual respect, and not reduced to a mere normative or productive institution.

2 JUDICIAL ACTIONS AVAILABLE FOR THE RECOGNITION OF MULTIPARENTALITY AND SOCIO-AFFECTIVE PATERNITY/MATERNITY

There are different procedural and administrative avenues for the recognition of socio-affective parenthood or multiparent hood in the Brazilian legal system. The main ones are listed below:

Action for the Recognition of Socio-affective Paternity or Maternity: Based on Article 1,593 of the Civil Code, this action seeks to legally recognize the existence of an affective parental bond, even if a biological bond already exists. As explained by Maria Berenice Dias (2019, p. 286), “essa ação pode ser proposta pelo filho ou pelo pai ou mãe afetivo, e deve provar a convivência estável, pública e o exercício da função parental.”

Action for Multiparent hood: This is a more recent action that gained strength after the judgment of RE 898.060/SC (2016). In this case, the plaintiff seeks the simultaneous recognition of two or more parental bonds: one biological and another affective. Multiparent hood can be recognized both judicially and incidentally in actions for civil registry rectification, custody, or child support.

Action for Investigation of Paternity/Maternity with Request for Socio-affective Inclusion: This action is used when there is doubt about the origin of parentage, but recognition of socio-affective parenthood is also sought in parallel. It allows that, even if the biological father/mother is identified, the affective bond may also be legally recognized.

Civil Registry Rectification: Based on Article 109 of the Public Registry Law (Law No. 6,015/1973), this action seeks to modify or include data in the civil registry, especially the name of the socio-affective father/mother.

Extrajudicial Recognition (CNJ Provision No. 63/2017): If there is consensus among the parties, it is possible to recognize socio-affective paternity or maternity directly at the notary’s office. CNJ Provision No. 63/2017 allows this measure, provided that public and continuous coexistence is proven, as well as mutual consent.

As highlighted by Maria Berenice Dias (2019, p. 290), “o reconhecimento extrajudicial da filiação afetiva é um avanço na desburocratização do acesso aos direitos da criança e do adolescente.” Jurisprudence has also recognized these possibilities. In REsp 1.348.536/SP, the STJ admitted the recognition of socio-affective paternity even when a biological father exists, based on the protection of the child’s best interest.

In HC 145.363, the STJ reinforced that “o reconhecimento da filiação afetiva deve ser garantido mesmo que existem dúvidas quanto à origem biológica, desde que comprovado o vínculo de fato.”

Therefore, the current legal system offers multiple pathways for the recognition of affective parenthood and multiparenthood, always grounded in the dignity of the human person and the best interest of the child.

3 THEORETICAL FOUNDATION: MULTIPARENTALITY, SOCIO-AFFECTIVE PARENTHOOD, AND *POSSE DO ESTADO DE FILHO*³

As seen in the previous section, the Brazilian family structure has undergone significant transformations in recent decades, driven by cultural, social, and legal changes. In this new context, Family Law has come to incorporate categories that were previously marginalized, such as socio-affective parenthood and multiparenthood, aligning itself with the principle of human dignity. The analysis of the categories of parenthood, socio-affectivity, and multiparenthood allows us to understand the criteria by which the legal system today recognizes the various forms of legitimate family bonds.

With the enactment of the Federal Constitution of 1988, the normative paradigm of the family shifted from the patriarchal model, centered on marriage and consanguinity, to a plural conception of family.

According to Anderson Schreiber (2013, p. 51), “a afetividade se converteu em valor jurídico constitucional, sendo princípio que deve orientar a aplicação das normas de Direito de Família.” This conception was fundamental for the emergence of the notion of filiation based on the parental function and not merely on genetic origin. Rolf Madaleno (2022) argues that “a família é uma realidade emocional antes de ser jurídica,” and that “o afeto justifica o nascimento, a permanência e até o término de vínculos jurídicos.”

The recognition of affection as a legal foundation of filiation was consolidated by the jurisprudence of the Supreme Federal Court, especially in the judgment of RE 898.060/SC. In this decision, with recognized general repercussion, the STF declared that “o afeto, presente de forma contínua e pública, é elemento suficiente para gerar vínculo de parentalidade jurídico.” In this sense, multiparenthood was consolidated, that is, the possibility of coexistence of both biological and socio-affective parental bonds.

The III Civil Law Conference of the Federal Justice Council (CJF), through Enunciado nº 256, also expressly recognized that “A posse do estado de filho (parentalidade socioafetiva) constitui modalidade de parentesco civil” (CJF, 2006), thus expanding the normative value of affection beyond the moral sphere.

Luis Edson Fachin (2011, p. 67) affirms that “a afetividade se converteu em elemento estruturante da família contemporânea, como expressão da liberdade e da dignidade da pessoa

³ Legal status of child based on socio-affective parenthood

humana,” which legally legitimizes arrangements such as homoaffective families and multiparental families.

Parenthood, in the current legal context, is a functional concept that encompasses the exercise of duties of care, protection, and education, and not merely genetic origin. Paulo Lôbo (2019, p. 102) defines parenthood as “a relação jurídica entre pais e filhos fundada no desempenho das funções parentais, independentemente da origem biológica.”

The Civil Code, in Article 1,593, already admits that filiation may have a “biological or civil” origin, including adoption and socio-affective relationships. The recognition of multiparenthood was reinforced by the STF in RE 898.060/SC, which authorized the simultaneous inclusion of two fathers, one biological and one affective, in the civil registry, without the need to exclude any of the bonds.

At the administrative level, CNJ Provision nº 63/2017 expressly authorized the extrajudicial recognition of socio-affective filiation at the notary’s office, upon proof of affective, public, and lasting coexistence with the child. This innovation allowed broader access to the legal recognition of real family bonds, breaking away from the biologizing tradition.

The issuance of CNJ Provision No. 63/2017 represented a significant milestone in the modernization and debureaucratization of Family Law in Brazil. Aiming to standardize civil registry certificate models nationwide, the provision also innovated by regulating the voluntary recognition of socio-affective paternity and maternity within the extrajudicial scope, as well as the registration of children born through assisted reproduction. By allowing family bonds based on affection to be formally recognized through an administrative procedure, without the need for judicial action, the CNJ incorporated into registry practice the doctrinal and jurisprudential advances already consolidated in the legal system, particularly regarding the valuation of affectivity as a structuring principle of parental relationships, in line with the constitutional paradigm inaugurated by the 1988 Constitution.

However, to enhance legal certainty and regulate sensitive aspects of extrajudicial recognition, CNJ Provision No. 83/2019 amended provisions of Section II of Provision No. 63, imposing new criteria for formalizing these bonds. Among the main changes are the limitation of the minimum age of the child to be recognized (over 12 years), the mandatory consent of the minor up to 18 years of age, and the requirement of objective evidence of socio-affectivity through documents and other evidentiary elements. Additionally, the provision began to require a prior opinion from the Public Prosecutor’s Office for validation of the act and restricted the possibility of extrajudicial multiparentality to only one socio-affective ascendant, referring other cases to judicial consideration. These changes aim to ensure the effectiveness of the principle of the best interest of the child and

adolescent, as well as to prevent fraud and simulations that could compromise the stability of recognized family relationships.

In summary, Provisions No. 63 and No. 83 interact by seeking a balance between speed and legal certainty in the recognition of socio-affective filiation. While facilitating access to justice and promoting the inclusion of new family structures, they do not disregard the protection of fundamental rights, especially those of the minors involved. Consequently, they reinforce the role of affection, cohabitation, and responsibility as legitimate foundations of contemporary parenthood, aligning Family Law with the requirements of human dignity and the plurality of family formations recognized by the Brazilian legal system.

From a social perspective, the 2022 Demographic Census conducted by IBGE provided detailed information about the composition of Brazilian households, analyzed according to the kinship or cohabitation relationship of residents with the household head. As explained by João Hallak, Deputy Director of IBGE Research, these data, derived from the basic questionnaire, provide a “first portrait of household composition” and classify domestic units into categories such as single-person, nuclear, composite, or extended households, addressing the presence of a spouse or children. Marcio Minamiguchi, IBGE manager, clarified that this analysis of household units does not constitute a complete study of the concept of family, as more specific data on nuptiality and the identification of a father or mother for all residents are collected in the Census sample questionnaire.

Parallel to this description of household composition by IBGE, the Brazilian social reality encompasses the emergence of various “new family entities,” arising from social and cultural transformations. Among these arrangements are “reconstituted” or “blended” families, formed by individuals who had previous relationships and now compose a new family, often with children from past relationships. The complexity of these relationships and the presence of children living with people who, while not their biological parents, play a fundamental role in their lives, reinforce the legal relevance of socio-affective parenthood.

Cíntia Rosa Pereira de Lima (2020, p. 147) states that “multiparentality represents a legal response to the plural reality of contemporary families, serving as an instrument to uphold human dignity.” Similarly, Maria Berenice Dias (2019, p. 283) argues that “denying the recognition of multiparentality is to contravene the principles of affection and equality.”

These changes reflect a Family Law that adapts to societal transformations and increasingly recognizes multiple, simultaneous, and legitimate bonds, grounded in cohabitation and affection, rather than solely in biology.

In this current context, socio-affective paternity or maternity has come to be defined as the bond constructed through affection, manifested in stable, public cohabitation with the appearance of a filial relationship. This relationship is legally identified through the so-called *posse do estado de filho*, which is characterized when someone treats another person as a child and is socially recognized as such.

Giselda Hironaka (2018, p. 193) explains that “a posse do estado de filho é formada por três elementos: o nome, o tratamento e a fama, sendo critério essencial para o reconhecimento jurídico da filiação afetiva.” Based on this understanding, both the Judiciary and the civil registries have begun to recognize parental relationships even in the absence of a biological bond or formal adoption.

The legal implications of socio-affective filiation are multiple: the socio-affective child has the right to a name, inclusion in the civil registry, child support, inheritance, custody, and family cohabitation. Recent jurisprudence recognizes multiparentality, allowing, for example, a child to have two fathers and one mother in their birth certificate.

Rodrigo da Cunha Pereira (2020, p. 88) highlights that “a parentalidade socioafetiva rompe com o paradigma da consanguinidade e redefine os contornos do parentesco jurídico,” promoting the social function of the family. Rolf Madaleno (2022) affirms that “a filiação afetiva não apenas possui validade jurídica, como deve ser estimulada pelo ordenamento como forma de proteção da infância e da juventude.”

Data from CNJ (2023) reveal that more than 20,000 acts of socio-affective filiation recognition have been carried out extrajudicially since the issuance of Provision No. 63, demonstrating the consolidation of this practice. According to IBGE (2021), more than 5.5 million Brazilian children live in households without the presence of the biological father, many being raised by stepfathers, grandparents, stepmothers, or same-sex couples - situations in which affection has become the most appropriate criterion for legal recognition of filiation.

Regarding these issues, the Supreme Federal Court (STF) has played a central role in constructing a new concept of family in Brazil, recognizing forms of filiation founded on affectivity rather than solely on biology. Multiparentality and socio-affective parenthood have become legally accepted, marking a profound change in the Brazilian legal system.

The main milestone of this transformation was the judgment of Extraordinary Appeal (RE) 898.060/SC, adjudicated in 2016, with general repercussion recognized under Theme 622. The established thesis was clear: “A existência da paternidade socioafetiva, declarada ou não em registro civil, não impede o reconhecimento do vínculo de filiação com o pai biológico, com os efeitos jurídicos próprios” (Brasil, STF, RE 898.060/SC, 2016). This understanding enabled multiparentality,

that is, the possibility for a person to have two or more legally recognized filiation bonds, one biological and another socio-affective, without one needing to exclude the other.

Even before this decision, state courts and the Superior Court of Justice (STJ) had already been adopting rulings in this sense, recognizing *posse do estado de filho* as a valid element for constituting parenthood (Dias, 2019). This movement represents the “overcoming of the biologicist paradigm, centered exclusively on blood,” which is why the STF decision reflects the understanding that the legal filiation bond must protect the child and recognize the affective and cohabitation reality that sustains them, not just genetic origin (Lobo, 2019). By affirming affectivity, a legitimate criterion was adopted for the recognition of filiation in contemporary law, with value equivalent to consanguinity (Pereira, 2020).

Thus, constitutional jurisprudence has advanced toward consolidating a more plural and protective legal model of human dignity, especially for children and adolescents.

Regarding *posse do estado de filho*, it is important to highlight that this institution is the main criterion adopted by the Judiciary for recognizing socio-affective filiation. It is characterized by the presence of three classical elements: name, treatment, and reputation (*nomen, tractatus, fama*).

Name: when the child is socially treated as such, including the use of the surname of the socio-affective father or mother. Treatment: when there is continuous cohabitation and the exercise of parental functions, such as care, education, affection, and responsibilities. Reputation: when society recognizes that relationship as being between parent and child.

Nome: quando o filho é tratado socialmente como tal, incluindo o uso do sobrenome do pai ou da mãe socioafetiva. Trato: quando há uma convivência contínua e o exercício das funções parentais, como cuidados, educação, afeto e responsabilidades. Fama: quando a sociedade reconhece aquela relação como sendo de pai/mãe e filho.

According to Giselda Hironaka (2018, p. 193), “a posse do estado de filho é formada por três elementos: o nome, o tratamento e a fama, sendo critério essencial para o reconhecimento jurídico da filiação afetiva.”

The Civil Code, in art. 1.593, already allows filiation to have “biological or civil” origins, and doctrine and jurisprudence have interpreted this norm considering the principle of human dignity (art. 1, III, CF/88).

Proof of the socio-affective bond can be provided through witnesses, photographs, documents, school records, or any other means that demonstrate stable and public cohabitation between the child and the socio-affective parent.

Furthermore, *posse do estado de filho* has practical effects: it can justify granting custody, awarding child support, recognizing filiation, and entitlement to inheritance, according to articles 1.694 and 1.829 of the Civil Code.

Rolf Madaleno (2022, p. 161) recalls that “a posse do estado de filho é a manifestação mais concreta da parentalidade socioafetiva e precisa ser reconhecida como fonte legítima de vínculos jurídicos, inclusive sucessórios.”

Jurisprudence has applied these principles based on a constitutional interpretation of Civil Law, privileging affective bonds over mere biological origin.

4 FINAL CONSIDERATIONS

Based on the analysis developed throughout this study, it is possible to affirm that the legal recognition of multiparentality constitutes a significant advance in the consolidation of a plural, inclusive Family Law, committed to the constitutional principles of human dignity, affectivity, and the best interest of the child and adolescent. The jurisprudence of the Supreme Federal Court, especially in the judgment of RE 898.060/SC, reaffirms the possibility of the coexistence of biological and socio-affective bonds, without establishing a hierarchy between them.

The study revealed that multiparentality is not only legally possible but socially necessary, reflecting the real transformations of family structures. Socio-affective parenthood, recognized through *posse do estado de filho*, consolidates itself as an instrument for the enforcement of fundamental rights and for overcoming the biological paradigm that for a long time limited the recognition of family relationships.

However, the consolidation of this reality requires continuous interpretative and legislative efforts that ensure legal certainty, especially in the spheres of succession, registration, and the exercise of parental authority. Law must keep pace with the complexity of human relationships, promoting solutions that reconcile respect for plurality with the protection of vulnerable subjects.

It is concluded, therefore, that multiparentality represents a decisive step in the redefinition of the concept of family, demanding from legal practitioners' sensitivity, knowledge, and commitment to the concrete reality of people, especially regarding the valorization of affective bonds and the full protection of childhood and youth.

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REVIEW

CRITICAL REVIEW OF THE WORK 1964: CRITICAL PERSPECTIVES ON THE COUP D'ÉTAT – DEMOCRACY AND REFORMS IN POPULISM

RESENHA CRÍTICA DA OBRA 1964: VISÕES CRÍTICAS DO GOLPE – DEMOCRACIA E REFORMAS NO POPULISMO

RESEÑA CRÍTICA DE LA OBRA 1964: VISIONES CRÍTICAS DEL GOLPE – DEMOCRACIA Y REFORMAS EN EL POPULISMO

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INTRODUCTION

This work intends to critically review the work organized by Professor and Doctor of Philosophy Caio Navarro de Toledo, entitled *1964: visões críticas do golpe: democracia e reformas no populismo* (1964: Critical Views of the Coup: Democracy and Reforms

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in Populism). It is composed of a set of texts produced for the Seminar entitled "The 1964 Coup: 30 Years Later," held at the Institute of Philosophy and Human Sciences of the State University of Campinas in March 1994. The texts, produced by various writers, highlight parts of a dark past that left marks on Brazilian society and should be remembered in respect to its victims—civilians who fought for democracy, freedom of expression, and other rights essential to human life. Therefore, this work addresses the central arguments of each of the authors present in the work, seeking not only to reflect and problematize but also to relate the discussions pointed out among the texts.

The work includes a table of contents, an introduction, five chapters, and an appendix. Each chapter seeks to cover important aspects responsible for establishing and perpetuating the military dictatorship that began on March 31, 1964, and ended on March 15, 1985. These include: I. Economics, debated by economist and Doctor of Sociology Paul Singer and sociologist Francisco de Oliveira; II. Politics and Social Movements, composed by Doctor of Philosophy Caio Navarro de Toledo, Doctor of Political Science Argelina C. Figueiredo, political scientist Lucilia de Almeida Neves, social scientist João Roberto Martins Filho, and historian and political scientist I. A. Moniz Bandeira; III. Leftists, Military: The Defeat Without Resistance, in which the texts developed by historian and sociologist Nelson Werneck Sodré, historian and social scientist Jacob Gorender, and philosopher, legal, and social scientist João Quartim de Moraes dialogue; IV. Thirty Years Later, containing the texts of sociologists Octavio Ianni and Florestan Fernandes; and V. Testimony, written by militant book publisher Ênio Silveira. As a post-textual element, the appendix stands out, available in item VI, containing a Bibliography on the 1964 Coup, produced by Patrícia Trópia, and a section about the biography of the book's writers.

1 ECONOMY

To reflect on the economic aspects in the context of the military coup, the work *1964: visões críticas do golpe: democracia e reformas no populismo* (1964: Critical Views of the Coup: Democracy and Reforms in Populism) draws upon the texts "The Significance of Distributive Conflict in the 1964 Coup" by Paul Singer and "Dilemmas and Prospects of the Brazilian Economy Pre-1964" by Francisco de Oliveira.

Paul Singer points out that in 1964, Brazil was experiencing a serious problem with high inflation. The author notes that before the 1964 coup, it was unviable for the popular classes to open savings accounts; to build their nest eggs, they opted to purchase land in peripheral areas. As emphasized by the author, the economy of the period depended entirely on the export of commodities

like coffee, and in 1964 and the preceding years, coffee constituted 70 or 80% of the volume of products exported from Brazil. In the author's words:

Quando o preço do café caía, o Brasil entrava em crise; quando o preço do café subia havia, não apenas no setor cafeeiro, mas através da expropriação cambial, também no setor industrial. As divisas proporcionadas pela cafeicultura permitiam importar meios de produção. Quando o volume importado crescia, a indústria se acelerava. Portanto, o ritmo de desenvolvimento do Brasil era comandado pelo câmbio, pela exploração e pelo preço do café (Singer *apud* Toledo, 1997, p.16).

In 1963, the country faced a serious problem with its external debt, comprised of loans granted by intergovernmental institutions such as the Inter-American Development Bank, the World Bank, and others. High inflation was one of the means of transferring income from the working classes to capital. Added to this was the aggravating factor of the mismatch between wage values and the cost of goods.

In this sense, the labor movement was enormously important in demanding wage improvements, which at the time were disproportionate to inflation, which reached 80% per year in the 1960s. It is worth remembering that a large part of the Brazilian population still lived in rural areas in 1964, and the majority survived on their labor, which was undervalued and poorly paid, in agriculture.

Despite all the major hardships faced in the country, democracy was well utilized by the population, which consistently chose to vote for the opposition. This statement is clear and reinforced by the following excerpt:

Linhares perdeu a eleição porque não era a favor de Dutra, Dutra perdeu porque não era a favor de Getúlio, Getúlio morreu, mas Café Filho não conseguiu evitar a eleição de Juscelino, assim como Juscelino não conseguiu evitar a eleição de Jânio Quadros. (Singer *apud* Toledo, 1997, p.18).

This rebelliousness can also be observed in three social movements of the period. The student movement was defined by the author as "active, articulate, strong, and with a great impact on public opinion" (Singer *apud* Toledo, 1997, p.18). The peasant movement transgressed the rules established by private property and received significant media attention, which even predicted an agricultural revolution. Regarding the labor movement, it is worth highlighting that it was an important means found by workers to take over state-controlled unions, with greater ferment in São Paulo. In 1953, a time when the PT (Workers' Party) already existed, bricklayers, carpenters, metalworkers, and other workers mobilized in São Paulo in a strike that lasted about six weeks, and since then, this proletarian movement became increasingly solid and organized, intensifying in 1983

with the emergence of the CUT (Unified Workers' Central). Returning to the discussion about the period before the dictatorship, it is necessary to emphasize the indispensability of these social movements for the occurrence of wage readjustments, which began to correspond to inflation thanks to the Labor Court.

Thus, it is worth highlighting that the coup executed by the Armed Forces on March 31, 1964, was realized under the aegis of the economic problems plaguing Brazil in the period in question. However, the topic "Dilemmas and Prospects of the Brazilian Economy Pre-1964," by Francisco de Oliveira, problematizes the widely disseminated ideological predeterminism that characterizes the 1964 coup as the only alternative capable of leading Brazil towards overcoming the economic crisis faced in the years prior to the coup.

In addition to economic aspects, it is necessary to emphasize the political and ideological relationship behind the coup. Given the Cuban Revolution, the possibility of such a revolution occurring in Brazil was an idea that the right feared obsessively, since the press, television, and radio disseminated the notion that the left was already on the rise in the country and that democracy would be extinguished by this political spectrum. After the military seized power, the social movements of workers, students, and peasants were brutally repressed, and the "economic miracle" that occurred between 1968 and 1976 was used to justify and legitimize the downfall of democracy.

2 POLITICS AND SOCIAL MOVEMENTS

As the contributors to the work argued, the democracy established in 1946 was threatened on numerous occasions. The parliamentary system, implemented after Jânio Quadros' attempt to return to power and suspend Congress, was seen by conservative civilians as a "compromise solution" in the face of coup attempts that frequently loomed over Brazil. In this context, Toledo draws attention to the conditions under which the government that preceded the military coup was established:

O governo Goulart nasceu, conviveu e morreu sob o signo do golpe de Estado. Durante seus dois anos e meio de existência (setembro de 1961 a março de 1964), um novo contexto político social emergiu no país. Suas características básicas foram: uma intensa e prolongada crise econômico-financeira (recessão e uma inflação com taxas jamais conhecidas); constantes crises político-institucionais; ampla mobilização política das classes populares (as classes médias, a partir de meados de 1963, também entram em cena); fortalecimento do movimento operário e dos trabalhadores do campo; crise do sistema partidário e um inédito acirramento da luta ideológica de classes (Toledo, 1997, p. 31-32).

At the time Toledo's text was written, thirty years after Goulart's government, there was still no consensus regarding this government. While conservatives and liberals fervently disapproved of the government in question, for some leftist groups "it was an authentic nationalist, democratic, and popular government" (Toledo, 1997, p.32), and "for others, we were facing a government with a populist and bourgeois reformist character, without any real commitment to broader socio-economic transformations" (Toledo, 1997, p.32). There are even some criticisms from leftist groups that go further: for them, Goulart acted favorably towards the ruling classes and imperialism, handing over power to the right without any resistance.

However, despite all these criticisms, in general, the left agreed that there had been, from the first months of Goulart's government, an enormous ideological and political advancement of the popular classes, since politics advanced towards spaces that did not welcome it in earlier times, such as the countryside, factories, streets, and other spaces.

Goulart fulfilled part of his term under a parliamentary system, from September 1961 to January 1963. However, incapable of meeting institutional and administrative demands, parliamentarism was revoked, giving way once again to presidentialism.

To address the political, social, and economic problems, the "Three-Year Plan for Economic and Social Development: 1963-65" was adopted during João Goulart's government. Prepared by economist and Planning Minister Celso Furtado with the help of Finance Minister San Thiago Dantas, the plan in question sought to combat inflation but failed in its purpose. Subsequently, involvement in the purchase of American Foreign Power (Amforp), coupled with the failure of the Three-Year Plan, highlighted some of the signs of the anti-national economic-financial policy of João Goulart's government.

Another aspect that should be highlighted about the historical context prior to the beginning of the dictatorships relates to João Goulart's defense of the need to implement social reforms, necessary both for the improvement of the country's industrial capitalism and for the easing of tensions present in the social field. Agrarian reform, although not revolutionary in nature, was harshly rejected by Congress and by "right-wing sectors (Ipes/Ibad, ADP, the Church, women's associations, etc.), some of which were widely financed by the U.S. embassy and multinational companies, which began to denounce 'subversion' and the 'communization of the country'." According to these sectors, the government was accused of encouraging "disorder and social agitation" (Toledo, 1997, p.36). Under such circumstances, the Goulart government lost strength, because despite raising the nationalist banner and that of basic reforms, the government did not prioritize implementing measures that would justify raising these banners.

3 LEFTISTS, MILITARY: THE DEFEAT WITHOUT RESISTANCE

When discussing the question "Was the coup inevitable?", Nelson Werneck Sodré pointed to a series of coups that had occurred since 1945: "the coup of 1945, immediately after the end of the War; that of 1954, which deposed Getúlio Vargas; the attempted coups of 1955 and '61; and the coup of 1964" (Sodré *apud* Toledo, 1997, p.103). The author draws attention to the ideological conflict that followed World War II between the powers of the USA and the Soviet Union, in which, with the aim of defending capitalism, any attempt to promote changes in the political and social field was combated through coups against the democratic state.

Within this reflection, the author points to the fact that the 1964 coup could have been avoided if Brazilian institutions had been truly democratic. In this discussion, Jacob Gorender, through a Marxist lens, emphasizes that "historical events and social transformations are the effect of defined causes, occurring within a set of determinations" (Gorender *apud* Toledo, 1997, p. 109). That said, Gorender speculates that if, a few months before the coup's execution, the left had been sufficiently organized, the right would have felt intimidated, and thus the execution of the coup would have been avoided.

However, given the circumstances to which pre-military dictatorship Brazil was subjected, João Quartim de Moraes expresses disbelief regarding the adoption of other tools to solve the problems present in the political-institutional scenario of that period. In his words, "there was a moment when the victory of the coup plotters became inevitable" (Moraes *apud* Toledo, 1997, p. 118).

4 LEFTISTS, MILITARY: THE DEFEAT WITHOUT RESISTANCE

To reflect on the Brazilian conjuncture thirty years after the coup was carried out, the time when the book was organized, Octávio Ianni draws attention to the following fact: from the 1930s onward, Brazil adopted a model of national development; after World War II and with the advent of the Cold War, it opted for a model of associated, or dependent, development; and after the end of the military dictatorship, Brazil was experiencing transnational, or globalized, capitalism.

In this new configuration, the country's economy turned toward world capitalism, where transnational and multinational corporations began to influence governmental practices, which dynamize the banking system, commerce, agriculture, and industry within a logic of denationalization and privatization aimed solely at productivity and profitability in pursuit of a supposed modernization established by the World Bank, the World Trade Organization, and the International Monetary Fund. After the military dictatorship, the Brazilian economy came to be understood no longer as agrarian or underdeveloped, but rather as part of an emerging market of globalized capitalism.

5 TESTIMONY

Finally, the work includes the testimony of Ênio Silveira entitled "The Resistance in the Cultural Sphere," in which the author recounts his experience during the military dictatorship period. In his account, he mentions that he used to gather at his home with various left-wing intellectuals. One of them, Nelson Werneck Sodré, who also contributed to the production of one of the texts available in the work analyzed in this paper, even prepared a list with the names of the military officers who were eager for the coup, delivering it to Goulart, who unfortunately took no action to prevent the consummation of this threat.

He then recounts that he was at Rádio Nacional in Rio de Janeiro together with comrades Nelson Werneck Sodré, Álvaro Pereira Pinto, and Alex Vianni (also an author of this book), alerting the Brazilian population about the military coup at the exact moment the military seized power. Faced with the instantaneous invasion of the military at the location where they were, the militants in question even hid for twenty-four hours at the Yugoslavian embassy.

After that, "an entire process of violence and abuses began" (Silveira *apud* Toledo, 1997, p. 152), in which the editor's political rights were annihilated for ten years, his bookstore was destroyed, he was arrested seven times, and faced charges for four crimes against National Security. However, despite so many difficulties, Silveira did not become discouraged and made the *Civilização Brasileira* publishing house a suitable space for disseminating knowledge useful in the fight against the dictatorship.

Although he was a member of the Communist Party, the author reveals that the desire to go against and fight the dictatorship came from a personal place, and for this, he used the publishing house. The militant highlighted some of the important books published by the publishing house before the coup, among them *Breve história do fascismo* (Brief History of Fascism) by Italian journalist and filmmaker Mário Fioranni, *Cangaceiros e fanáticos* (Bandits and Fanatics) by Rui Facó, *Pioneiro e*

nacionalista (Pioneer and Nationalist) by Delmiro Gouvea, *O Estado militarista* (The Militarist State) by Fred J. Cook, and *Introdução à revolução brasileira* (Introduction to the Brazilian Revolution) by Nelson Werneck.

Foreseeing the coup, with the aim of raising public awareness, *Civilização Brasileira* launched the collection *Cadernos do Povo Brasileiro* (Notebooks of the Brazilian People), composed of a series of affordable pocket books that discussed, for example, the interests of which social strata the military sought to represent and satisfy. The collection came to include between thirty and forty books but ended up being suspended by the military. Also notable is the collection launched in Brasília, *Violão de Rua* (Street Guitar), which brought together various poets with different ideological positions.

Ênio Silveira faced significant financial difficulties, as the military prohibited numerous bookstores from selling *Civilização Brasileira*'s books, banned the publishing house from using Banco do Brasil, and censored countless of its books. However, Silveira continued to resist the offensives of censorship. In his words: "A publisher is not a mere merchant of books, not a butcher who wraps meat in paper; it is someone who seeks to put the cause ahead of commercial interests" (Silveira *apud* Toledo, 1997, p. 155). Later, he reiterates: "fighting against the dictatorship was for me something viscerally necessary" (Silveira *apud* Toledo, 1997, p. 156).

6 FINAL CONSIDERATIONS

It is undeniable that the work used for this paper was successful in its objective of responsibly discussing the delicate topic of the military dictatorship that occurred in Brazil. The care taken by its organizer, Caio Navarro de Toledo, in selecting the contributors to the book is noticeable, as all of them presented valuable contributions in reflecting on the proposed theme.

It is evident that several aspects were responsible for provoking and maintaining the military dictatorship. Among these, the economic crisis faced by the country stands out, where external debt and inflation permeated the financial system; the ideological crisis stemming from the Cold War, in which, under U.S. influence, fear of communism took hold and spread rapidly throughout the country; the unpreparedness of João Goulart's government to counteract the coup attempt; the disorganization of the left in providing means to block the coup; and the very fragility of Brazilian democracy.

It is always necessary to reflect on this set of factors, as doing so makes it possible to problematize the perception of the coup as if it were merely a desire of the military. In *The Meaning of the Military Dictatorship*, Florestan Fernandes reminds us of the responsibility that civilians had

in executing and maintaining the 1964 coup. He emphasizes that many civilians, originating from and defending "traditional families," clamored for the dictatorship; these individuals "saw through the same lens the need for oppression and repression, used the State as an instrument of 'preserving order' and the 'legal means' of collective defense in defensive and offensive disputes to keep 'the rabble in their place'" (Fernandes *apud* Toledo, 1997, p. 141).

The work presented the consequences of the military dictatorship, the main one concerning the restriction of human freedoms. It was a long and brutal period for thousands of Brazilians; however, the resistance of many was also a consolidated fact. To exemplify this, Toledo invited left-wing militant Ênio Silveira to share his experience in the fight against the dictatorship.

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REVIEW

**THE INDISPENSABILITY OF LEGAL REGULATION
IN THE RURAL FIELD BY CONTEMPORARY
AGRARIAN LAW – AN ANALYSIS OF THE WORK
“THE DEMOCRATIC REGULATION OF SURPLUS
IN THE RURAL AREA: THE STILL
INDISPENSABLE AGRARIAN LAW” BY JOÃO
PAULO DE FARIA SANTOS**

**A IMPRESCINDIBILIDADE DA REGULAÇÃO
JURÍDICA NO CAMPO PELO DIREITO AGRÁRIO
CONTEMPORÂNEO – UMA ANÁLISE DA OBRA “A
REGULAÇÃO DEMOCRÁTICA DO EXCEDENTE NO
CAMPO: O AINDA INDISPENSÁVEL DIREITO
AGRÁRIO” DE JOÃO PAULO DE FARIA SANTOS**

**LA IMPRESCINDIBILIDAD DE LA REGULACIÓN JURÍDICA
EN EL CAMPO POR EL DERECHO AGRARIO
CONTEMPORÁNEO – UN ANÁLISIS DE LA OBRA “LA
REGULACIÓN DEMOCRÁTICA DEL EXCEDENTE EN EL
CAMPO: EL TODAVÍA INDISPENSABLE DERECHO
AGRARIO” DE JOÃO PAULO DE FARIA SANTOS**

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The indispensability of legal regulation in the rural field by contemporary agrarian law – an analysis of the work “the democratic regulation of surplus in the rural area: the still indispensable agrarian law” by João Paulo de Faria Santos.

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ABSTRACT

This review aims to critically analyze the doctoral thesis of João Paulo de Faria Santos, entitled "The Democratic Regulation of Surplus in the Countryside: The Still Indispensable Agrarian Law," which defends the continued relevance of legal regulation in the Brazilian countryside. To support this thesis, the author presents the historical, political, and legislative perspective of the agrarian question, aiming to understand the formation of Agrarian Law as a branch of Economic Law. Additionally, the transition of land into an economic good (commodity) tradable in the land market is examined. This good, therefore, is strategically stripped of its collective dimension to acquire an individual/private character, protected by Modern Law as an absolute right. However, as a result of the global crises of the late 19th century, a new way of thinking about Law emerged, resulting in the creation of Economic Constitutionalism and the recognition that property has a social function of a collective nature. In the Brazilian context, the author presents how the agrarian question has been addressed since colonization, through the Land Statute (considered fundamental for the institutionalization of Agrarian Law) of 1964, and culminating in the Federal Constitution of 1988. It can be concluded that, given the paradoxes witnessed in Brazil, such as hunger coexisting with bumper crops and the growth of "Agribusiness Law," the role of the State and agrarian reform remain crucial for sustainable development and for safeguarding the public interest.

Keywords: Contemporary Agrarian Law. Agrarian Question. Legal Regulation of Capital in the Countryside. Social Function of Property.

RESUMO

A presente resenha objetiva analisar criticamente a tese de doutorado de João Paulo de Faria Santos, intitulada "A Regulação *Democrática* do Excedente no Campo: O Ainda Indispensável Direito Agrário", a qual defende a contínua relevância da regulação jurídica no campo brasileiro. Para sustentar a tese, o autor apresenta a perspectiva histórica, política e legislativa da questão agrária, com vistas a se compreender a formação do Direito Agrário enquanto ramo do Direito Econômico. Adicionalmente, examina-se a transição da terra para um bem econômico (mercadoria) transacionável no mercado de terras. Esse bem, portanto, é estrategicamente desconstituído de sua dimensão coletiva para adquirir um caráter individual/privado, resguardado pelo Direito Moderno enquanto um direito absoluto. Todavia, em decorrência das crises globais do final do século XIX, emergiu uma nova forma de se pensar o Direito, resultando na criação do Constitucionalismo Econômico e no reconhecimento de que a propriedade tem uma função social, de caráter coletivo. No contexto brasileiro, o autor apresenta a maneira como a questão agrária foi tratada desde a colonização, passando pelo Estatuto da Terra (tido fundamental para a institucionalização do Direito Agrário), de 1964, e se chegando à Constituição Federal de 1988. Conclui-se que, diante dos paradoxos testemunhados no Brasil, como a fome coexistindo com as supersafras e o crescimento do "Direito do Agronegócio", a atuação do Estado e a reforma agrária permanecem cruciais para o desenvolvimento sustentável e para a salvaguarda do interesse público.

Palavras-chave: Direito Agrário Contemporâneo. Questão Agrária. Regulação Jurídica do Capital no Campo. Função Social da Propriedade

RESUMEN

Esta reseña analiza críticamente la tesis doctoral de João Paulo de Faria Santos, titulada «La regulación democrática del excedente en el campo: la aún indispensable ley agraria», que defiende la vigencia de la regulación jurídica en el campo brasileño. Para fundamentar su tesis, el autor presenta la perspectiva histórica, política y legislativa de la cuestión agraria, con el fin de comprender la

formación del Derecho Agrario como rama del Derecho Económico. Asimismo, se examina la transformación de la tierra en un bien económico (mercancía) comercializable en el mercado de tierras. Este bien, por lo tanto, se despoja estratégicamente de su dimensión colectiva para adquirir un carácter individual/privado, protegido por el Derecho Moderno como un derecho absoluto. Sin embargo, a raíz de las crisis mundiales de finales del siglo XIX, surgió una nueva concepción del Derecho, que dio lugar al constitucionalismo económico y al reconocimiento de que la propiedad tiene una función social de carácter colectivo. En el contexto brasileño, el autor presenta cómo se ha abordado la cuestión agraria desde la colonización, a través del Estatuto de Tierras (considerado fundamental para la institucionalización del Derecho Agrario) de 1964, y culminando en la Constitución Federal de 1988. Se concluye que, ante las paradojas observadas en Brasil, como la coexistencia de hambrunas y cosechas abundantes y el auge del Derecho Agrario, el papel del Estado y la reforma agraria siguen siendo cruciales para el desarrollo sostenible y la salvaguarda del interés público.

Palabras clave: Derecho Agrario Contemporáneo. Cuestión Agraria. Regulación Jurídica del Capital en el Campo. Función Social de la Propiedad.

INTRODUCTION

The thesis analyzed here is titled "The Democratic Regulation of the Agricultural Surplus: The Still Indispensable Agrarian Law" and was produced by João Paulo de Faria Santos in 2020 for the Graduate Program of the Law School at the University of São Paulo (USP).

Firstly, the introduction confronts the reader with provocative questions about Brazilian reality, as the author places side by side situations so opposite they seem almost irreconcilable, but are in fact more connected than one might imagine: Brazil as a country of record harvests and, simultaneously, of hunger; and the Covid-19 pandemic as a period when commodity exports reached high levels, but the tables of Brazilians were also emptier than usual, as prices rose incessantly.

In this vein, Santos relates such paradoxes to the Brazilian agrarian issue, which, as he describes, gained importance in progressive circles in the 1950s and 1960s, a period when changes in the structure of the countryside and land organization seemed more imperative than ever, paving the way for the emergence of a new branch of Brazilian law: Agrarian Law. However, the author is quick to point out that the notions of Agrarian Law and agrarian reform did not arise from a sudden progressive impulse during the 20th century, but are part of a set of historical, social, and academic phenomena far more comprehensive than those that occurred during the brief past century.

From the introduction, it is evident that the thesis intends to delve into national and international history, analyzing the path taken by the agrarian issue until reaching the current reality of Agrarian Law – a context extremely welcome for any legal scholar. Here, Santos makes a point of explaining that he will address the past of Constitutionalism, in order to demonstrate how land went

from being conceived as a simple commodity to being considered an asset of collective importance, and during this process, ended up influencing the consolidation of Economic Law and Agrarian Law itself as areas primarily in the service of public, not private, interest. The author then describes the hypothesis to be analyzed throughout the thesis, namely, that offering a legal perspective to the problem of land remains relevant today, and therefore, Agrarian Law is still indispensable.

1 ON THE INDISPENSABILITY OF CONTEMPORARY AGRARIAN LAW: THE LESSONS OF JOÃO PAULO DE FARIA SANTOS

"Chapter I – Economic Law as the Law of Economic Organization," the best-written part of the thesis, offers an essential historical overview to understand the transition between the liberal worldview and interventionism aimed at regulating the economy and social welfare. The author explains that the ideals of individualism, economic freedom, and absolute private property – counterpoints to the *Ancien Régime* – guided the rise of the bourgeoisie and the solidification of its power during the 18th and 19th centuries. During this period, pandectics, a school of legal thought based on Roman writings, emerged to ground the understanding of Law for the new ruling class.

The text makes it clear that, by valuing Private Law in an abstract and autonomous way, pandectics relegated Public Law to a secondary plane, subservient to private relations and neutral to changing reality. This arrangement was very favorable to the bourgeois class but ignored the historical and social processes that human society tends to undergo. By defending the existence of a universal, definitive legal order detached from the struggles of peoples, pandectics removed the innovative and renewing aspect of Law, leading to a rigidity that would prove unsustainable.

As history has often shown, it sometimes takes a major crisis or an unprecedented catastrophe for humanity to change its course. This is what the first half of the 20th century confirmed. Although prominent authors, such as Karl Marx, had already pointed out the flaws of liberal thought and the consequences of unbridled capitalism, it was the outbreak of world conflicts and devastating economic crises that caused long-established ideas to be questioned. In this sense, the "purity" of Law and its closeness to the absolute idea of property gave way both to the rescue of the historical dimension of legal production and to the notion of a State that regulates, intervenes, and imposes limits on that property.

Even before the 1929 New York Stock Market crash and the Second World War (1939-1945), the need to renounce the model of a State that allowed property owners, including landowners, to act as they pleased – the State indifferent to economic reality – seemed latent. After all, with the problems brought by the European liberal model – expressed in the form of income concentration,

misery, and popular dissatisfaction – the economy needed to cease being a mere private matter and become a problem for the entire community. It is in this context that the phenomenon of Economic Constitutionalism comes to life in the form of the 1917 Mexican Constitution and the 1919 Weimar Constitution, documents that came to challenge the liberal civils ideology, introducing the State as an agent of the economic order and one of the responsible parties for regulating what would become known as the "social function of property."

It is understood that this imposition of duties correlative to the rights of property owners is the hallmark of the primacy of collective interest, which in turn results from the return to the protagonism of Public Law over Private Law. It comes to be understood that the economy does not concern only the individual sphere but concerns the entire nation, deserving, therefore, appropriate legal treatment by the State. Thus, Economic Law is born, autonomous in relation to Civil Law and closely linked to the concrete world and the regulation of economic activity, aiming to achieve certain ends – such as social welfare, for example.

From this moment on, the thesis begins to relate the historical transformations, Economic Constitutionalism, and Economic Law to the structuring of Agrarian Law, as the latter also emerges as an autonomous public branch, to be discussed by everyone and not just a few powerful individuals. To better explain, Santos states that one of the legacies of the two world wars was the proof of how efficient a planned economy can be, so that, after the end of the conflicts, many countries – including the most capitalist ones, like the USA – began to see the existence of sectors and assets that should receive special attention and regulation from the State. Thus, Karl Polanyi enumerates three strategic legal assets (*bens jurídicos estratégicos*) that should fall under the purview of Public Law: money, labor, and land.

In general terms, the perspective brought by these changes was that when land is treated as a simple commodity, it becomes commercialized and minimized as nature, followed by its concentration in the hands of a few or its destruction. In the case of Economic Constitutionalism, which preceded the formation of Economic Law and, consequently, Agrarian Law, land ceases to be simply a product to be owned and traded by private individuals and becomes something socially relevant. Thus, when speaking of Agrarian Law, which deals precisely with the legal asset "land," it is fundamental to think about its teleological dimension; in other words, it is necessary that, as one of the branches closely linked to Economic Law, Agrarian Law be oriented towards objectives that benefit society as a whole, whether in terms of optimizing production, reducing land concentration, or financially incentivizing productive activities.

One last relevant point of this first chapter is the author's description of the plans that were (some partially) implemented in Brazil: starting with JK's *Plano de Metas* (Goals Plan), which combined planning and development; passing through João Goulart's Triennial Plan (*Plano Trienal*), which proposed reforms of economic structures (*reformas de base*), including agrarian reform; also the dictatorship's Development Plan (*Plano de Desenvolvimento*), which proposed growth and regulation but did not undergo social debate at any of its levels, becoming more a sample of totalitarianism than of democratic practice; and, finally, the 1988 Federal Constitution is discussed, which provides for a regulated economic order and functions, according to Santos, as a middle ground between liberal idealism and Soviet idealism, i.e., markets do not operate without regulation, nor are they destroyed.

Next, we have "Chapter II – Agrarian Law as the Legal Translation of the New Economic Organization of the Rural in the 20th Century," in which the author again addresses the historical aspect, but this time focusing on the formation of Agrarian Law in the global context. From Santos's explanation, it can be inferred that the agrarian issue occupied a central role not only in debates during the transition from liberalism to interventionism but also before, in the context where ideologies alternative to capitalism were emerging. Regarding this, the thesis discusses the absence of the social aspect in capitalist rural property, especially when talking about peasants, since the logic of profit delegitimizes small property. However, even in the socialist conception, small producers should not keep their lands, which would go to the State. Here, Santos states that this confluence of thoughts was not enough to remove the protagonism of peasants in consolidating Agrarian Law and in the struggle for agrarian reform.

The thesis is very didactic when describing the case of the Mexican Revolution, which culminated in the already mentioned 1917 Constitution. In Mexico, thanks to peasant pressure, the absolute commodification of land was blocked, confirming its classification as an asset belonging to the nation (original property) that was only, in a way, granted by the State to individuals (derived property). According to this reasoning, one of the pillars of the civils and liberal logic falls, as private property is no longer seen as a natural right.

In this line, the innovations brought by the Mexican Revolution reverberated in various parts of Latin America and the rest of the world, including Brazil. It became evident that it was necessary to treat the problem of land in a specific way, giving birth to this area of study that, as already stated, was part of Public Law and was focused on the resolution and regulation of demands important to society, such as the autonomy of traditional communities, agrarian reform, food sovereignty, and the rights of rural workers.

It is impossible to dissociate what is today understood as Agrarian Law from the Italian tradition, after all, it was precisely in Italy that the foundations of this branch were established. Santos cites, as a milestone of Agrarian Law, the publication of the *Rivista di Diritto Agrario* in 1922, which officially inaugurated discussions about the emancipation of the legal treatment of land in relation to Civil Law. Important exponents of the period were Gian Gastone Bolla and Antonio Carrozza, as well as the Spaniard Alberto Ballarín Marcial. The production of such authors was so relevant that, in continuation of the break with the liberal tradition, countries began to incorporate in their Constitutions the agrarian issue allied with the "social function of property," in addition to establishing their own Agrarian Codes.

The social function of property is a neuralgic point of the examined thesis, with Santos touching more than once on the fact that a right without limitation would lead to chaos. This view becomes predominant with the incorporation of land into the constitutional thematic, because giving someone the subjective right to own a piece of land, without proposing a correlative duty, is harmful to the collective interest, since land is an essential asset for human sociability – besides being, obviously, an inseparable part of nature.

In this vein, there was a shift from property-as-speculation to property-as-function, in order to direct Agrarian Law towards the improvement of common life and not just private life. Furthermore, disputes around expropriation and the nationalization of the means of production were also growing, agendas that definitively put an end to absolute private property by establishing the notion of the State as an agent capable of intervening and taking away an individual's property for the sake of public interest.

Certainly, Brazil did not escape this conjuncture, since, throughout the 20th century, it became inescapable that agrarian reform was essential for the country. The thesis begins its "Chapter III – Formation, Consolidation, and Crisis of Agrarian Law in Brazil," with the author resorting to chronology to elucidate how the current national picture of the agrarian issue was reached.

Briefly, Santos deals with the beginnings of Portuguese colonization in Brazil, which brought the *sesmarias* model – very linked to cultivation and productivity – and, later, consolidated the plantation system, which, like that adopted in the USA, brings monopoly both of labor (enslaved workforce) and land (large monocultural properties geared to the external market). This history made Brazil one of the world's largest producers of primary commodities, which continues to this day. However, despite the early importance of the agrarian sector for the national reality, land received tardy treatment in the legal system, this being only a result, like many of the Brazilian government's initiatives, of foreign pressure. The English Crown, eager to expand its consumer markets, pressured

Brazil heavily to abolish slavery, so that in 1850 the so-called Land Law (*Lei de Terras*) was enacted – responsible for ensuring that land could only be acquired through purchase and sale, burying possession and drastically hindering access to the countryside. This legislation was nothing more than the attempt to retain the monopoly of land, as the monopoly of labor was gradually dissolving.

While, in the author's words, the captivity of man was turning into the captivity of land, the government began to seek more effective ways to regulate the countryside, as the alternatives chosen until then, such as the control of the coffee surplus, generated little beyond imbalance between supply and demand. Attempts were made throughout the 20th century to establish an economic order in Brazil focused on fostering the national market and providing inputs for industrialization and development. In this, it is worth noting that the social function of property had already been alluded to in the 1934 Constitution; however, the first major project for the countryside was that of Getúlio Vargas's Estado Novo, which, although focused on the urban sector, brought important regulatory aspects for the rural area, notably regarding the sugarcane-alcohol sector.

After the end of the Estado Novo, the next major project was that of João Goulart, who, confronted with the rise of the *Ligas Camponesas* (Peasant Leagues) and the need for agrarian reform and supply of the internal market, began to encourage land distribution and the fight against land concentration. Intending to implement the so-called "reforms of base" (*reformas de base*), Goulart proposed restructuring the Brazilian countryside through a National Agrarian Reform Plan (PNRA) that would be adjusted annually. However, Jango's ideas did not come to fruition, as the 1964 Military Coup brought another type of government to power.

During the dictatorial period, some previously discussed guidelines were applied by the military government, such as Constitutional Amendment No. 10 (linked to the 1946 Federal Constitution), which provided for the autonomy of agrarian law and sanctioning expropriation (paid for by public debt bonds). Furthermore, it was during the dictatorship that the Land Statute (Law No. 4,504/1964) was published, establishing the conception of Economic Law to Brazilian Agrarian Law and regulating rural contracts.

Rightly, the thesis delves into the two factors that explain this reality during the dictatorship: 1) the pressure from the USA, which encouraged agrarian reforms around the world to reduce the chance of uprisings and revolts similar to those that occurred in Russia and Cuba; and 2) the need to suppress dissent in the countryside without, however, altering the large structures, incorporating the encouragement of colonization of the agricultural frontier as a strategy to absorb the large mass of landless workers. According to the author, truly changing the agrarian environment was never the intention of the military government; the very creation of the National Institute of Colonization and

Agrarian Reform (INCRA) was only one of the many ways the government ensured that reform remained on paper, without it being too apparent.

After dealing with all this, the thesis addresses, in a less organized manner, the topic of rural credit, which also dates to Vargas's time and emerges as an aid aimed at financing, investment, and commercialization in the countryside. Upon realizing that rural production time is very different from consumption time, providing subsidies to producers becomes a necessary measure to ensure they can continue their activities. In view of this, the National Rural Credit System (SNCR) was created by Law No. 4,829/1965, and since then, taking rural credit has been considered essential for the survival of many producers, although, even today, small suppliers receive much less credit than large farmers and ranchers, who are already economically established. For Santos, the *Manual de Crédito Rural* (Rural Credit Manual), which regulates credit concession, is considered very technocratic and undemocratic.

With this panorama, the thesis finally examines the 1988 Federal Constitution, the one responsible for placing the social function as an unamendable clause (*cláusula pétrea*) (Article 5, item XXIII and Article 60, §4º), confirming property as a right-duty and detailing agricultural and land policy (Article 184 and following). On the other hand, even with the advances brought, since the promulgation of its official text – from which many proposals on agrarian reform and combating land concentration were removed – little has advanced in terms of Agrarian Law to achieve an effective restructuring of the countryside, and, as can be inferred from the text, the federal government only adopted a reactive posture, responding with actions only when provoked by some event. Therefore, it is said that, during the New Republic period, there was an official forgetting of the agrarian issue, although the population still remembered. Even with attempts and sketches of Agrarian Reform Plans, there was no significant progress, and currently there is no proper settlement plan.

The text emphasizes that the forgetting of the agrarian agenda does not mean that Agrarian Law became less important; quite the contrary. What occurred from the 2000s onwards were profound changes in the rural economy, with the so-called "commodities boom" and the organization of an agro-industrial structure, leading to the strengthening of "Agribusiness Law." Now, more than ever, it becomes imperative to discuss land concentration, deindustrialization – motivated by the predominance of primary product exports – the weakening of the internal market, and supply problems in the country.

The expansion of neoliberalism and the more intense presence of international oligopolies make urgent the discussion about the role of Agrarian Law, which, as already pointed out, should be one of legal protection and achievement of constitutional objectives aimed at societal improvements.

The author argues that large-scale soy production, for example, brings income to its producers but does not bring food to the people's table and does not seem to culminate in benefits for the national industry and the internal market. According to the statistical data listed, family farming and small property are the most responsible for providing the variety of food necessary to supply the Brazilian population, but they still do not receive the same incentives dedicated to large producers.

2 FINAL CONSIDERATIONS

Amidst so many conflicts provoked by a new conservatism – with pandectist roots – that has emerged alongside this "Agribusiness Law," it is perceptible that the legal regulation of the agrarian sector is as essential and indispensable now as it was at the beginning of the 20th century.

Given timid advances on the subject – such as the establishment of the Food Acquisition Program and changes in the Bidding Law –, transformations and difficulties imposed by a constantly changing world, the thesis allows us to conclude that the function of the State as a regulatory agent of the surplus and an intercessor for collective interests must continue to be exercised, confronting market forces and aiming to guarantee national development in a sustainable manner, thus not forgetting the vitality of agrarian reform and the valorization of small property.

In summary, the thesis is extremely well-written and detailed, with emphasis on the first chapter, and brings up a theme that never goes out of style, i.e., the agrarian issue. Not only the historical perspective but also the political and legislative analyses made by the author are very relevant for understanding the formation of Agrarian Law.

In any case, the thesis offers rich material for the law student, notably for those interested in pursuing the agrarian and/or constitutional fields.

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LAW FOUND IN THE STREETS AND ITS RELATION TO SOCIO-TERRITORIAL CONFLICTS

O DIREITO ACHADO NA RUA E SUA RELAÇÃO COM OS CONFLITOS SÓCIO-TERRITORIAIS

EL DERECHO ENCONTRADO EN LA CALLE Y SU RELACIÓN CON LOS CONFLICTOS SOCIO- TERRITORIALES

**JOSÉ GERALDO DE SOUSA JÚNIOR¹
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Brief Biography:

José Geraldo de Sousa Júnior (Rio de Janeiro, 1947) is a jurist, professor, and researcher widely recognized for his work in the fields of human rights, citizenship, and critical legal theory. He holds a Bachelor's degree in Legal and Social Sciences and a Master's and PhD in Law from the University of Brasília (UnB). He joined the faculty of UnB in 1985, where he became a Full Professor and was elected Rector in 2008. He also served as Director of the Faculty of Law at UnB and as Director of the Department of Higher Education Policy at the Ministry of Education, in addition to holding relevant administrative positions during the administration of Cristovam Buarque in the Government of the Federal District.

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As the creator and main articulator of the project *Law Found on the Streets* (*O Direito Achado na Rua*), he consolidated one of the most influential Brazilian legal currents focused on recognizing rights produced through social struggles and in public spaces. With more than three decades of participation in the Federal Council of the Brazilian Bar Association (OAB), he distinguished himself in the defense of civil liberties and in the mediation of social conflicts. Author of an extensive academic body of work, editor of editorial series, and a key reference in articulating legal theory, democracy, and social emancipation, he received the title of Professor Emeritus of UnB in 2024, crowning a career marked by commitment to justice and social transformation.

1 – Law Found on the Streets and the Territories of Traditional Peoples and Communities

Liliane Pereira de Amorim: Professor, in your writings you have emphasized the importance of legal pluralism and the idea of a “law found on the streets.” How do these references help to rethink the recognition of the territories of traditional peoples and communities in the face of tensions with the dominant logic of private property and economic development?

José Geraldo de Sousa Júnior: Well, *law found on the streets* is theoretically grounded in the hypothesis of legal pluralism. Later, if there is an opportunity, we can delve further into additional references related to this conception. But the theoretical hypothesis on which it is based is pluralism, which assumes that more than one legal order may coexist within the same space—sometimes coexisting cooperatively, sometimes competitively, but generally operating through exchanges. These are usually unequal exchanges of juridicity.

This territorial dimension, which lies at the foundation of pluralism and gives rise to other temporalities, animates the intersystemic dimension of rights. For example, recently the Supreme Federal Court, when examining the issue of the so-called *temporal framework* in the agribusiness-oriented thesis, incorporated the conception of Indigenous peoples according to which the framework is ancestral, because it derives from another legal system—anthropologically recognized as a juridicity inscribed in pre-state and pre-capitalist uses and traditions—which generates a juridicity that constitutes the basis of the legitimacy of their position and their claim.

And in deciding the case, Justice Fachin, for instance, stated that the interpretation should clearly be made from the tension between these two systems. Because the State produces law, but this is a legal, codified, modern law, in contrast to the temporality of ancestral law. Therefore, it cannot replace or suppress an original right that predates it. Here, then, lies the

dimension of legal pluralism, which has a more general anthropological configuration, since it involves very distinct cultures, but which in the contemporary world are often embedded in the coexistence of multiple territorialities.

For example, a quilombola territory may be in an urban space or in a rural space, but it operates under the influence of another form of sociability and of relationships between people and things, and among people themselves. There, for instance, there is no individual property right, because the right is collective, due to the strategy of sociability that survives from the very origin of the quilombola way of living together. From this even emerges another category that defines this reality, namely *quilombamento*. That is it.

Pluralism as a theoretical conception emerges between the late nineteenth and early twentieth centuries, when the State begins to take shape. At that point, the tension appears between a law that is established within a unit of centralized political power—which will become the State form—and a social fabric laden with fragmented, pluralized juridicities, configured from uses and traditions. Note that when the first Brazilian Civil Code entered into force, its final article stated that it revoked the Philippine Ordinances and, in addition, customs. That is, a modern, legal, and bureaucratic law revoking an ancient and traditional law. Yet that law does not disappear: it continues to produce effects, even when temporalities reterritorialize experiences, spaces, and political action. Does that make sense?

Liliane Pereira de Amorim: You emphasize that human rights must be read through a socio-environmental lens and not merely an individualistic one. In this sense, how do you assess the relationship between the territorial rights of traditional peoples and the struggle for socio-environmental justice in contemporary Brazil?

José Geraldo de Sousa Júnior: Well, this is a configuration of that pluralism hypothesis which, at the political level, updates traditions deeply rooted in social practices. These are social practices that carry this ancestry inscribed in their very mode of manifestation and that imply a reference to uses that organize a given community which, in some way, presents a certain homogeneity in its reproduction. It reproduces itself socially while maintaining what we call a condition of origin. That is why we speak of original peoples, of traditional peoples. These are appropriate expressions. The older, colonized, and colonizing terms are not appropriate: ancient peoples, archaic peoples, primitive peoples.

Very recently, in fact, a form of governance that has fortunately now been characterized as criminal used expressions of this kind to define public policies: “I will not demarcate a single

centimeter of territory,” “I will not serve lazy people who get fat like cattle,” “who no longer even reproduce because they have too many arrobas.” Do you remember those expressions?

Well then, these traditional uses generate a theoretical conception according to which we are dealing with a legal system, a system of law. And for that very reason, this system needs to be lived as justice from within its own foundations.

This explains, for example, Convention No. 169, which differs from the earlier Convention No. 103. Under the model of the earlier Convention, supranational and international logic was still very much constrained by the mechanism of liberal hegemony. Therefore, it viewed these peoples as peoples who should be integrated, who should disappear, be diluted into the dominant society. But since these peoples have always claimed autonomy and titularity, this also challenged the international system, which came to recognize them. Thus, Convention No. 169 recognizes their autonomy. They are peoples with autonomy, with their own uses. It is not that they are backward.

For this reason, these systems pointed toward a core of equity that would recognize and consider autonomy, conquered through political processes. In the sense that even the foundation of justice inscribed there is something constructed from their own autonomy. That is why Convention No. 169 presupposes socio-environmental justice, because these values of consideration for nature stem from a mentality, from a way of life in which there is no separation between human identities. Everything is humanity. Animals are humanity. Nature is humanity. As such, it is mother, it nurtures, it is life, it is not a thing.

The relationship is one of belonging, isn't it? One does not exploit it: it is not a resource, it is not an input; it is a nourisher of life. Of the environment, of the generosity of what it offers as shelter and food. Life lived, life well lived.

Look at the categories that emerge from this: *good living (buen vivir)*, *Mother Nature*, *Pachamama*, in the Andean case. Thus, Convention No. 169, for example, establishes that in relations of justice these equivalent factors must be considered and must be dialogued in order to reach understandings between different cultures, generated by also different conceptions of the world, when it comes to sharing a common life, a common heritage, isn't that so?

That is why, when it comes to original and traditional peoples, consultation is fundamental: they must be consulted, they must know the reality, they must be well informed, and they must be respected in their autonomy, free in their expression. This is what characterizes, for example, the mechanism of socio-environmental justice. And not only socio-environmental, but necessarily socio-environmental, because these are peoples who are still embedded in natural life, in the countryside.

A life that, as Ailton Krenak says, is not utility; it is existence. Life is not useful; life is the expansion of happiness, of good living. That is why today the foundational mechanism that these peoples affirm, their fundamental norm, is free, prior, and informed consultation. It has been violated, yes. It has been violated, but it is already within the legal and political horizon, therefore it is an object of dispute. It is violated, but it is also repaired, within the limits of the machinery that moves the world and that sometimes crushes people. But we also learn and transform ourselves in that process.

2 – Law Found in the Street: an emancipatory approach for universities and for the recognition of territorial rights

Liliane Pereira de Amorim: In several texts, you address the need to build an emancipatory law rooted in the social and cultural practices of peoples. What paths do you envision for the university, research, and legal practices to effectively contribute to the resistance and re-existence of quilombola, Indigenous, and other traditional communities?

José Geraldo de Sousa Júnior: On a more general and conceptual level, I naturally have my political-epistemological references. We do not think of the university as an abstraction; we think of it as situated within a social space of colonial origin.

From an epistemological standpoint, I think through the categories of decoloniality. In the field you mentioned, for example, when thinking of an intellectual from that milieu, Nêgo Bispo, I would say he is more than decolonial: he is counter-colonial. That is why I consider that thinking about the university implies founding it from the perspective that it must be an emancipatory university—one that opens space, for instance, to processes of decoloniality or counter-coloniality. The first point, to greatly abbreviate, is to decolonize curricula.

Universities, even within the colonial experiment, were created as spaces for the application of hegemonic knowledge and knowledges of the colonizer. They were epistemologically instituted with a pedagogical agenda that justified colonization. It suffices to recall debates such as whether Indigenous peoples were considered persons or not, on any continent. The colonizer constructed an academic reading that justified denying the other as a subalternized subject. Therefore, building a reference of this kind within the university requires, as a primary epistemological task, decolonizing curriculum, and pedagogical practices. Evidently, this is not about applying within the university the educational model of a quilombo

or a village, but rather instituting—through dialogue among knowledges—pedagogical practices that represent exchange among traditions and forms of knowledge.

I believe that among us, Paulo Freire worked on this better than anyone, for example. Then, a second moment is to recognize that, since coloniality implied segregation, hierarchies, discrimination, subordination... In the colonial experiment, it does not have to be a thinker explicitly committed to a liberation agenda—whether theologically, philosophically, or sociologically—to perceive this. Anyone with minimal intellectual acuity can see that colonialism among us occurred because it was racial, because it was patriarchal, because it was capitalist.

Thus, the structures of knowledge that justify hegemonies are racist, misogynistic, sexist. We are speaking today on the 13th; on the 11th we heard Justice Cármen Lúcia's vote at the Supreme Court. Neither in form nor in content did it refrain from revealing the extent to which this reaches everyone—including a woman Justice of the Supreme Court. And note: she is neither Black nor Indigenous, yet she still suffers what all those who are subordinated suffer. And it is capitalist, because it is a class condition.

This process alienated the human. To insert it into production, it was necessary to dehumanize it: to enslave it and, in the current context, to make precarious it; today, even to “platformed” it. Therefore, it is necessary for the university to review its forms of reception, access, and admission.

Affirmative action policies partially fulfilled this role, didn't they? They opened access through quotas to Black people, Indigenous peoples, quilombolas, trans people, and persons with disabilities. But did they open the curricula? No. We have seen within the university the discomfort of these new communities in the face of persistent discrimination—because of their cosmologies, their readings of the economy, and the subordination of their knowledges. Yet, because this is political, we have also seen emancipatory actions in this field. Thus, universities have opened themselves, for example, to struggles for education in quilombos.

You are from Goiás; there lies the origin of PRONERA, with education of the countryside, higher education in the countryside, special cohorts for agrarian reform settlers. I recently read that the Ministry of Education and universities are meeting to create an Indigenous university. This is not about forming a ghetto, but about creating an institutional reference. In the past, for example, in Europe, Humboldt created a university for the technological development of modernity. Why could they do it and we cannot?

Another point is to insert education not only within an elegant and dilettantish abstraction, but to create formative mediations that involve dialogue. At the university, this is favored by

extension activities, but it should not be confined to them; it must also enter research. That is why, in graduate studies, we have seen an enormous contribution—from other horizons of inquiry—regarding realities historically marginalized and excluded for not fitting within the canon of formative paradigms.

For example, the Unified Health System (SUS) developed, by law and regulation, a form of popular education for the SUS. The principles established by the popular education norm for the SUS presuppose an emancipated, democratic, participatory society—so much so that the norm states that, in addition to universality and equity, the SUS must value participatory deliberation and social control within the system. But education is grounded on certain pillars. What are these pillars? Problem-posing, rather than banking education. Dialogue. Exchange of knowledge. Love. Consider the well-being of that, right? Loving kindness as a political category inscribed in a legal regulation of a public system.

I believe the university must also open itself to this. And we already see it happening. At my university, the University of Brasília, there is an intense program, statutorily inscribed, that defines as an institutional function the defense of the environment and the realization of human rights. A programmatic support system was created for these dimensions: there are graduate programs in sustainability and in human rights, and a management structure unique in Brazil, with a Human Rights Chamber within the University Council.

That is, education is emancipatory. Of course, the UnB draws inspiration from Darcy Ribeiro's project of a university linked to society. But to be emancipatory it must be critical; it must be self-reflective. To discuss sustainability is to discuss paradigms—the economy of consumption—but also a politicized economy that, as Amartya Sen says, conceives development as freedom. That is what I think. What do you think?

Liliane Pereira de Amorim: Professor, *in light of* the perspective of **Law Found in the Street**, what instruments can be used so that the claims of social movements struggling for land are transformed into formal recognition of the right to land, highlighting their members as collective subjects of law?

José Geraldo de Sousa Júnior: The question already contains, to a large extent, my answer, because—returning to the idea—Law Found in the Street is structured epistemologically. Of course, it also has a reference on the political plane, doesn't it? In the idea of thinking about the transformation of society in the direction of emancipation.

Law as freedom, and not as a mere rule. A rule can carry possessive appropriations of regulation. Even organized crime establishes rules, but that is not law, because it does not overcome what emancipation is—namely, overcoming oppression and expropriation.

Thus, Law Found in the Street is constituted on the foundation that law is not the norm, but freedom, which is realized through norms and therefore reads rules critically to verify whether they convey emancipatory processes. To this end, Law Found in the Street articulates itself epistemologically and methodologically through three main mediations.

One of them is space. In which sociability do we situate ourselves when law acts territorially? Space. That is why Law Found in the Street is a metaphor—a metaphor of space. In our work we speak of law found in the street, in the countryside, in the waters, at crossroads, in the forest. At night. There is even a dissertation entitled *Law Found in the Night*.

Here, night is not conceived as an atmospheric or cosmic phenomenon resulting from the Earth's rotation, but as a space to produce culture, art, and economy. Night thus becomes a social space. That is one element. And what, then, is the other element with which we work? Protagonism. It is not the imaginary that changes the world; it is subjects who act—protagonists. So, no matter how strong the capacity of an individualized subject may be, it has limits. Of course, for example, if I am hungry, I have a biological impulse to nourish myself.

If President Lula feels hunger, he creates a global pact against hunger. There is this nuance. But, in general, what changes the world is the active and collective capacity of subjects who unite in a commitment that projects itself as action and moves it toward a process of transformation. What is at stake here? It cannot be an individual subject; it must be a collective subject.

So where are collective subjects constituted? They are constituted in what mobilizes and moves within the social realm. They are constituted in what we have called social movements, aren't they? Thus, in social movements that mobilize to act upon reality and transform it, right? Marx said that it is not enough to interpret the world; it is necessary to transform it, isn't that so? In praxis, therefore, a collective subject is constituted. We must see who this collective subject is.

For example, in the case of the night, the researcher identified as the subject a movement that was created to counter a real estate initiative to establish, in the city council, a "law of silence" that affected spaces of culture. They created a movement called "Who Turned Off the Sound." Its representatives and spokespersons began to negotiate with city hall to build mediations, including legislative ones, that could reconcile the interests of real estate developers—who want to sell serenity, tranquility, comfort, and security to sell properties—

with those who want to celebrate, to gather, to have an evening out, to recite poetry, and to contribute to joy and happiness.

Thus, we study space; we study the subject—and the subject is the collective subject of law. We therefore have extensive research in this field. But all right, to produce what?

These are the findings. These findings are what develop the themes of study. Many of these findings, due to decolonization and politics, enter new agendas—new agendas that emancipatory actors began to bring into the university and began to use to question academic programs. Thus, in this conception, law is found in the street, which is a line of research, a research program, a research group listed in the CNPq directory, which receives applications for master's and doctoral programs, among others. It has begun to accumulate a substantial body of dissertations and theses.

And what are these theses about? They address the *aldeamento* (village-making) of law; they address the *aquilombamento* of the legal sphere, right? Not merely a state, positive, legal law—only critically speaking—but a law that arises from the very conditions of, for example, what extractivism is—plant extractivism. It was here at the University of Brasília that Chico Mendes developed and presented his thesis. It was here at the University of Brasília that he presented his thesis when he brought together rubber tappers at a congress and proposed the concept of the extractive reserve of *florestania*, which already represents the dialogue of forest peoples.

3 – Closing:

Liliane Pereira Amorim: Professor, as always, your reflections are profoundly thought-provoking and leave us with much to reflect upon. It has been an honor to interview you. You are a major reference in Brazilian law and one of the pillars of the University of Brasília. Your contribution to science is transformative, inspiring, democratic, and inclusive. Without a doubt, this interview will contribute to the “findings” of numerous research endeavors.

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