

ICCAS

Analysis of the Legal Context and Territories Implementation in Brazil

**Cláudio C. Maretti e
Juliana F. Simões**



30 YEARS
INSTITUTE SOCIETY,
POPULATION AND NATURE

ICCAs

Analysis of the Legal Context and Territories Implementation in Brazil

**Territories and Areas Conserved by
Indigenous Peoples and Traditional
and Local Communities in Brazil and
Relations with the Concepts Associated
with ICCAs**

**Cláudio C. Maretti e
Juliana F. Simões**

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Cláudio C. Maretti and Juliana F. Simões.

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About the authors

Cláudio C. Maretti is an expert in territorial planning, traditional communities and society-nature relations. PhD in human geography, consultant and independent researcher, vice-chair of the IUCN World Commission on Protected Areas for South America and coordinator of the III Congress of Protected Areas of the Latin America and the Caribbean. He was president and director of ICMBio (Brazilian federal protected areas agency), leader of the Global Amazon initiative, national superintendent and coordinator of support for Arpa, for WWF Network, technical project coordinator for IUCN in West Africa and director and technician of the Forest Foundation (state protected areas agency) and at the State Environment Secretariat in São Paulo.

Juliana F. Simões has a bachelor's degree in Educational Sciences, with 20 years' experience on environment and public policies. Currently she is a specialist in environmental management at the Institute of Environmental Conservation, The Nature Conservancy -TNC in Brazil. She was Secretary of Extractivism and Sustainable Rural Development, Director of Extractivism and Policy Manager for Combating Deforestation at the Ministry of the Environment (MMA), where she coordinated the implementation of public policies for Indigenous Peoples, Quilombolas and traditional extractive communities and against deforestation. At the Institute of the Environment and Renewable Natural Resources – IBAMA (the federal environmental agency), she developed environmental conservation actions, especially in PAs, through the training of environmental agents in extractive reserves, Indigenous territories and “ribeirinhos” communities.

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Abbreviations and acronyms

ADCT	Ato das Disposições Constitucionais Transitórias (Transitional Constitutional Provisions Act)
ADI	Ação Direta de Inconstitucionalidade (Direct Unconstitutionality Action)
APAs	Áreas de proteção ambiental (areas of environmental protection)
BMU	German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety
BNDES	Banco Nacional de Desenvolvimento Econômico e Social (National Bank for Economic and Social Development)
CAR	Cadastro Ambiental Rural (Rural Environmental Registry)
CBD	Convention on Biological Diversity
CDRU	Concessão de direito real de uso (granting use rights)
CIMI	Conselho Indígena Missionário (Indigenous Missionary Council)
CNPCT	Conselho Nacional dos Povos e Comunidades Tradicionais (National Council of Traditional Peoples and Communities)
CNPI	Conselho Nacional de Política Indigenista (National Commission for Indigenous Policy)
CNUC	Cadastro Nacional de Unidades de Conservação (National Register of Protected Areas)
CoPs	Conferences of the Parties
CPI	Comissão Parlamentar de Inquérito (Parliamentary Inquiry Commission)
CTLs	Coordenações Técnicas Locais (Local Technical Coordinations)
FCP	Fundação Cultural Palmares
FLONAs	Florestas nacionais (national forests)
FPEs	Frentes de Proteção Etnoambiental (Ethno-Environmental Protection Fronts)
FUNAI	Fundação Nacional do Índio
IBAMA	Institute of the Environment and Renewable Natural Resources (Brazilian Institute of Environment and Renewable Natural Resources)
IBGE	Instituto Brasileiro de Geografia e Estatística
ICCA-GSI	Global Support Initiative to Indigenous Peoples and Community-Conserved Territories and Areas
ICMBio	Chico Mendes Institute for Biodiversity Conservation
ILO	International Labor Organization

Abbreviations and acronyms

INCRA	Instituto Nacional de Colonização e Reforma Agrária (National Institute of Colonization and Agrarian Reform)
ISA	Instituto Socioambiental (Socio-Environmental Institute)
ISPN	Instituto Sociedade, População e Natureza (Institute Society, Population and Nature)
IUCN	International Union for Conservation of Nature
MAPA	Ministério da Agricultura, Pecuária e Abastecimento (Ministry of Agriculture, Livestock and Supply)
MMA	Ministério do Meio Ambiente (Ministry of the Environment)
MPF	Ministério Público Federal (Federal Public Attorney Organization)
MUPAN	Mulheres em Ação no Pantanal
NGO	Non-governmental organization
OECM	Other effective area-based conservation measures
PAs	Protected areas
PAA	Política Nacional de Aquisição de Alimento (National Policy for Food Acquisition)
PAC	Programa de Aceleração do Crescimento (Growth Acceleration Program)
PAEs	Projetos de Assentamento Agroextrativista (agro-extractive settlement projects)
PAFs	Projetos de Assentamento Florestal (forest settlement projects)
PBQ	Programa Brasil Quilombola (Brasil Quilombola Program)
PCTs	Povos e comunidades tradicionais (Brazilian traditional peoples and communities)
PDSSs	Projetos de Desenvolvimento Sustentável (sustainable development projects)
PGPMBio	Programa de Garantia de Preços Mínimos para Produtos da Biodiversidade (Minimum Price Guarantee Program for Biodiversity Products)
PGTAs	Planos de gestão territorial e ambiental (Indigenous Environmental and Territorial Management Plans)
PLANAFE	Plano Nacional de Fortalecimento de Comunidades Extrativistas e Ribeirinhos (National Plan for Strengthening Extractive and Riverside Communities)
PLANAPO	Plano Nacional de Agroecologia e Produção Orgânica (Plan for Agroecology and Organic Production)
PNAE	Programa Nacional de Alimentação Escolar (National School Feeding Program)

Abbreviations

and acronyms

PNGATI	Política Nacional de Gestão Ambiental e Territorial Indígena (National Policy for Indigenous Environmental and Territorial Management)
PNPCT	Política Nacional de Desenvolvimento Sustentável dos Povos e Comunidades Tradicionais (National Policy for the Sustainable Development of Traditional Peoples and Communities)
PNPSB	Plano Nacional para a Promoção dos Produtos da Sociobiodiversidade (National Plan for the Promotion of Socio-biodiversity Products)
PNRA	Programa Nacional da Reforma Agrária (National Agrarian Reform Program)
PPA	Planejamento Plurianual do Governo Federal (Federal Government's Pluri-Annual Planning)
PRONAF	Programa Nacional de Fortalecimento da Agricultura Familiar (National Program for Strengthening Family Agriculture)
RDS	Reservas de desenvolvimento sustentável (sustainable development reserves)
REBIO	Reserva Biológica (Biological Reserve)
RESEX	Reserva extrativista (extractive reserve)
RPPN	Reserva particular do patrimônio natural (private reserve of natural heritage)
SICAR	Sistema Nacional de Cadastro Ambiental Rural (Rural Environmental Registration System)
SNUC	Sistema Nacional de Unidades de Conservação (National System for Protected Areas)
SPI	Serviço de Proteção ao Índio (Indigenous Protection Service)
SPU	Secretaria de Patrimônio da União (federal government assets)
STF	Supremo Tribunal Federal (Supreme Federal Court)
SURs	Sustainable use reserves
TAUS	Termo de autorização de uso sustentável (term of authorization for sustainable use)
UNDP	United Nations Development Programme

Introduction



Introduction

In this report we present the traditional peoples and communities (Indigenous Peoples, Quilombola communities, extractivist and other traditional communities) in Brazil and their lands, territories and areas, including a general analysis of the laws, regulations and public policies that support their rights and affect their management and conservation results, as well as the threats to those rights and to the establishment of their territories. It is, therefore, about their well-being and the conservation of nature and the ecosystem services provided to the whole society. The social groups and their territories here identified are those that, in Brazil, are equivalent to the international concept of ICCAs.

We also present the concept of territories and areas conserved by Indigenous Peoples and traditional and local communities (ICCAs), their history and their possible suitability for cases in Brazil. And the potential opportunities that the link of Brazilian social groups to this international concept and, eventually to the international registration, can bring to traditional peoples and communities in Brazil, if in their interest to follow this path.

It is important to present some clarifications here. Quilombola communities are related to former-slave and traditional black communities. In this report we also use extractive or extractivist communities as related to traditional communities which livelihood depend on ecosystems extractive activities. The term traditional extractive communities became known in Brazil from the movement of rubber tappers in the Amazon, especially with the definition of extractive reserves. These terms are therefore associated with communities that live with the tradition of collecting natural resources from ecosystems, such as forests, rivers, mangroves, etc. (We note that in other countries, including our neighbors in Latin America, the term extraction or extractive is more often associated with mining, oil exploration and similar activities.) We may use traditional extractive communities, but not always.

Introduction

This is a very vast content for a report, especially considering the very significant diversity of traditional peoples and communities in Brazil and the multiple possibilities of processes associated with them. This means that, for a complete treatment, it would take a much longer time than the few weeks and a much more complete team than the two specialists.

Due to the vastness of the theme, the availability of information, the relative importance of different aspects and the time available for this report, among other factors, there is a predominance of information and situations related to the federal level of Brazilian government, albeit without exclusivity. For similar reasons, there is a greater relative concentration of information in some social groups, such as Indigenous People, Quilombolas, traditional extractive communities in protected areas (PAs) and settlements, etc. Unfortunately, there is still less organized information available about communities, territories and conflicts in relation to other traditional communities. Therefore, this report presents some examples and delves into some cases, but it does not reach a complete systematic treatment for all types of traditional social groups considered and their territories.

The intention with this document is to contribute with the interested parties, expanding the clarifications on the theme and above all to provide the minimum bases for the elaboration of national and international strategies, both to the traditional peoples and communities and to civil society, as well as to support improvement of governmental policies, depending on the political conditions.

We thank ISPÑ for the friendly and productive interaction, and the representatives of traditional peoples and communities, of public institutions and other organizations that participated in workshops, responded to the consultation, expressed their views, contributed with opinions and knowledge or provided data and information.

The ICCAs are territories and areas conserved by Indigenous Peoples and local and traditional communities. Therefore, they referred to: the peoples and communities; their territories; and the conservation resulted from their management. Based on ICCA definition, we considered for this report the Brazilian traditional peoples and communities (“*povos e comunidades tradicionais – PCTs*”) and their rights for their territories. It is important not to try to replace their usual Brazilian territories types and names, but associate them to the ICCA concept, as well as the possibility of better international recognition. It is also important to consider Indigenous Peoples and traditional communities in processes of self-determination or in struggle for their territories and, therefore, not able yet to assure conservation results (for not having full management conditions of their territories). ICCAs are also related to conservation results, and these are often important and should be recognized. But the rights of Indigenous Peoples and local and traditional communities are not only related to the conservation results of the management of their territories. (More details below in the report.)

1. Indigenous Peoples and other local and traditional communities in Brazil equivalent to the ICCAs



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Defining who are Indigenous Peoples and other local and traditional communities in Brazil is a complex task, since the ethnic origins and different histories (although with common elements, particularly in terms of threats), in dispersed corners of the wide country, created the possibility to the existence in Brazil of an extraordinary diversity of traditional peoples and communities, such as: Indigenous Peoples, Quilombolas, “terreiro” communities and groups related to African-origin religions , gypsies, extractivists, “caíçaras” (traditional dwellers of the coastal zone of southeastern part of the country), “faxinalenses” (traditional farmers with common use of land and natural resources in the southern part of the country), “ilhéus” (traditional dwellers of certain islands), “raizeiros” (traditional families or communities associated to the use of roots or other plant parts for the production of traditional medicines), “geraizeiros” (traditional communities mostly in the north of Minas Gerais), caatingueiros (traditional communities strongly related to the “caatinga” semi-dry ecosystems), “vazanteiros” (traditional farmers related to the meadows of São Francisco river), “veredeiros” (traditional farmers related to the central savannas, particularly the “veredas”, ecosystems related to the lower humid areas), “pantaneiros” (traditional communities associated the Pantanal, large wetland in the western Brazil), “morroquianos” (traditional farmers associated to Morraria, in central-western part of the country), “pomeranos” (traditional communities, with their own language, related to their origin in the former Prussian Pomerania), “retireiros do Araguaia” (traditional cow herdsmen related to the plains of Araguaia river), communities of “fundos e fechos de pasto” (traditional communities of herdsmen and farmers related to the Cerrado and Caatinga biomes), “ribeirinhos” (traditional Amazon river fishermen communities), artisanal fishermen (traditional communities mostly related to the coastal zone), “jangadeiros” (specific type of traditional fishermen communities, related to the “jangadas”, special fishing boat, in the northeastern Brazil), “cipozeiros” (traditional

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communities related to the use of lianas for their handcraft in southern Brazil), “andirobeiros” (traditional communities related to the women use of andiroba), “quebradeiras de coco-babaçu” (traditional communities related to the women use of babassu coconut), mangaba pickers (traditional communities related to the women use of mangaba), caboclos (traditional farmers of mixed origin) and many others. Although many of these traditional peoples and communities have lived a history of violence, violation of rights and massacres, many have managed to resist and to this day struggle to exist, maintain their territories and protect their identities.

But the associated processes are dynamic, especially throughout the various phases of its history, and there may be perceptions that are still evolving and definitions that are still changing. It has been said in scientific papers that ethnic groups are not rigid in time and space, but interpenetrate, modify, evolve, also as a product of the struggles they go through. Thus, these social groups are not immutable, clearly divisible and without interactions with each other. On the contrary, what is presented today is as much a product of its current context as of its history, both in relation to endogenous processes, such as those related to oppression and external attacks, in addition to the variable possibilities of self-determination.

With regard to legal support, between Indigenous Peoples and other local and traditional communities in Brazil, there are those who have their rights more clearly and strongly guaranteed, explicitly mentioned in the Federal Constitution, such as (A) Indigenous Peoples and (B) Quilombola communities, followed by (C) traditional extractive communities. Considering, within the group of traditional extractive communities, the communities living in (C.i) extractive reserves or officially recognized in other categories of adequate PAs (without conflict with their sustainable use and with supporting public policies) and living in

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(C.ii) environmentally differentiated settlements, as differentiated but both with provision in national laws, decrees or acts and other instruments developed to ensure their rights and the implementation of associated public policies, and (C.iii) the broadest set of traditional peoples and communities¹, as those with less explicit recognitions in the legislation and implementing instruments more fragile, but still referred to in decrees. (Decree is an act or legal decision of the executive power of any of the three governmental levels.)

On the other hand, there are any of those, in specific groups or communities, that have the recognition, rights and public policies denied because of specific conflicts.

1.1. (A) Indigenous Peoples

In the colonial period, Indigenous Peoples had their population drastically reduced. The arrival of Europeans, in the territory that would become Brazil, brought about profound changes in the social, political, cultural and territorial organization of Indigenous Peoples. Brazil was not an empty and uninhabited space. On the contrary, according to the ethnologist Curt Nimuendaju, about 1,400 different Indigenous Peoples lived in the future Brazilian territory. The Indigenous population was around 1,500,000 to 5,000,000 Indigenous People at the time of the “Brazil Discovery”.² Carneiro da Cunha presents other population estimates by different researchers: “Rosenblat gives 1 million to Brazil as a whole, Moran gives a modest 500 thousand to the Amazon, while Denevan estimates the Aboriginal population of the Amazon, 6.8 million in Brazil central and northeastern coast, with a very high density of 14.6 inhabitants/km² (inhabitants per square kilometer) in the area of the Amazon floodplain and only 0.2 inhabitant/km² for the interflow”.³ However, religious missions, slavery, wars, settlements and epidemics of diseases, of which the Indigenous Peoples were the target, caused a sharp reduction in the Indigenous

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population, reaching the point where the entire villages were extinguished.

In the beginning the Indigenous Peoples were trading partners of the Europeans, exchanging parrots and monkeys for scythes, axes, knives and redwood for dyeing fabrics⁴ Afterwards, the Indigenous Peoples stopped being commercial partners and became slave labor for colonial companies. “From the middle of the 19th century, as emphasized by J. Oscar Beozzo, greed moves from the work [of Indigenous Peoples] to the Indigenous territories⁵. A century later, it will move again: from the ground, [greed] will pass to [or include] the subsoil of the Indigenous territories.”⁶

Until the mid-1970s the Brazilian Indigenous population declined sharply. According to the Socio-Environmental Institute (“Instituto Socioambiental - ISA”), it was believed that Indigenous Peoples would be extinct in Brazil. However, there was a reversal in the demographic curve in the 1980s and since then the Indigenous population has grown. In 1991, IBGE (“Instituto Brasileiro de Geografia e Estatística”, the federal agency in charge of data and statistics) included Indigenous Peoples in the national demographic census. In 2000, the population of people who declared themselves to be Indigenous increased from 0.2% to 0.4%, totaling 734 thousand people.⁷

According to the 2010 census, 896,917 people declared themselves to be Indigenous, of which 517,300 lived on officially recognized Indigenous territories and 379,500 lived outside them. Unlike the national average in which the urban population is significantly larger than the rural population, the majority of Indigenous Peoples, around 64%, lives in rural areas. This fact reinforces the strong connection of Indigenous Peoples with the land and natural resources, an intrinsic relationship that makes up the identity of these peoples. According to IBGE (2010 census), there are 305 different ethnicities and about 274 Indigenous languages

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spoken. Some of the more populous groups are as Guaraní Kaiowá (43,401), Tikuna (46,045), Tenetehara (24,428), Yanomami (21,982), Munduruku (13,103), Xavante (19,259) and Kaigang (37,470).⁸

In addition to Indigenous territories being fundamental for the physical and socio-cultural reproduction of Indigenous Peoples, they play a very important role in the conservation of nature and its biodiversity, in the maintenance of carbon stocks and in the region's rainfall regime. And they provide important environmental (or ecosystem) services and perform some functions similar to those of PAs, so much so that they have been a barrier to the advancement of deforestation, in all Brazilian biomes, but mostly in the Amazon. According to deforestation data for 2018, only 4% of deforestation occurred on Indigenous territories in the Legal Amazon.⁹ Analysis of deforestation in Indigenous territories and in the Legal Amazon, from 2000 to 2014, showed that the average area deforested in Indigenous territories was less than 2%, while in the entire region it was 19%.¹⁰ Furthermore, the deforestation that occurs inside Indigenous territories, in most cases, is associated with the illegal action of non-Indigenous Peoples, who invade Indigenous territories for the removal of wood, the installation of mining and land grabbing with supposed agricultural production. The extension of Indigenous territories in Brazil and their high degree of conservation of vegetation cover, together with PAs, as well as other social territories, are essential for maintaining the rain regime, not only in the North region, but also in other regions of the country.

In addition to having a rich traditional knowledge about biodiversity, Indigenous Peoples develop sustainable traditional practices for managing the forest, fauna and native vegetation. Their traditions therefore retain a rich sociodiversity and traditional knowledge associated with the forest, fauna and plants. Such knowledge and experiences are extremely relevant to the lives of Indigenous Peoples, as

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well as to the life of society in general, as from this knowledge of centuries, medicines, cosmetics and a variety of food plants can be produced.

1.2. (B) Quilombolas

Historically, Quilombola life has been intricately linked to the resistance movement and the fight against slavery. “Callombolas”, “quilombolas” or “mocambeiros” was what the Portuguese called the members of the “quilombos”, who were commonly seen as settlements built by black slaves escaped from captivity, who revolted individually or collectively against the oppression and violence to which they were subjected in the slave system of the time.¹¹ Quilombos have become spaces of resistance against oppression, prejudice and racial discrimination, but, above all, a space to live according to their own traditions, beliefs and social and political organization.¹²

Throughout the whole period of slavery there was resistance. Quilombos are symbols of this resistance and insurrection against the political system in force at the time. During this period hundreds of quilombos of different types and sizes were formed, where black people from different parts of the African continent and born in Brazil lived. But it was also possible to find quilombos with the presence of Indigenous Peoples and even white people.¹³ Quilombos were distributed geographically in practically the entire national territory. According to official statistics, between 1520 and 1850 more than 4 million Africans landed in Brazil, apart from those who were being smuggled into slave ships of which precise information is not yet available.¹⁴

Anjos¹⁵ reveals that Brazil is the second country with the largest black population on the planet. It is this group that receive important levels of discrimination and violence, and have important poverty and social vulnerability. Slavery lasted for more than 300 years in Brazil, being abolished

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in 1888. However, freed slaves were not given the conditions to effectively achieve equality. What was seen, from the abolition, was the perpetuation of an unequal and exclusionary system, which remains until today – even if this is not exclusive to black peoples. Quilombolas who resisted the time and survived persecution, prejudice, violence, expulsion, and destruction, continue in the constant and contemporary struggle for the recognition of rights that were historically suppressed.

So far, there is no census information about traditional Quilombola communities. However, starting in 2020, it will be possible to know a little more about them. The IBGE will include specific questions about this population group in the 2020 Demographic Census, based on data from the Fundação Cultural Palmares (FCP; the federal government institution for cultural policies related to black communities), National Institute of Colonization and Agrarian Reform (INCRA, “Instituto Nacional de Colonização e Reforma Agrária”, the federal agency in charge of land tenure issues) and the state land institutes. It is expected that the Quilombolas General Registry of Information would have information and general data on Quilombolas, such as socio-political organization, family numbers, location, land conflicts, culture and economic situation of communities. Therefore, the data of this census will be complementary to the referred register, since it will investigate information about the households. To this end, IBGE, following Convention 169 of the International Labor Organization (ILO), held free, prior and informed consultation with Quilombolas to present and discuss the theoretical, methodological, operational and geographical proposal for the insertion of Quilombolas in the census.¹⁶

Today most Quilombola communities are located in rural areas, although peri-urban and urban Quilombola communities also exist. They are social groups whose ethnic identity distinguishes them from the rest of society, which

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means that they have their own form of social and political organization, an inseparable identity from the territory, a common ancestry and unique linguistic, religious and cultural expressions. Data from the FCP, the body responsible for granting certification to the remaining quilombo communities and the General Quilombola Information Register, point to the existence of 3,311 remaining Quilombola communities across Brazil in 2,752 certificates (a certificate may refer to more than a community), most of them located in the Northeast Region.¹⁷

Although less striking than Indigenous territories, Quilombola territories also play an important role in the conservation of biodiversity and forests. A specific case is the quilombos in Oriximiná, Pará, according to a study by the Comissão Pró-Índio São Paulo (a non-governmental organization), only 1% of the Quilombola territories in Oriximiná are deforested and it indicates that, in general, the pace of deforestation in the Quilombola territories has decreased. This region concentrates 37% of the area of Quilombola territories in Brazil that have received property titles. There are 9 ethnic territories on the banks of the Trombetas River, Erepecuru, Acapu and Cuminã, where about 8 thousand people live in 35 remaining quilombo communities, partly with interfaces with federal and state PAs.¹⁸ Due to the high rates of conservation and sustainable management of biodiversity in these areas, many Quilombola territories concentrate a wide variety of plant species, which are genetically better adapted and, therefore, more resilient.

1.3. (C) Other traditional peoples and communities

In addition to Indigenous Peoples and Quilombola communities, there is a diversity of traditional peoples and communities in Brazil.

These traditional peoples and communities, although relatively distinct from each other, share the fact of having

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their own form of culture and social organization different from mainstream society, albeit also different between them, and many of them maintain an intrinsic relationship with the territory and natural resources on which they depend for their physical, cultural, social, religious and economic reproduction. (In other words, Indigenous and Quilombola peoples fit into the set of traditional peoples and communities in general terms.)

Historically these traditional communities lived in rural areas, many occupied forest areas, close to rivers and springs, where they developed their agriculture fields, fished, collected native fruits and raised small animals and, in some cases, even cattle. Most of these families, for not having knowledge of the laws and having low formal school education, were excluded from the process of land distribution in Brazil, which concentrated large extensions of land in the hands of farmers, since the “Sesmaria” Regime (large concessions from colonial times), passing through the “Law of the Lands” of 1850. To date, most of these families have not had their land regularized, which has caused numerous land conflicts.

In this scenario of struggle for land, in the late 1980s, led by Chico Mendes, in Acre, came the social movement called “empate” which, in the Amazon language, means to prevent, to stop the forest clearing. They were rubber tappers (extractivists) who stood up against deforestation and the concentration of land in the Amazon. It is at this moment that the model of extractive reserve (“reserva extrativista – RESEX”) appears, as an alternative for maintaining local and traditional populations on their land, collectively in areas of public domain, and for the conservation of forests and other ecosystems. As a similar alternative, but usually not entirely collective and not entirely in the public domain, the model for an agro-extractive settlement project (“projeto agroextrativista – PAE”) was also proposed, also the result of the struggle of Chico Mendes and the demand

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of social movements for new models of agrarian reform that favored the way of life of traditional Amazonian populations and guaranteed the right to land ownership. Therefore, RESEXs and agro-extractive settlement projects (“*projetos de assentamento agroextrativista – PAEs*”) appear as a form of land regularization for traditional extractive and ribeirinho communities that lived in the forest and depended on it to survive.

Although there is no official census information on these other traditional non-Indigenous Peoples and communities, government agencies have population data on traditional peoples and communities, such as the extinct Ministry of Social and Agrarian Development (now subdivided, part of which was incorporated into the Ministry of Citizenship), from the Chico Mendes Institute for Biodiversity Conservation (“Instituto Chico Mendes de Conservação da Biodiversidade – ICMBio”, the Brazilian agency in charge of federal PAs), the INCRA and from the federal secretariat in charge of the federal government assets (“Secretaria de Patrimônio da União – SPU”).

The extinct Ministry of Social and Agrarian Development, through the Single Registry for Social Programs (“Cadastro Único para Programas Sociais – CADÚnico”), carried out a differentiated registration process to identify and socio-economic profile of traditional and differentiated population groups (“grupos populacionais tradicionais e específicos – GPTEs”), with the aim of including these families in the Single Registry and make them visible for a set of social protection policies. In 2015, 1,965,768 families belonging to these groups (GPTEs) were identified, which corresponds to 7.1% of the total families existing in the Single Registry. Considering that in June 2015, more than 82.4 million people were included in this register, it can be said that around 6.2 million people belonged to traditional and differentiated groups.¹⁹

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Information from ICMBio (including data from Sisfamília – register of traditional extractive families –, its own registry), indicates about 76 thousand traditional families benefiting from 87 federal sustainable use reserves (a group of protected area categories), such as RESEXs and similar. Of these, 73.49% is located in the Amazon region (North), 18.07% in the Northeast, 4.81% in the South / Southeast and 3.61% in the Central-West. It should be noted that 30% of those PAs are marine and coastal RESEXs.²⁰

INCRA has settled around 123,390 agro-extractive families in environmentally differentiated settlement projects, such as PAEs, sustainable development projects (“projetos de desenvolvimento sustentável – PDSs”) and forest settlement (“projetos de assentamento florestal – PAFs”).

Finally, we have the SPU, the body responsible for managing the federal real estate, which has been regularizing land tenure in some traditional communities that live in federal river banks and associated meadows, and also in stretches of the coast, for example. through the term of authorization for sustainable use (“termo de autorização de uso sustentável – TAUS”). Approximately 58.417 traditional families of ribeirinhos have had their occupations regularized by the referred instrument.²¹

2. Territories and areas conserved by Indigenous Peoples and local and traditional communities



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2.1. (A) Indigenous territories

The original right to the lands that traditionally occupied by the Indigenous Peoples, was expressly recognized by the Federal Constitution of 1988. The competence of “demarcation”²² of Indigenous territories belongs to the Fundação Nacional do Índio (FUNAI, the national agency for indigenous issues), which has, among others, the role of guiding and executing the demarcations, as provided for in Law No. 6,001, 1973 (Statute of the Indigenous Peoples), and in Decree (or Act) No. 1,775, of 1996, which established the administrative procedure for the demarcation of Indigenous territories.²³ (In Brazil, the Indigenous territories remain or become as federal government ownership when declared, but with exclusive use of the Indigenous Peoples. The use of “demarcation”, following Brazilian legislation, refers to the whole process, including recognition, delimitation etc. until the actual field demarcation.)

FUNAI data records 568 Indigenous territories at different stages of recognition or regularization, and 54 Indigenous reserves. (In simple terms, the Indigenous reserves are a more ancient form of land to which the Indigenous Peoples could be removed and the Indigenous territories are recognized where they live and often much larger.) Of the Indigenous territories, 441 are regularized, 9 approved, 75 declared and 43 delimited, in addition to 118 under study.²⁴ On the other hand, 35 Indigenous reserves have been regularized and 19 have been processed as Indigenous reserves, awaiting administrative procedures for direct purchase, expropriation or donation.

In total, they cover about 12.2% of the National Territory, distributed in all Brazilian Regions, with greater concentration in the Amazon. Of the total of approximately 118 thousand km² covered by Indigenous territories, 54% are located in the North, 19% in the Central-West, 11% in the Northeast, 6% in the Southeast and 10% in the South (related to the

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official Brazilian Regions). Data also show the existence of 82 references of non-contacted Indigenous groups, 32 of which have already been confirmed by FUNAI.²⁵

2.2. (B) Quilombola territories

For Quilombola communities, the Brazilian Constitution also recognized their rights to land and determined that the government issue property titles.²⁶ (Different from Indigenous territories, the Quilombola communities are expected to receive collective property rights.) The current process of recognition of Quilombola territories was instituted by Decree No. 4,887, of 2003, which defined the stages of identification, recognition, delimitation, demarcation and granting ownership titles and registration of Quilombola territories. The process of granting titles to Quilombola territories at the federal level is the responsibility of INCRA. According to data from this agency, 1,784 processes for the granting titles of lands belonging to the Quilombola communities are open in all regional offices (with the exception of Roraima, Marabá and Acre). Considering the performance of all federative entities, 247 titles have been issued so far, regularizing about 10 thousand km² for the benefit of 160 territories, 303 communities and 16,785 Quilombola families.²⁷

2.3. (C) Extractivists and other traditional peoples and communities

As mentioned, there is a significant diversity of traditional peoples and communities in Brazil. They are also distributed in different parts of the country. Usually, traditional peoples and communities are located in the most remote parts of the national territory (due to progressive processes with their expulsion or non-inclusion in the areas under the interest of the dominant part of society), where the territories are wider. But there are also significant clusters of traditional peoples and communities in locations close

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to important cities and areas with more intense economic activities.

These other traditional peoples and communities do not have as explicit a provision in the Brazilian Constitution as Indigenous Peoples and Quilombola communities (which are also at different levels in the Carta Magna). However, due to cultural and ecological forecasts in the Constitution, laws and decrees have been defining criteria and processes for the recognition and delimitation of part of their traditional territories. In this sense, there are different groups in terms of the territorial definition of these communities: in PAs; in differentiated settlements; and in other, more or less precarious conditions.

2.3.1. (C.i) In protected areas

Traditional extractive communities living in adequate PAs have greater territorial security, due to their achievements associated with the movement led by Chico Mendes, which generated the possibility of recognition and defense through extractive reserves (first by decree and later by law²⁸). In short, these are defined with public domain, collective ownership and the sustainable use of ecosystems by the local traditional communities living there. The first extractive reserves were of forests and created in the Amazon biome, and then extended to other ecosystems and other biomes.

According to the National Register of Protected Areas (Cadastro Nacional de Unidades de Conservação – CNUC”), without considering the private reserves of natural heritage (“reservas particulares do patrimônio natural – RPPNs”), there are 662 sustainable use reserves (SURs), with approximately 1.9 million square kilometers (km²). Despite the importance of state PAs in some states, particularly the Amazonas, there is a more focused attention by the traditional extractive communities in the federal PAs (185 fed-

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eral SURs, with about 1.2 million km², without consider RP-PNs). Those communities are interested, in the first place, in extractive reserves (95 nationally, with approximately 155 thousand km², of which 66 federal, with approximately 135 thousand km²), followed by the sustainable development reserves (“reservas de desenvolvimento sustentável – RDS’s”, 39 nationally, with approximately 113 thousand km², with great concentration, especially in area, in the state of Amazonas). At the federal level, these populations are also strongly interested in national forests (“florestas nacionais – FLONAs”, 67, with approximately 178 thousand km²).²⁹ (All those three categories are equivalent to the IUCN international category VI, although the co-management by local communities is stronger in RESEXs and partially in RDS’s, and the FLONAs have also potential for companies’ forest management, although the traditional communities have priority.)

According to data of ICMBio, in total, at the federal level, there are 87 sustainable use reserves with the application of management tools and public policies for the traditional extractive communities. (Recognized tradition communities live in 66 extractive reserves, in 2 sustainable development reserves, both at the federal level, and in 19 of the 67 national forests.) Of these, 54 PAs are in the Amazon, with approximately 213 thousand km² and about 24,400 families, 26 in the coastal-marine zone (including the coastal-marine zone of the Amazon), with approximately 14 thousand km² and about 50.3 thousand families, 6 in the Cerrado, with approximately 1 thousand km² and about 1,200 families, and 1 in the Caatinga, with approximately 390 km², with no estimated families. In terms of categories, 71,500 families are estimated in RESEXs, 3,500 in FLONAs and less than 1,000 in RDS’s.³⁰

Therefore, it is in the category of the Extractive Reserve that most extractive families live in PAs, which are characterized by a way of life in communities, with sustainable use

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of the forest, rivers, seas, mangroves and other ecosystems, mainly fish, crab, non-wood products from forests, such as Amazon-nut (also called Brazil-nut or Pará-nut), açaí, latex, oils, such as andiroba and copaiba, among others. They are communities that over the generations have developed specific knowledge and skills about the use of biodiversity and the ecosystems where they live, especially in relation to forests, but also water bodies, at least in the Amazon. This is the case of pirarucu, an Amazonian fish threatened with extinction, which, through the work of management and conservation by the communities, has returned to populate the local rivers and lakes, free of this risk. And today it is one of the main incomes of communities of ribeirinhos in the Amazon. Thousands of fishermen and artisanal fishermen live in the marine and coastal RESEXs and survive from the use and conservation of fishing resources.

Unfortunately, traditional communities in the areas of environmental protection ("areas de proteção ambiental – APAs"; IUCN international category V) are still not sufficiently covered by the same level of service, management tools and application of public policies compared to the other categories mentioned above. The whole population is certainly very significant (considering that a precarious survey considering only the main coastal federal APAs indicated at least 50 thousand families of artisanal fishermen). There are 37 federal APAs (with about 0.9 million km²), but the number of traditional communities must also be important in the state APAs, which are 198 (with about 342 thousand km²). There is still little evaluation of the importance in this sense of the 127 municipal APAs (with approximately 59 thousand km²).

There are extractive communities or families in other categories as well, including those that contradict their specific rules (such as strict preservation areas, protected area categories group with more restrict rules). In most of these cases, it is about conflicting relationships between

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former residents or users, as well as the creation of strict preservation areas over their traditional territories. Examples of cases in the Cerrado are the Parque Nacional das Semper-Vivas, the Chapada das Mesas National Park, the Serra Geral do Tocantins Ecological Station and the Jalapão State Park. In several of these situations, many families are vulnerable. If, on the one hand, the creation of the PAs often prevents or reduces the pressure of vectors of environmental degradation, which are also the vectors of expulsion from these communities, on the other hand it can leave families without conditions for socio-cultural and economic reproduction.

2.3.2. (C.ii) In differentiated settlements

The Law No. 8,629, of 1993, which regulates the constitutional provisions on agrarian reform, established the possibility of different forms of use of the areas destined for it, admitting possibilities for individual, condominium, cooperative, associative or mixed ownership and exploitation.³¹ In this way, traditional agro-extractive communities could have secured the territory through the creation of differentiated settlements, established in communal regime, in associative, condominium or cooperative forms, through agro-extractive settlement projects (PAEs), PDS's and PAFs.³² These settlements are similar to the conditions of the extractive reserves. And in many of these settlements live traditional communities whose way of life is dependent on the use and conservation of natural resources.

The INCRA , settled 127,458 traditional agro-extractive families in the referred environmentally differentiated settlement projects (PAEs, PDS's and PAFs). According to INCRA, there are 554 differentiated settlements (413 PAEs, 6 PAFs and 135 PDS's), with 0.133 million km² (respectively 98 thousand km², 2.72 thousand km² and 320 thousand km²). Considering the three “project” types, there are 496 settlements in the North (121,901 families and 130 thousand km²), 23 in

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the Southeast (with 1,696 families and 0.26 thousand km²), 21 in the Northeast (with 2,272 families and 1.01 thousand km²) and 14 in the Center-West (with 1,589 families and 1.26 thousand km²).³³ These families live by handling non-timber species, such as chestnuts and vegetable oils, artisanal fisheries and small subsistence gardens. These areas belong to the “Union” (the Brazilian federal level national state) and are granted to agro-extractive communities through the instrument (or contract) for granting use rights (“concessão de direito real de uso – CDRU”), which guarantees the exclusive use of the area, for an indefinite period and for generations.

It is worth noting that the terms “projects” and “settlements” must be understood in their specific context, different from their generic concepts. For the purposes of this analysis, therefore, it is a matter of recognizing rights to families that have occupied areas for a significant time and seeking to regularize their land tenure, through family areas integrated into a community.

2.3.3. (C.iii) In other conditions

Another group among traditional communities is the “ribeirinhos”. They live in small communities located by the rivers and practice artisanal and subsistence fishing, in addition to plant extraction and subsistence agriculture. Families of ribeirinhos have their own form of organization, with their identity, culture and tradition strongly marked by their relationship with rivers and forests. The SPU, the department responsible for managing the federal real estate assets, has been regularizing land possession for the benefit of these families through a TAUS. Approximately 58.417 traditional families of ribeirinhos have had their occupations regularized by the referred instrument.³⁴

In addition to the instruments for the recognition of territories and land tenure regularization, there are other mech-

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anisms that can contribute to ensuring access to natural resources and, therefore, some level of sustainability for traditional community families. For example, in the North (Amazon) region there is some tradition of fishing agreements, an instrument whereby fishermen, ribeirinhos and other interested parties establish rules, developed in partnership with an environmental agency, that govern fishing in local rivers and lakes, with the objective of maintaining fish stocks and practicing sustainable fishing and not endangering fish species in the region. This practice has been decreasing recently.

The main public policy that guides government actions towards traditional peoples and communities is the National Policy for the Sustainable Development of Traditional Peoples and Communities, instituted by Decree No. 6,040, of 2007, complemented by the National Plan for Strengthening Extractive and Riverside Communities (“Plano Nacional de Fortalecimento de Comunidades Extrativistas e Ribeirinhos – PLANAFE”), instituted by Decree No. 9,334, of 2018.³⁵

But not all traditional peoples and communities have achieved recognition and the allocation of their territory for their use. Beyond Indigenous Peoples, Quilombola communities, and traditional extractive communities that have had their territories recognized through RESEX and PAEs, other traditional peoples and communities are more vulnerable in terms of legal recognition of their traditional territories. Although there are possibilities to ensure their permanence in their territories, the mechanisms are less established and potentially more fragile. But, even in an unfavorable context, there are some victories, such as land regularization for part of these communities, for example, by the TAUS, which recognizes the right to occupation and sustainable use of natural resources. It has been applied in federal river banks and lowlands associated, and elsewhere. The TAUS can be the beginning of the process of land reg-

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ularization in public lands of the Union, which can be concluded with a concession of right of use (CDRU). In the state of Bahia, CDRU has been the solution offered by the state government to regularize the territories of communities of “fecho e fundo de pasto”.

In view of this situation, the Federal Public Attorney Organization (“Ministério Público Federal – MPF”), in partnership with the National Council of Traditional Peoples and Communities (“Conselho Nacional dos Povos e Comunidades Tradicionais – CNPCT”), has been leading the preparation of the Digital Platform for Traditional Territories, which will gather the territorial data of traditional communities from all over Brazil. The purpose of the platform is to carry out a diagnosis of occupation of traditional territories, in order to give visibility to these traditional communities and to guide public bodies in meeting their needs through appropriate and specific public policies. After some events, agreements and work, this platform was launched in August 2019.

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In terms of the rights to land or territories, in relation to their legal situations, those clearer and stronger definitions are those provided for in the Brazilian Constitution³⁶, followed by those provided for in national laws, such as PAs³⁷, especially extractive and similar reserves. Those only provided for in decrees are relatively more fragile. In this sense, of the relative minor or greater fragility, the existence of regulations and institutions in charge of implementing the corresponding public policies shall also be considered.

3.1. Constitution of the Federative Republic of Brazil

The main legal landmark of interest for Indigenous Peoples and local and traditional communities in Brazil is the Brazilian or National or Federal Constitution of 1988. Not only because it is the main charter, Carta Magna, the country's most important legal document, but also because of the significant advances in rights social and environmental benefits obtained there. (Several details are presented throughout the report.) In Brazilian Constitution rights for Indigenous and Quilombola territories are mentioned, as well as "territorial spaces and their components to be specially protected".

Still dealing with higher-level legislation, even considering that the focus here is "territories and areas conserved by Indigenous Peoples and local and traditional communities", it is interesting to cover elements that go beyond the classically defined as PAs and as territories. (This does not mean diminishing the importance of territories for these traditional populations and local communities, but rather exploring possibilities for legal and extra-legal recognition of them on other fronts, which may eventually even strengthen their struggles and the conservation results that are part of the main interest Considered here.) Thus, we see that the Brazilian Constitution also defends cultural heritage³⁸.

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3.2. ILO Convention n. 169

Convention No. 169 of the ILO shall be considered as having force of law.³⁹ Although there is some controversy regarding the use of this instrument for traditional or non-Indigenous communities. The adoption of Convention No. 169 of the ILO, promulgated in 2004 by Brazil, is one of the most important achievements after the Brazilian Constitution of 1988.

The struggle of the Indigenous, Quilombola and traditional communities movements for its implementation stands out. The provisions of Convention No. 169, in particular its Article 6⁴⁰, which determines that the governments should carry out prior free and informed consultation with Indigenous and tribal peoples, whenever administrative or legislative measures that affect them are envisaged, have been a strong instrument for the protection of territorial rights, especially in view of the country's economic development trends, based on major infrastructure works, mining, expansion of commodities, use of pesticides, expansion of transgenic planting, etc.

It is also worth mentioning the reach of the Convention to other traditional peoples and communities in Brazil and the work of the MPF in ensuring that it is complied with. Another important aspect was the contribution of this Convention to the right of self-determination, which has supported diverse segments of traditional peoples and communities to emerge from invisibility.⁴¹

3.3. Convention on Biological Diversity

Another convention that must be dealt with here is the Convention on Biological Diversity (CBD)⁴². Usually, the CBD's language deals with "Indigenous Peoples" and "local communities" and there is no formal definition or decision to fully clarify these terms, although this may be considered

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unnecessary.⁴³ In particular, the CBD recognizes community or Indigenous conservation territories and areas in its Programme of Work on Protected Areas (PoWPA)⁴⁴, as well as in subsequent decisions, such as in its 9th and 10th Conferences of the Parties (CoPs)⁴⁵. Being a Convention ratified by Brazil, there is no doubt about its legal validity.

3.4. Decrees and other legal norms

There are two important considerations to make in this regard as to what may be defined or provided for in lower-level, national and sub-national decrees and legal norms. First, there are conceptions that government executive powers should not institute new responsibilities or determinations by decree that has not already been provided for by law.⁴⁶ In addition, considering that lower-level decrees and legislation (such as resolutions, ordinances, etc.) would be the current dynamics of public management and, considering that the public service should not do anything that is not defined in a legal diploma, there would hardly be any kind of recognition, support or policy not provided for in any legal document. In any case, there are important government definitions at this level.

3.5. (A) Indigenous Peoples

The Indigenous policy in Brazil is mainly based on the Brazilian Federal Constitution of 1988, the Statute of the Indigenous Peoples (Law No. 6,001, of 1973) and international legal instruments, such as Convention No. 169 of ILO, the Convention on Biological Diversity, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions and the United Nations Declaration on the Rights of Indigenous Peoples.⁴⁷

Importat to mention that the Brazilian Constitution of 1988 overcame definitively the Brazilian society ethnocentric vision related to the Law of the Indigenous Peoples Statute

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(“Estatuto do Índio”)⁴⁸, adopting a vision of respect for differences and Indigenous cultural identity. Although the Statute of the Indigenous Peoples already guaranteed the right to possession of the lands on which they traditionally lived, the exclusive use of natural resources and other Indigenous customs and traditions and that this Law was an important achievement, it currently finds itself with many of its provisions outdated, mainly because it contains an ‘assimilationist’ ideological vision, which aimed to integrate Indigenous Peoples into the dominant culture. In order to correct such provisions, Bill No. 2,057, of 1991, has been processed by the National Congress (consisting of the House of Federal Deputies and the Senate), which aims to adapt the Statute of the Indigenous Peoples to the current constitutional provisions.

Among the fundamental rights is the right to land or its territory. In the context of Indigenous Peoples in Brazil, Indigenous rights over traditionally occupied lands have always been present since colonial Brazil.

The Federal Constitution (CF) of 1934 (Article 129), as well as the following, CF of 1937 (Art. 154), CF of 1946 (Art. 216) and CF of 1967 (Art. 186) expressly recognized the Indigenous Peoples possession rights over their land, adds Dodge. However, it is in the Brazilian Constitution of 1988 that the rights of Indigenous Peoples are extended and the right over their territories is reaffirmed and strengthened. The 1988 Brazilian Constitution devotes an exclusive chapter to the rights of Indigenous Peoples. In chapter VIII, Art. 231 and 232, recognizes the Indigenous Peoples, their social organization, customs, beliefs and traditions and the original right⁴⁹ on the lands that they traditionally occupy, declaring acts null and void with the objective of occupation, possession or control of Indigenous territories, or exploitation of the natural wealth of the soil, rivers and lakes in them, regardless of the time they were granted, even that was before the Brazilian Constitution. (This means no previous

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right for non-Indigenous Peoples should stand in Indigenous territories.) Therefore, Article 231 determines that the Union promotes the demarcation of Indigenous territories, to make explicit the limits and provide physical and legal security to Indigenous Peoples.⁵⁰

It should be noted that the administrative act of demarcating an Indigenous territory is not an indispensable source of the right to the lands that they traditionally occupy. In other words, demarcation is a secondary act and the presence and traditional Indigenous occupation is already sufficient to guarantee the right to the land, which must be protected by the Union. As for the right to property over Indigenous territories, the Brazilian Constitution establishes that Indigenous territories traditionally occupied are property of the Union, with permanent possession and exclusive use by the Indigenous, pursuant to Paragraphs 1 and 2 of Article 231.

Exclusive exploitation is understood as the exploitation of natural resources to meet the internal needs of a community, according to their uses, customs and tradition, without any administrative or legal restrictions or the need for authorization from the public authorities. However, the production of surpluses for sale, going outside the Indigenous territories must be guided by the applicable general rules, including those related to national environmental legislation. They may even enter into partnerships for the development of economic projects, as long as it does not imply the alienation of the use or exploitation rights of the natural resources of their lands.⁵¹

The Brazilian Constitution of 1988 guaranteed the right to exclusive use of the soil, however, the underground ores and the energetic potential of rivers in Indigenous territories were excluded. Mining and water and energy exploitation activities on Indigenous territories, according to Paragraph 3, of Article 231, of the Brazilian Constitution of 1988, shall

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be authorized by the National Congress, provided that the affected Indigenous communities are heard and guaranteeing their participation in the results of the mining. Paragraph 4, of the same Article, determines that the lands of the Indigenous territories are inalienable and unavailable and the right over them is essential. Paragraph 5 prohibits the removal of Indigenous groups from their territories, except with ad referendum from the National Congress, in the event of catastrophe or epidemic or in the interest of the country's sovereignty, guaranteeing immediate return as soon as the risk ceases.

Even though the use of water (energy) and mining in Indigenous territories requires authorization from the National Congress and the hearing of affected Indigenous Peoples, it is noteworthy that such ventures can be approved even if the Indigenous Peoples are opposed. The works of the Growth Acceleration Program (“Programa de Aceleração do Crescimento – PAC”), especially the case of the Belo Monte hydroelectric plant, are emblematic to illustrate this “gap” left by the Brazilian Constitution of 1988.

Considering that the recognition of Indigenous Peoples' rights to their lands has been present in the legal system since “Colonial Brazil”, it is clear that such rights have been violated for centuries by the delay in proceeding with the demarcations. It was only in 1996 that Decree No. 1,775 was published, which currently provides for the administrative procedure for delimiting and ratifying Indigenous territories.⁵²

The consuetudinary or customary right was guaranteed in the Federal Constitution of 1988, in the caput of Article 231 that recognizes the Indigenous Peoples their social organization, customs, languages, beliefs and traditions. It is also present in Article 1, single paragraph, of the Statute of the Indigenous Peoples, that the protection of the laws of the country is extended to the Indigenous Peoples and

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their communities, safeguarding their uses, customs and traditions.⁵³

However, Curi warns that, “in practice, there are often conflicts between the current positive system and the norms proper to Indigenous communities. Invariably, the State’s position is to want to hurt the autonomy of Indigenous Peoples by imposing their rules and value systems.” And that “the terminologies “consuetudinary rights” and “customary rights” of Indigenous Peoples only exist in the dimension of the current positive law, which has the premise of identifying the State as the sole source of law. In this context, the norms proper to Indigenous Peoples are still identified as something inferior, which supposedly would promote legal uncertainties because they are not codified and based on the figure of the State.”⁵⁴

In other words, although the Brazilian Constitution fully guarantees consuetudinary or customary Indigenous Peoples’ rights, in practice the predominance of a dominant view in the current positive system is still a barrier to be overcome so that consuetudinary or customary Indigenous Peoples’ rights can be fully realized in all aspects and in fact prevail the autonomy of Indigenous Peoples and the right to decide about their lives and their territories, their culture, their traditions, their languages etc. One must seek to achieve legal plurality, where other forms of expression are admitted, in order to recognize diversity and ethnic plurality.

3.6. (B) Quilombola communities

The 1988 Brazilian Constitution recognized Quilombola territorial rights and determined, in Article 68 of the Transitional Constitutional Provisions Act (“Ato das Disposições Constitucionais Transitórias – ADCT”). This same Constitution also sought to protect the cultural heritage of these peoples, provided for in Paragraph 5 of Article 216, “all doc-

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uments and sites with historical reminiscences from the old quilombos are listed” (registered for protection). And in Art. 215 and the following, attributes to the State the obligation to ensure the protection “of the manifestations of popular, Indigenous and Afro-Brazilian cultures, and of other groups participating in the national civilizing process”.

In 2003, after 15 years of the promulgation of the Brazilian Constitution, and after temporary or unsuccessful processes, the procedure for the granting the property titles of lands occupied by remnants of quilombos communities remaining today was issued (regulated), through the publication of Decree No. 4,887.⁵⁵ This Decree determines that INCRA is responsible for the granting property titles process. One of the main achievements of the Decree was to consider the self-recognition made by the communities themselves to start the granting ownership titles process, and it is no longer necessary to prove a centenary possession to be entitled to the territory. It also provides that the titled land must guarantee the physical, social, economic and cultural reproduction of Quilombola communities, having as reference the areas that have been traditionally used by the community for their survival over the years.

3.7. (C) Other traditional peoples and communities

Although the Brazilian Constitution did not mention them explicitly, as in the case of Indigenous Peoples and Quilombola communities, its Article 215 determines that the State will guarantee the full exercise of cultural rights for all, and Article 216 includes as forms of Brazilian cultural heritage the expression and ways of creating, making and living of different groups that make up Brazilian society. Therefore, Duprat expresses the guarantee of constitutional rights contained in Articles 215 and 216, “without naming them, the other groups that had their own forms of expression and of living, creating and doing.”⁵⁶

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Based on this understanding, Decree No. 6,040, of 2007, was published, which instituted the National Policy of Traditional Peoples and Communities, whose general objective is the “sustainable development of traditional peoples and communities, with an emphasis on the recognition, strengthening and guarantee of their territorial, social, environmental, economic and cultural rights, with respect and appreciation for their identity, their forms of organization and their institutions”.⁵⁷

Decree No. 6,040 also defines traditional peoples and communities, as culturally differentiated groups that recognize themselves as such. It also defines its traditional territories as the necessary spaces for its cultural, social and economic reproduction. It is interesting for this analysis that this Decree includes in the very definition of traditional peoples and communities those “who 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”.⁵⁸

3.7.1. (C.i) Traditional extractive communities in protected areas

The Law No. 9,985⁵⁹ defined the National System of Protected Areas (“Sistema Nacional de Unidades de Conservação – SNUC”), with two groups of categories of PAs: strict preservation areas; and sustainable use reserves. The group of sustainable use reserves includes the PA categories RESEX, FLONA, RDS and Environmental Protection Areas (“Área de Proteção Ambiental – APA”), among others. (The first three related to the IUCN international category VI and the latter to the category V, all with Brazilian particularities.) In these categories of PAs, human presence and sustainable use of natural resources are allowed, according to the rules defined by the legislation and in the management plan of each one of them. RESEX and RDS are PA categories for

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traditional communities. FLONA is also related to companies forest exploitation, but considers traditional communities as priorities. APA has no mention to traditional communities. It should also be noted that the relationship between traditional extractive communities is strong with federal PAs, but not exclusive. But there are also good responsibilities and positive definitions in some states, especially in some Amazonian states, such as Amazonas, Acre, Rondônia, Pará and Mato Grosso, as well as many gaps and several mistakes also at subnational levels. (All Brazilian protected area categories can be defined by any of the three levels of government – federal, state and municipal –, with the same legal level, being the more restrictive which prevails according to the environmental legislation doctrine.)

Considering the system approach and the complementarity of the elements (objectives, legal provisions, management categories, management instruments or tools, etc.), although the “Law of SNUC” presents a specific objective that is relevant to the theme of this report (“XIII - protect the natural resources necessary for the subsistence of traditional populations, respecting and valuing their knowledge and culture and promoting them socially and economically”), other objectives also have a strong relationship with this theme (“IV - promoting sustainable development based on natural resources”; “V - promoting the use of nature conservation principles and practices in the development process”; and “XI - valuing biological diversity economically and socially”; among others).⁶⁰

Similarly, among the SNUC guidelines there is also a more specific formulation (guidelines that “X - guarantee traditional populations whose livelihood depends on the use of natural resources within the PAs, alternative means of subsistence or fair compensation for the resources lost”) and other associated ones (guidelines that “IX - consider the conditions and needs of local populations in the development and adaptation of methods and techniques for sus-

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tainable use of natural resources” and “V - encourage local populations and private organizations to establish and manage PAs within the national system”).⁶¹ In addition, Decree No. 4,340, which regulates the “Law od SNUC” (Law No. 9,985) at the federal level, deals with “traditional beneficiary population”, “traditional resident population” and “traditional populations” more generally.⁶²

PAs are a main branch of “specially protected territorial spaces and their components” (as defined in the Brazilian Constitution), but this is not necessarily the only one⁶³, including considering the ability to define territories in the interests of traditional peoples and communities that contribute to nature conservation.

There are legal possibilities and positive experiences of interaction in the management of PAs, among themselves and with that of other PAs (including Indigenous territories, traditional territories, etc.), in mosaics.⁶⁴ The intention of the legislation is clear in promoting collaboration between the management of those PAs for mutual benefit and greater conservation effectiveness on a wider scale. As mentioned in other parts of this report, in Brazil the term ‘protected area’ (“área protegida”) expresses a broader concept (than in the international technical language, more related to PAs) and includes Indigenous territories and Quilombola territories, among other areas. Considering what was analyzed in this report and the relatively recent definitions of the CBD (on “other effective area-based conservation measures – OECM”) – and also considering the differences between the Brazilian legal language and the international technical language (on ‘protected areas’ and ‘conserved areas’), among other terms – we must consider the territories of traditional peoples and communities more broadly in mosaics, as *lato sensu* PAs.⁶⁵

3.7.2. (C.ii) Traditional communities in differentiated settlement projects

Among the possibilities of territories and community conservation areas, one can consider some types of settlements, associated with agrarian reform. Although the Law No. 8,629 has not defined what settlements are and does not explicitly consider traditional populations and their rights, it does admit possibilities for individual, condominium, cooperative, associative or mixed ownership or exploitation, as mentioned above.⁶⁶ Decree No. 9,311 defines “environmentally differentiated settlement projects”, including explicitly mentioning “populations that traditionally occupy the respective area”⁶⁷. INCRA also presents the different types of settlements.⁶⁸

3.8. Subnational legal instruments (as examples)

In addition to federal legislation, there are state-level laws that protect the right of some segments of traditional peoples and communities, such as quebradeiras de coco-babaçu (“babassu coconut breakers”). The State Constitution of Maranhão, in its Article 196 and its single paragraph, determines the protection of “babaçuais” (a forest or a set of babaçu palm trees), and their exploitation on public and unoccupied lands is ensured to the traditional communities and family farmers. Additionally, at the municipal level, versions of “Lei do Babaçu Livre” (free access to the babaçu, even in private properties) were published. Such measures inaugurate a new conception of the law that privileges access to natural resources by traditional extractive communities that differs both from the more traditional Civil Law, which aims at property rights, the agrarian rights, which aims at the social use of land, and the environmental legislation, aimed at preserving vegetation cover.⁶⁹

The State of Tocantins has State Law No. 1,959, of 2008, whereby the babassu palm tree is immune to cutting, burn-

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ing and predatory use, and which regulates the access of coconut breakers to private properties, requiring that their associations or traditional communities enter into a partnership agreement with the land owner.⁷⁰ In Piauí, there is a State Law No. 3,888, of 1983, which prohibits the cutting of the babassu palm tree. And in Pará, the city of Domingos do Araguaia passed Law No. 934, of 2004, of “free babassu” (“*babaçu livre*”)⁷¹

In the 1989 Constitution of the State of Bahia, communities of “fundo e fecho de pasto” are granted the right to territory, by granting rights of use, their territories being inalienable, in its Article 178, single paragraph. Additionally, the State of Bahia published State Law No. 12,190, of 2013, to regulate what was proposed in its Constitution, with the objective of promoting land regularization of the Quilombola and “fecho e fundo de pasto” communities, based on the self-determination criterion. This law guarantees the participation of communities interested in all phases of the administrative regularization process and prioritizes communities in conflict. It is undoubtedly an important instrument, however it fails in establishing the deadline of December 31, 2018 for communities to submit recognition request protocols. The deadline for regularization is provided for in its Article 3, Paragraph 2, of the aforementioned law and was questioned through the “Direct Unconstitutionality Action” (“Ação Direta de Inconstitucionalidade – ADI”) No. 5,783, filed by the Public Attorney General’s Office, since the State Constitution did not create a time limit so that these communities were recognized and the right to possession of areas of occupation and traditional use was guaranteed.

3.9. Access to biodiversity

On the right related to access to traditional knowledge associated with biodiversity, Brazil published Law No. 13,123 in 2015, known as the “Biodiversity Law” (or ‘Law on Access

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Bento Viana, ISPNC collection

to Biodiversity” – a national legislation related to the CBD Nagoya Protocol), which inaugurates the new legal framework on the theme. The aforementioned Law, in its chapter III, provides for the recognition and protection of the rights of Indigenous Peoples, traditional communities or traditional farmers on their traditional knowledge associated with biodiversity and its genetic values, and also deals with access to that knowledge and provides for the obligation of sharing benefits in a fair and equitable manner. It establishes the collective nature of this knowledge and conditions access to prior consent, which can be proven by signing a term, audiovisual record, opinion from a competent body or adherence in the form of a community protocol.⁷²

3.10. Interfaces between protected areas and traditional territories

When there is an interface or overlap between Indigenous territories (ITs) and PAs, it may be more difficult to demarcate Indigenous territories. Although both (PAs and ITs) are provided for in the Brazilian Constitution, there may be understandings that, theoretically, the creation of PAs overlapping Indigenous territories is subject to Paragraph 6 of Article 231, which establishes null and void the acts that aim to occupation, dominion and possession of Indigenous territories, even if they have not been demarcated previously. This is because, as already mentioned, Indigenous territories are recognized and Indigenous Peoples rights are considered to be original and prior to any act, and their homologation being only an act of recognition of such right. According to this understanding, as determined by the Brazilian Constitution, the creation of a protected area overlapping the Indigenous Territory, previous or not, should not be completely valid.⁷³

However, known jurisprudence has not always confirmed this interpretation. And there is the Supreme Federal (Constitutional) Court ("Supremo Tribunal Federal – STF") Decision (or Decree) that kept the Monte Roraima National Park valid when it recognized the Indigenous Territory Raposa - Serra do Sol, including the National Park in the Indigenous Territory and orienting towards an integrated management, also recognizing the ICMBio authority over the specific protected area.⁷⁴ In any case, the debates are still happening on whether this model should be followed by all cases, even if the aforementioned Decision has not been defined as a general rule. In this sense, the MPF has been defending the double land affectation or designation, as one of the hypotheses to pacify the situation of interfaces (or of solution of supposed conflicts) between Indigenous and traditional communities territories and PAs.⁷⁵

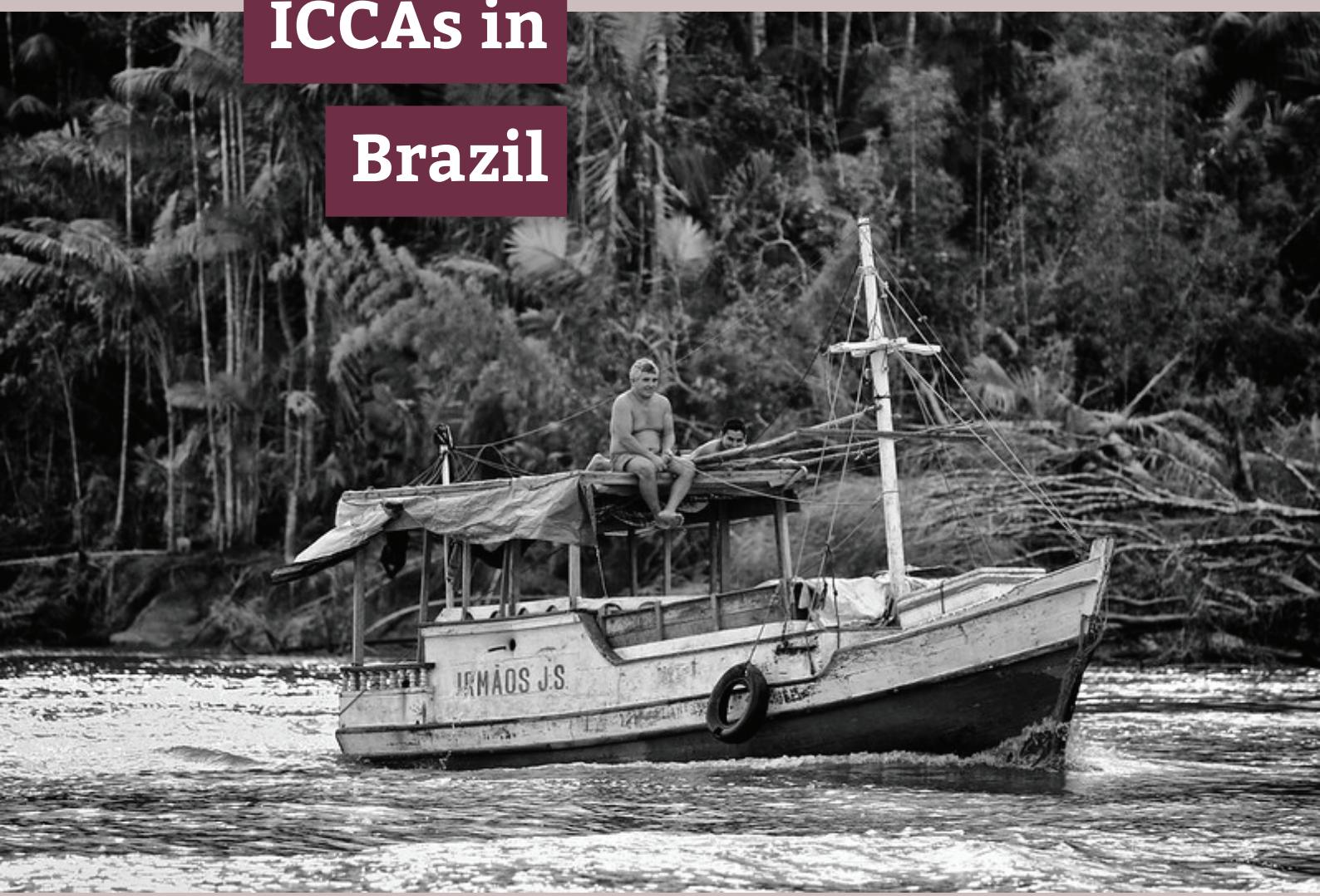
4. Concepts

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4.1. ICCAs – definition

Definition adopted by this report: ICCAs are territories and areas conserved by Indigenous Peoples and local and traditional communities. Other definitions or presentations that have emerged in the process are also considered, such as territories of life (or for life), conserved community territories, traditional territories with conservation, among others.

The ICCA Consortium bases its understanding of what ICCAs are on three elements: (i) a deep and close connection between an Indigenous People or local community and a territory or area; (ii) the existence of a management or governance process that works; and (iii) results in terms of nature conservation, as well as community welfare⁷⁶.

Based on ICCA definition, we considered for this report the Brazilian PCT and their rights for their territories. It is important not to try to replace their usual Brazilian territories types and names, but associate them to the ICCA concept, as well as the possibility of better international recognition.

It is also important to consider Indigenous Peoples and traditional communities in processes of self-determination or in struggle for their territories and, therefore, not able yet to assure conservation results (for not having full management conditions of their territories). ICCAs are also related to conservation results, and these are often important and should be recognized. But the rights of Indigenous Peoples and local and traditional communities are not only related to the conservation results of the management of their territories.

In some Brazilian cases there are also interests of access of natural resources by traditional communities even outside or not considering traditional territories.

4.2. Conservation and protected areas

The most classic definition of ‘conservation’ comes from the IUCN’s Global Conservation Strategy of the early 1980s⁷⁷, and it hasn’t changed significantly. It is worth noting, however, that, despite this definition, the scientific and technical literature in English uses much more, and more generally, the term ‘conservation’, than ‘preservation’, which only appears in very specific applications. The text of the Convention on Biological Diversity shows ‘conservation in situ’, but it also defines “sustainable use”⁷⁸ – both, conservation and sustainable use, which are also among the three main objectives of this convention.⁷⁹

“Unidades de conservação (UCs)” – “conservation units”) is the official Brazilian name (defined by law) for stricto sensu nature conservation PAs, which is the term (protected areas) normally used in other countries. (Including consistently in the English, Spanish and French languages and the most used in the legal, scientific and technical fields that are of interest here.)

In Brazil, the debate between preservation and conservation was reflected in the long discussion process for the approval of the Law that instituted the SNUC, which adopted two groups of categories of PAs, the group of strict preservation areas and the group of sustainable use reserves. But it seems to us that, more and more, it is necessary to think and work on the systems and sets of stricto sensu PAs and other types of lato sensu protected and conserved areas, with the best possible integration, with the greatest conservation objective and with respect to the rights of traditional populations.

In a simplified way, PAs are predominantly defined by elements of: definition and characteristics of what is important to protect; limits or boundaries spatial delimitation; legal mechanisms or other forms of establishment or cre-

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ation and management; and specific, special management (or management perspectives).⁸⁰ The IUCN definition makes it clear that the intention to conserve nature is explicit and a priority.⁸¹

In addition, today there are also “other effective area-based conservation measures – OECMs”, which were adopted from the formulation, in 2010, of the Biodiversity Aichi Target 11 for 2020⁸². The CBD, at its 2018 Conference of Parties (CoP), in Egypt, finally set the criteria for what it considers “OECM”⁸³, including for national reports. (The IUCN and its World Commission on Protected Areas have a tendency to call them “conserved areas”, because “OECM” it is not a “name” that works. But it probably was also inspired by the movement of the past two decades on ICCAs – from community conserved areas.) The OECMs are not PAs (and usually do not have the objectives of nature conservation in an explicit and perhaps even a priority way). But they must have defined areas, with some management (and some level of effectiveness) and present results of nature conservation de facto (proven by some level of monitoring).

4.3. Territories

Currently, the term territory can often be used in a generic way, without major commitments. But one of the main elements are the cultural ones, sometimes including areas of mythical origin, sacred sites fundamental to the respective cosmology, and the spaces and natural resources necessary for the social, economic and cultural reproduction of these communities.⁸⁴

There are also similarities and parallels between the territory of Geopolitics (or Geography) and that of the Anthropology. Thus, several definitions seek to address different aspects and refer to the territory equivalent to an area or parcel of land, or water, which is considered to belong to a country or a group of people. Therefore related to the power

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of the entity or social group over the area. However, in despite the rigidity of the territorial limits of national states in the last century (and the changes in country boundaries, often through wars, only confirm the need for this well-defined delimitation), the reality of social, ethnic, cultural, economic and other groups, is, in fact, much more dependent on history and contexts, which are steeped in powers, disputes, consciences, as well as potentially interwoven, and therefore potentially mutant.⁸⁵

In other words, the actual geography of traditional peoples and communities depends on its self-determination, the identification of its territory, the demand for recognition of this territory and its management – in order to seek, in this way, to establish conditions for a good quality of life and their social, cultural and economic reproduction. This process, which is neither linear nor unequivocally progressive, is strongly dependent on the “social battles” for the construction of narratives, their legitimization and their link with public policies that are favorable to them. In other words, the legal documents and the implementation of public policies are very important, but also the recognition by institutions, civil servants and government authorities and by society, in shaping the territories.⁸⁶

4.4. Elements of the ICCA definition and proposal for adaptation to Brazil

In the process of analyzing the legal and real situation of Brazilian cases, portrayed in this report, we consider it important to state that ICCA should not be understood as a new name or a legal category, or even something that requires mandatory adherence. The original definitions and terminologies of territories such as Indigenous Territory, extractive reserve, etc., will not be replaced by the name ICCA, nor will they undergo a change in their legal status and in their links with public policies in Brazil, much less with the own Indigenous Peoples and traditional commu-

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nities relation to their territories. ICCA is a concept used internationally that traditional peoples and communities can eventually use if they understand that this is beneficial for their strengthening. There is also the possibility of recognition through an international registration. This means that Indigenous, Quilombola, extractive or other territories that fit the concept can be considered ICCAs for the purposes of international language (understanding, public policies, possible projects, etc.) and, possibly, benefit from international links, networks, support, etc.

We understand that the definition of the limits of the areas, lands or territories that we deal with here should include: the most visible occupation areas (buildings, crops, etc.); areas of use of natural resources; and areas of symbolic, cultural or mystical value, all necessary for the good social, cultural and economic reproduction of traditional peoples and communities.⁸⁷

In this Brazilian process it was also defined that the peoples and communities in the process of self-determination and the territories in the process of definition, reconquest or dispute must be considered. In this way, depending on the cases, the original or claimed areas can be considered, even if they are occupied “regularly” or used by other so-called “proprietaries”, and, therefore, still without established governance and conservation results by the Indigenous People or traditional community that claims it. Likewise, it seemed pertinent to clarify that the conservation of nature and ecosystems in these lands, areas or territories is beneficial and desirable, and is part of the ICCA concept. However, this nature conservation, or not, by itself, does not define the rights of these peoples and communities over territories and natural resources.

4.5. Extra-legal recognition and support for ICCA-equivalent territories in Brazil

4.5.1. Governmental recognition (as examples)

In addition to legal diplomas, the recognition of traditional peoples and communities can also occur in the government space, in reports, studies, proposals and other initiatives.

What is probably the most important today is the Federal Public Attorney Service's initiative to spatially register the territories of traditional peoples and communities⁸⁸. The contribution of the MPF also appears through positions, publications and booklets.⁸⁹

On its website, the Ministry of Citizenship cites categories of traditional peoples and communities, including "Indigenous Peoples, Quilombolas and other traditional communities."⁹⁰ And the Ministry of the Environment affirms that there is "a great sociodiversity among the Indigenous Peoples and traditional communities of Brazil."⁹¹

In 2017 and 2018, the Ministry of the Environment (and its Brazilian Forest Service) held several discussions with representatives of traditional communities, support their entities and launched a specific module for the Rural Environmental Registration System ("Sistema Nacional de Cadastro Ambiental Rural – SICAR"; related to the environmental compliance of rural areas).⁹²

4.5.2. Social (non-governmental) recognition

The knowledge and recognition of the Brazilian population about Indigenous Peoples and local or traditional communities and about their rights grows in Brazil. At the same time, "fierce opposition" to them grows due to interests and disputes in areas, lands and resources.⁹³

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There is probably a dialectical relationship between, on the one hand, legislation, together with public policies, institutions and instruments, and, on the other hand, knowledge and recognition by society. The laws, rules, public policies and instruments are the product of the understanding by society, often materialized in groups and organizations that exercise their defense or advocacy. At the same time, these laws, rules, public policies and institutions promote actions that make these traditional peoples and communities better known and recognized. Therefore, as well as their legal situation, Indigenous Peoples are more recognized than other traditional communities. And there is a relative gradation in relation to the other groups of traditional peoples and communities, passing through Quilombola communities, extractive communities and other traditional communities.

5. Implementation

of laws, public

policies and

programs



Implementation of laws, public policies and programs

5.1. (A) Indigenous territories

The implementation of the process of demarcation of Indigenous territories, currently regulated by Decree No. 1,775, is complex, with several stages and lengthy. According to this Decree, the demarcation of Indigenous territories will take place at the initiative and guidance of the FUNAI and is mainly divided into 6 stages.⁹⁴

Chart 2. Total quantity and area of Indigenous territories according to their phases⁹⁵

Process phase	Quantity	Surface (km ²)
Delimited	43	21,840
Declared	75	76,127
Homologated	9	3,346
Regularized	440	1,069,362
Total	567	1,170,674
Under study	117	0
Interdiction Ordinance	6	10,807

In addition to Indigenous territories, there is another form of land tenure regularization to assist Indigenous people, which is the constitution of Indigenous reserves. In this case, the Union may assign and give possession and occupation by Indigenous Peoples in any area of the national territory, with exclusive use, in order to guarantee the physical and cultural reproduction of these peoples. For this purpose, the Federal Government may purchase the area through direct

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purchase, expropriation or donation. This process occurs in two stages, considering the areas: 1) forwarded, when the area is under administrative procedure for its acquisition; and 2) regularized, when the area is registered with a notary in the name of the Federal Government.

Chart 3. Total quantity and area of Indigenous reserves according to their phases⁹⁶

Indigenous Reserve	Quantity	Surface (km ²)
Regularized	39	738
RI forwarded	13	146
Total	52	885

Despite 567 Indigenous territories in Brazil, there is still a great deal of demand. It is estimated that the Brazilian Government has demarcated 63.5% of the total of Indigenous territories, and that the number of Indigenous areas still pending demarcation and land tenure is still significant, especially in the South, Southeast, Northeast and Central-West regions. And it is exactly in these regions, within the historical and uneven process of land distribution in Brazil, that the greatest disputes over land are fought, regions where Indigenous Peoples have been evicted from their lands in the past and now live in a constant situation of violation of rights.

In 1973, the Indigenous Peoples Statute established a period of 5 years for all Indigenous territories to be demarcated by the federal government. However, the deadline has not been met. The Brazilian Constitution of 1988, in Article 67 of the Transitional Constitutional Provisions Act, renewed this term. But this was also exhausted, in October 1993, without the Union concluding the demarcation of all Indigenous territories.

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There are several reasons for the relative delays in the demarcations. As for the procedure regulated by Decree No. 1,775, in addition to FUNAI, other institutions are responsible for certain stages throughout the complete demarcation process, such as the Ministry of Justice, responsible for the declaration stage, and the Presidency of the Republic, responsible for the stage of homologation. This makes the process more time consuming and subject to political interventions.

One example of a case of contrary interests intervening in a Indigenous territory process was the suspension of the demarcation of lands of the Ava-Guarani Indigenous People, in the State of Paraná, by the Civil Cabinet of the Presidency of the Republic, in 2013, and then the attempt of a new suspension by the president of FUNAI in 2017. The case of Ava-Guarani is typical of difficulties caused by interests in the construction of the Itaipu Hydroelectric Plant. The studies for the demarcation of the lands of the Ava-Guarani people began in 2009. Despite the contrary pressures, the Federal Court of the State of Paraná determined that the demarcation should continue. However, 10 years have passed and so far there has been no demarcation and the judicial decision has not been fulfilled.

Another factor to consider in the demarcation of Indigenous territories is the innumerable possibilities of challenges throughout the process, since the Federal Constitution guarantees the right to be heard and the broad defense of all interested parties. Contesting lawsuits can be filed by both state governments and “landowners” contrary to the demarcations. These factors end up slowing down the processes, which can last for many years, delaying the recognition of the rights of these peoples. It is worth remembering that the original right recognized by the Federal Constitution precedes the creation of the Brazilian State itself, which means that any land property title that overlaps an Indigenous Territory must be annulled, guaranteeing the indemnities for improvements over the land.

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One way to speed up demarcations would be to give the FUNAI greater autonomy in the demarcation process, in addition to recomposing and strengthening its workforce. Along with this, it would be advisable to organize a strategic high level plan with an integrated task force between the government and the Judiciary, accompanied by the Federal Public Attorney Service, which would be able to define priorities, resolve administrative issues and judicial challenges, with the firm purpose of completing the demarcation of Indigenous territories. This process is overdue, with more than 300 years, considering that the Indigenous Peoples rights to traditionally occupied lands was already present in the legal system since Colonial Brazil.⁹⁷

5.2. (B) Quilombola territories

Based on Decree No. 4,887, of 2003, the first step in recognizing Quilombola communities at the federal government level is certification by the FCP (although certification also serves for other processes).⁹⁸

The process of granting land ownership titles for Quilombola communities over their territories faces similar problems to those of Indigenous territories. The relative lack of conditions of governmental agencies (in terms of budget or financial resources and personnel, both in volume and qualification and agile management) in face of demands and needs, the complexity in the stages, the disputes by the interested parties, in various possibilities, impact in the speed of processing the processes. In addition, there are possibilities for confronting political interests. And the granting titles processes of Quilombola territories are also subject to the need for consultation with several other bodies.

Public policies over the years aimed at Quilombola communities have been punctual and so far have not been sufficient to guarantee constitutional rights for all these communities, although in recent years they have achieved

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better decisions by some government bodies and more attention from international organizations. Therefore, it is essential to have systematized data about these communities, their territories and their geographic distributions, since the “existing estimates are inconsistent and divergent”⁹⁹, which makes it difficult to plan public policies appropriate to the real demands of this population group in all areas (land, health, education, housing, production, marketing, etc.).

In addition to the right to the territory, which is fundamental to guarantee other rights, their rights also include other indispensable conditions that must be made available for Quilombola communities to develop, such as appropriate specific education , technical assistance and rural extension, credit for agriculture, health and housing. In addition to access to basic public transport, communication, basic sanitation and road services.

In order to promote the development of Quilombola territories, INCRA published the Ordinance No. 175, of 2016, recognizing the remaining Quilombola family farmers as beneficiaries of the National Agrarian Reform Program (“Programa Nacional da Reforma Agrária – PNRA”), who now have the right of access to policy instruments public assistance such as technical assistance, credit and productive infrastructure.¹⁰⁰

The Brazil Quilombola Program, launched in 2004, and the Quilombola Social Agenda, instituted by Decree No. 6,261, of 2007, are the basis of public policies for Quilombolas.

5.3. (C) Extractivists and other traditional communities

5.3.1. (C.i) Protected areas

There is no well-established sequence in terms of steps and deadlines, neither for the creation, nor for the implemen-

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tation or even the management of the PAs. Neither by the National System of Protected Areas, nor that we are aware of specific institutions that manage PAs. However, it is possible to indicate some usual or recommended procedures and sequences, considering the experience of the federal PAs: creation, implementation, and management phases.

Demand, prioritization, technical studies, public consultation, technical proposal and institutional consultation are part of the creation phase. Usually, the technical and institutional priorities for the implementation phase are: to implement the protection of the area, to install the protected area management committee, o develop the protected area management planning and the territorial consolidation (including land tenure regularization). For the case of traditional communities in PAs, the registration of the traditional population, the granting of real use rights (CDRU) and the sustainable use of natural resources must also be considered priorities for the implementation phase. The management phase comprises the implementation of the management plan (after the protected area is already established or during the implementation phase). This is usually composed of management programs (such as protection, visiting or tourism, research, participatory management, sustainable use etc.), considering the objectives and the management categories.

There are positive experiences, although many still to be improved, of the interaction in the management among stricto sensu PAs, and with other conserved areas, in mosaics. Formally, there is only one case of mosaic with Indigenous territories, the Mosaic of the West of Amapá and North of Pará (since 2013), which management is considered very good. But there is participation of traditional peoples and communities in the council of other cases of officially recognized mosaics. And there is also a demand for greater participation of territories of Indigenous Peoples and traditional communities in mosaics, and even cases of

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real management with interaction among those protected and conserved areas that are not (yet) officially recognized as mosaics.¹⁰¹

5.3.2. (C.i) Environmentally differentiated settlements

Guidelines and processes for differentiated settlements, as defined by INCRA¹⁰²:

Chart 4. Guidelines and processes for differentiated settlements (selected sections of INCRA¹⁰³)

Group I - Project modalities currently created by INCRA

Modality	Initials	Characteristics
Federal Settlement Project	[...]	[...]
Agro-extractive Settlement Project	PAE	Obtaining land, creating the project and selecting beneficiaries is the responsibility of the Union through INCRA; Funding of credit resources installation support and production credit under the responsibility of the Union; Basic infrastructure (access roads, water and electricity) under the responsibility of the Union; Title (concession of use) under the responsibility of the Union; The beneficiaries are generally from extractive communities; Environmentally differentiated activities.
Sustainable Development Project	PDS	Settlement projects established for the development of environmentally differentiated activities and aimed at traditional populations (riverine, extractive communities, etc.); Obtaining land, creating the project and selecting beneficiaries is the responsibility of the Union through INCRA; Funding of credit resources Installation support and production credit ("PRONAF A and C) under the responsibility of the Federal Government; Basic infrastructure (access roads, water and electricity) under the responsibility of the Union; There is no individualization of installments (collective ownership titles – ideal fraction) and the liability of the Federal Government.

Forest Settlement Project	PAF	<p>It is a type of settlement, focused on the management of forest resources in areas with aptitude for community and sustainable family forest production, especially applicable to the northern region;</p> <p>Wood and non-wood forest production in the PAF should follow IBAMA's regulations for sustainable forest management, considering the conditions for increasing each forest site;</p> <p>Such areas will be managed by the settled forest producers, through their organizational form, association or cooperatives, which will receive the term of use concession; INCRA, together with IBAMA, state agencies and organized civil society, will indicate their own areas for the implementation of PAFs.</p>
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5.3.3. Support for extractive activities (traditional extractivism)

In 2009, the Federal Government created the National Plan for the Promotion of Socio-biodiversity Products (“Plano Nacional para a Promoção dos Produtos da Sociobiodiversidade – PNPSB”), the main objective of the plan was to promote alternative income for traditional extractive communities by supporting the production and marketing of extractive products from biodiversity. In 2013, the Federal Government launched the National Plan for Agroecology and Organic Production (“Plano Nacional de Agroecologia e Produção Orgânica - PLANAPO”), and, in 2016, the PNPSB was integrated into PLANAPO, which dedicated a specific axis to initiatives supporting the agenda for the promotion of socio-biodiversity products.

However, extractivist communities did not feel that their demands were being fully met by PLANAPO. So in 2018, the PLANAFE was created, through Decree No. 9,334.¹⁰⁴ The mentioned Plan was prepared within the scope of the National Policy for the Sustainable Development of Traditional Peoples and Communities (“Política Nacional de Desenvolvimento Sustentável dos Povos e Comunidades Tradicionais – PNPCT”) and aims to meet the demands of

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the communities of extractivist and ribeirinhos , who demanded a specific cut in the scope of public policies, as a way of obtaining greater transparency from public investments and facilitate social control.

PLANAFE is an achievement of traditional extractive communities and is divided into 4 thematic axes: i) Infrastructure; ii) Social Inclusion, iii) Promotion of Sustainable Production; and iv) Environmental and Territorial Management. The planning of the actions of each axis was discussed in meetings and workshops, which counted on the collaboration of governmental and non-governmental representatives and leaders representing the traditional communities of extractivists and ribeirinhos. PLANAFE has a Steering Committee responsible for monitoring the execution and evaluation of its actions.

In 2019, the agenda around the traditional extractivism left the structure of the Ministry of the Environment and passed to the Ministry of Agriculture, Livestock and Supply, specifically to the Secretariat of Family Agriculture, in the General Coordination of Extractivism.

The partnership between the Federal Government, the Social Fund of the National Bank for Economic and Social Development (“Banco Nacional de Desenvolvimento Econômico e Social – BNDES”), the Amazon Fund and the Banco do Brasil Foundation, has resulted in public calls for support for projects to implement public policies that promote conservation of ecosystems. The National Policy for Indigenous Environmental and Territorial Management (“Política Nacional de Gestão Ambiental e Territorial Indígena – PNGATI”, see below), PNAPO (“Política Nacional de Agroecologia e Produção Orgânica”) and SNUC, the latter specifically related to promoting the sustainable extractive production agenda in sustainable use reserves, are policies included in the priorities for the allocation of resources from the Amazon Fund¹⁰⁵.

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It is worth noting that the Amazon Fund has established some guidelines for project submission, among which is that the project must align with public policies that protect and conserve forests, this priority has allowed scale gains in the reach of public policies and consequently have been impacting conservation and quality of life of Indigenous Peoples and traditional communities in the Amazon. However, the current government wants to change the rules of the Amazon Fund, as well as its management model, which did not please donors and ended up paralyzing the Fund's financing actions.

5.4. Environmental management

The PNGATI was built by Indigenous Peoples in a participatory and consultation process that lasted for about 4 years. The construction of PNGATI brought together 1,250 Indigenous representatives, belonging to 186 peoples from all regions of the country, who were mobilized and nominated by the regional Indigenous organizations. Thus, in 2012, PNGATI is instituted by Decree No. 7,747 and in 2013 its Steering Committee is installed. The main guidelines for the implementation of Indigenous public policies in Brazil are derived from PNGATI. The management committee is composed of Indigenous representatives from all over Brazil and government representatives, being a space for participation and social control, which aims mainly to seek greater effectiveness in the formulation and execution of public policies for Indigenous Peoples.

In 2016, PNGATI's Integrated Implementation Plan was prepared, which was based on the objectives and goals set out in the Federal Government's Pluri-Annual Planning ("Planejamento Plurianual do Governo Federal – PPA"), to agree on more concrete commitments in the implementation of PNGATI's 7 axes: i) Territorial protection and natural resources; ii) Governance and Indigenous participation; iii) PAs and Indigenous territories; iv) Prevention and recovery

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of environmental damage; v) Sustainable use of natural resources and Indigenous productive initiatives; and vii) Intellectual property and genetic heritage, training, training, exchange and environmental education.

In order to strengthen the implementation of PNGATI, the FUNAI, in partnership with civil society organizations and the Indigenous movement, started a process of continuing training for public and Indigenous managers, whose objective was to put into practice the guidelines and the 7 PNGATI's axes, with emphasis on the implementation of the Indigenous Environmental and Territorial Management Plans ("planos de gestão territorial e ambiental – PGTAs") of their territories, built from Indigenous Peoples' views, with respect to traditional customs and the reality of each people. In this process, the Indigenous Environmental and Territorial Management Project ("Projeto Gestão Ambiental e Territorial Indígena – GATI") stands out, which played an important role in the implementation of PNGATI.

Although the Decree on the PNGATI is in effect, its governance was compromised by the publication of Decree No. 9,759, of 2019, which extinguished the National Commission for Indigenous Policy ("Conselho Nacional de Política Indigenista – CNPI"), instituted by Decree No. 8.593 of 2015 and the PNGATI Management Committee. The CNPI and the PNGATI Management Committee constitute an important space for participation and social control of public policies aimed at Indigenous Peoples.

5.5. Sustainable production and ethno-development

As mentioned above, the Indigenous Peoples have the right to exclusive use of their lands (territories), so they can develop diverse economic activities, as long as such activities are not detrimental to the sustainability of future generations, and the preservation of natural resources is essential, existing on Indigenous territories.

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There are Indigenous Peoples who have extractivism as their main economic activity, the Amazon-nut is one of the main products sold, but they also produce natural latex, vegetable oils, etc. Other Indigenous Peoples produce coffee and grow organic foods such as honey, beans, sweet potatoes, manioc, pumpkin, sugar cane, peanuts, rice and several varieties of Creole corn.

In addition to organic certification, there is also the “Indígenas do Brasil” (Indigenous Peoples of Brazil) seal whose objective is to give visibility to Indigenous Peoples’ production, in addition to informing the consumer of the cultural, ethnic and territorial origin of the products.¹⁰⁶

There is also the “Brasil Quilombola” seal, created under the Brasil Quilombola Program (“Programa Brasil Quilombola – PBQ”), aimed at certifying the production of the Quilombola communities certified by the Fundação Cultural Palmares.¹⁰⁷ The Brasil Quilombola seal aims to certify the origin, attributing ethnic and cultural identity to products from Quilombola territories.

And more recently, the Socio-biodiversity seal (“selo da Sociobiodiversidade”) was launched, which certifies products of biodiversity, of regional food value and economic potential, from traditional extractive communities and family farming.¹⁰⁸ Certifications add value to products from Indigenous Peoples, Quilombolas and other traditional communities and generate income and environmental conservation.

The Indigenous, Quilombola and Socio-biodiversity seals are part of the National Family Agriculture Policy, coordinated by the Ministry of Agriculture, Livestock and Supply (“Ministério da Agricultura, Pecuária e Abastecimento – MAPA”).

There is also the “Origens Brasil” seal, a civil society initiative that aims to provide transparency to forest products,

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produced by Indigenous Peoples and traditional extractive communities. It contains a QR code and the consumer, with the help of his/hers cell phone, can obtain information about the place, producers and territories from which the product originated.

Both Indigenous Peoples, Quilombolas and extractive communities, including those who live in sustainable use reserves, are recognized as members of the National Program for Strengthening Family Agriculture (“Programa Nacional de Fortalecimento da Agricultura Familiar – PRONAF”). Through the declaration of suitability to PRONAF, they can access sustainable rural development policies, both in terms of access to credit, as well as other public policies, such as the National Food Acquisition Policy (“Política Nacional de Aquisição de Alimentos – PAA”), the Program to Promote Sustainable Productive Activities (“Programa de Fomento às Atividades Produtivas Sustentáveis”), the Minimum Price Guarantee Program for Biodiversity Products (“Programa de Garantia de Preços Mínimos para Produtos da Biodiversidade – PGPMBio”) and the purchase of food from family farming under the National School Feeding Program (“Programa Nacional de Alimentação Escolar – PNae”). Unfortunately, as of 2019, the trend is towards cancellation or reformulation, a negative trend for traditional peoples and communities and for nature conservation.

In the last 20 years, several studies have demonstrated the advancement of public policies aimed at strengthening family agriculture, for the agroecological transition, for environmental management and the valorization of agrobiodiversity. However, Indigenous Peoples and Quilombolas and extractivists communities faced many difficulties in accessing public policies, such as the lack of information about policies and how to access them, required documentation, lack of technical assistance and rural extension in most communities and villages, bureaucratization and inadequacy of public notices, etc.

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To improve access to public policies, it would be necessary to adapt them to the different realities of Indigenous Peoples, Quilombolas and other traditional communities, considering their socio-cultural characteristics, geographical location, products offered and seasonality, valuation of environmental services in products, different terms and others means of access to information. It is essential that public procurement notices and school menus give preference to locally produced socio-biodiversity products, adapting the notices and menus to the seasonality of local food production and culture. However, the current political scenario in Brazil is going in the opposite direction, that of the retraction of public policies that favor traditional peoples and communities.

Another sustainable economic activity promoted within the scope of public policies is ethno-tourism, regulated by Normative Instruction No. 03, of 2015, by FUNAI (in some cases in coordination with ICMBio, when there is overlapping of Indigenous territories and PAs), which establishes rules and guidelines related to visitation activities for tourist purposes in Indigenous territories.¹⁰⁹

5.6. Interfaces between protected areas and traditional territories

Fernando Tatagiba/ICMBio.



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In several cases, when the creation (or declaration) of PAs has been done quickly, either due to the lack of more careful process guidelines, or because of the urgency of not losing opportunities or in the face of pressure from a project, proposal or activity, adequate surveys are not carried out and the conservation proposals could focus on areas with traditional communities. In other cases, there is an intention to remove traditional peoples and communities from the areas in which PAs were created, either by not respecting their rights, or by the conception that nature needs to remain untouched in the most restrictive categories. These two sets of possibilities were more common in previous processes in the past.

On the other hand, there has been an evolution of factors, mainly in relation to advances in the rights of these social groups, especially in the last three decades, so that the conscience, concepts or rights have changed, including in Brazil, with the Brazilian Constitution of 1988, the creation of extractive reserves in 1990, the promulgation of ILO Convention n. 169 in 2004, the CNPCT in 2004 etc. Internationally, the movement that led to the acceptance of the ICCAs is also from the 1990s and 2000s. With that, in recent decades there have also been advances in the self-determination of Indigenous Peoples and traditional communities, in the demands and guidelines of public policies in the sense of respect for their rights, modifying previously established scenarios – including changes in community demands.

There is also the “coincidence” factor, whereby development processes (not necessarily sustainable), land occupation and the conversion of ecosystems relegate both natural areas (many of which are under interest to the proposition of PAs), as traditional peoples and communities (and, therefore, the areas that they claim), to marginal spaces in the real economy, generating a trend of interfaces.

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From the point of view of PAs, internationally, it was in the 1980s that considerations of greater respect for the rights of traditional peoples and communities began to be considered more clearly, and in the 1990s and 2000s those perspectives were strengthened.¹¹⁰

According to the available survey of “interfaces (overlap) between [federal] PAs and ethnic territories and areas of use by traditional peoples and communities”¹¹¹, there are 185 interfaces (overlays), 132 of them in 94 strict preservation areas in the and 53 interfaces in 44 sustainable use reserves¹¹², in a universe (of answers) of 277 federal PAs (out of a total of 313).¹¹³

There are some management instruments or tools in order to attempt to resolve or manage these potentially conflicting situations. We can mention at least three, without being entirely exhaustive. Under the Law of SNUC and its regulation, there is provision for Terms of Commitment (“termos de compromisso”) for cases of local or traditional communities in strict preservation areas. Although the legal provision is for a temporary agreement, it has gradually become an accommodation with a tendency to be permanent. The PNGATI provides for the possibility of shared management in areas of interface between PAs and Indigenous territories (being areas already recognized by the Federal Government or claimed by Indigenous Peoples) and has supported the co-management in several cases. The decision of the STF, in the case of the interface between the Indigenous Territory Raposa - Serra do Sol and the Monte Roraima National Park, although questioned in several aspects, including the general application of the conclusions, has served as a foundation or inspiration to propose coexistence of Indigenous territories and PAs, under certain conditions, as well as this concept has been applied even to other cases, such as Quilombolas communities (in which case the land tenure is more complex due to the provision of granting collective propriety titles for the Quilombola community,

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different from Indigenous territories with governmental public ownership domain).

It is worth mentioning that, although oscillations occur over time, in general there is a positive evolution trend in the sense that, increasingly, the creation, planning and management of PAs consider the presence of traditional peoples and communities and respect their rights.¹¹⁴ It is interesting to note that there is a trend of positive progression in the management plans as well, since in the older ones there is a stronger failure to approach the interfaces and in the more recent ones the indication of agreed solutions between the management of the protected area and the social group with interface grows.¹¹⁵

In some cases, the process of creating a protected area has been carried out faster than the recognition of the Indigenous territory, which has advantages and disadvantages. Among advantages, it could be mentioned that the overlapping area gains protection from the Union or the corresponding federative governmental entity, in order to maintain its integrity. The disadvantages, because it tends to generate conflicts of management of the overlapping area, between the Indigenous People, and FUNAI, and the ICMBio (in the case of the federal ones).

These conflicts are mainly related to the rules of use and conservation of natural resources, presence and occupation in the overlapping area. This type of situation can also occur in other cases, in which, sometimes in the past, communities have been protected by PAs, before moving forward with their claims. (This is the case of Quilombola communities in Trombetas region.) However, there are extremely complicated cases, as communities may be recognized as extractivists, at their request (for example, for the creation of extractive reserves), and later part of that population declares itself to be Indigenous People or Quilombola community.

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The best solutions for confrontations or conflicts of rights must seek to harmonize social, environmental and ecological interests, always respecting the traditional rights.¹¹⁶ A dominant interpretation speaks of a collision of rights, when considering the importance of both nature conservation and the rights of traditional peoples and communities, both provided for in the Brazilian Constitution, but not necessarily liable to conciliation.¹¹⁷ More recently, however, the most used words have changed to “convergences between the guarantees of the fundamental [human] rights and [necessary] environmental conservation”, including by law operators, seeking precisely the reconciliation of these two sets of rights.¹¹⁸ In other words, the interpretation towards the recommendation of conciliation is strengthened by the various parties. However, there is a significant liability yet to be resolved.

5.7. Threats to territories



Roberto Ksau, ISPN collection.

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The country's economic development paths, through large infrastructure projects (large and small hydroelectric plants, transmission lines, roads, railways, etc.) have threatened the rights of traditional peoples and communities and the conservation of their territories. Many of its areas are currently coveted by agribusiness, albeit indirectly, for the expansion of monocultures, such as soybean, sugar cane and eucalyptus, as well as for the expansion of livestock. The lease of Indigenous territories is yet another offensive to the exclusive right of Indigenous Peoples to use their lands (or territories). Even more directly, they are pressured or attacked by land grabbing, invasions for illegal logging and mining, threats that historically and currently expel them from areas of their traditional occupation. Some communities are also under pressure from urban expansion (hotels, condominiums, land plotting, resorts, etc.), due to their privileged location, including on the coast. Unfortunately, the current trend is towards conflict intensification.

The processes of questioning and attack are systematic, even though they fluctuate in time depending on the context. The absence of public policies, such as technical assistance and rural extension, credit and infrastructure (water, energy, etc.) can threaten the conservation of these territories. The relative lack of conditions of public agencies (in terms of budget or financial resources, qualified personnel and agile management) in the face of demands and needs, also impacts on the speed of the processes. The weakening of FUNAI, INCRA, ICMBio, MMA etc., bodies responsible for public policies favorable to traditional peoples and communities and their territories, on their budget, personnel and power fronts, is now occurring. Still, there are conflicts in management, which are also marked by the difficulty of dialogue between government managers and communities.

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5.7.1. (A) Indigenous territories

The country's economic development paths, through large infrastructure projects have threatened the rights of Indigenous Peoples in Brazil and the conservation of their territories. Should changes occur in the Environmental Licensing Bill, which is a concrete threat, the tendency is for the impacts on Indigenous territories to worsen, directly threatening 223 Indigenous territories in the process of demarcation and 26 isolated Indigenous Peoples.¹¹⁹

What can be seen is the continuous attack on Indigenous Peoples constitutional rights, as well as the increase in discrimination, threats and deprivation. The Federal Government, especially the current one, has failed to guarantee respect for human rights and the security of Indigenous Peoples and still to strictly comply with Convention no. 169 of ILO, since any development project that has an impact on Indigenous communities must pass free, prior and informed consent from affected communities. It is necessary to guarantee compliance with the Constitution with regard to Indigenous rights, for this reason it is urgent that the State complete the demarcation of its lands and protect those that are demarcated.

The lease of Indigenous territories is yet another offensive to the exclusive right of Indigenous Peoples to enjoy the lands they traditionally occupy. The lease would allow Indigenous territories to be explored by third parties, which today is prohibited by the Brazilian Constitution. According to the Indigenous Missionary Council ("Conselho Indígena Missionário - CIMI")¹²⁰, the lease in the past resulted in the expulsion of Indigenous Peoples from their territories, mainly in the states of Rio Grande do Sul, Santa Catarina, Paraná and Bahia. The lease proposal now returns under the perspective of "partnerships", but it is the same strategy produced at the time by the Indigenous Protection Service ("Serviço de Proteção ao Índio – SPI") and which was

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so damaging to Indigenous Peoples. Apparently the statements of the current Federal Government could cause divisions in the Indigenous Peoples movement, because, if for some Indigenous groups the proposal to “generate income” through partnerships with agribusiness seems to be advantageous, for others (which seem to be the majority) it is unacceptable. The government’s “generate income” discourse hides the real intention of opening up areas for the expansion of agribusiness, which may lead to the mischaracterization of Indigenous territories and future questionings. Indigenous territories are an important factor in resisting deforestation. This is more common in the Amazon, with its cases of land grabbing, but the functions of Indigenous territories in promoting conservation also occur in other biomes.

The weakening of the FUNAI, the body responsible for coordinating Indigenous policy in Brazil, the criminalization of civil servants who work in the demarcation of Indigenous territories, the gradual reduction of their budget in recent years and the lack of civil servants, has hampered the work of the and consequently the fulfillment of its duties. In 2019, FUNAI's budget was contingent on 90%. In addition, with few servers, this agency has only guaranteed the minimum functioning of the administrative units, bringing losses mainly to the Local Technical Coordination (“Coordenações Técnicas Locais – CTLs”) and the Ethno-Environmental Protection Fronts (“Frentes de Proteção Etnoambiental- FPEs”), both administrative units, precisely the structures closest to support and protection to the villages and towns. to isolated Indigenous groups.

There has also been an increase in the criminalization of Indigenous Peoples leaders and social movements, in recent years there has been the indictment of more than 100 leaders (Indigenous persons and civil militants) who dedicated themselves to the struggle for the demarcation of Indigenous territories and the granting titles of Quilombola

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territories, the result of conclusion of the work of the Parliamentary Inquiry Commission (“Comissão Parlamentar de Inquérito – CPI”) of FUNAI and INCRA, which was led by the “ruralist” (radical pro-rural) bench in the National Congress. It should be noted that this CPI was unable to prove any irregularity in the demarcation of Indigenous territories or in the actions of FUNAI’s employees or Indigenous organizations.¹²¹

According to the Report on Violence against Indigenous Peoples in Brazil 2018, the picture of violence against Indigenous Peoples remains dramatic. The CIMI recorded 111 cases of invasion or illegal exploitation of resources in 76 different Indigenous territories, occurrences of conflicts related to territorial rights, such as the invasion of Indigenous territories by farmers to plant soybeans and livestock production, conflicts over land, threats, illegal allotment, illegal logging, illegal mining and mining, deforestation, arson, etc. In 2017 there were 96 cases and in the first 9 months of 2019, 160 cases of invasion in 153 Indigenous territories have already been counted by CIMI. Data from official government agencies point to 135 murders of Indigenous people in 2018, 25 more than in 2017. There are several reasons for the murders, including fights over alcohol consumption, land conflicts, complaints about illegal logging, mining in Indigenous Territory and illegal leases etc. There were also 53 assassination attempts, motivated by fights over alcohol consumption and harassment related to the denunciation of logging, illegal mining and invasions of Indigenous territories. There were 8 cases of death threats involving land conflicts and another 14 cases related to intimidation, persecution and the misappropriation of natural resources. The report also denounces several cases of intentional bodily harm, abuse of power, racism and ethnic cultural discrimination and sexual violence. Another reported violence is the State’s lack of assistance to Indigenous health and education, to isolated Indigenous Peoples and in the demarcation of Indigenous territories,

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a situation that has been aggravated in recent years by the weakening of the Indigenous body and the sharp reduction in the number of civil servants working in the demarcation and protection of Indigenous territories.¹²²

5.7.2. (B) Quilombola territories

Many quilombos were established in rural areas, with natural ecosystems, including forests. Many of these areas are currently coveted by agribusiness, for the expansion of monocultures, such as soy, sugar cane and eucalyptus, as well as for the expansion of livestock. Quilombos located in the Atlantic Forest still suffer additional pressure from urban expansion (hotels, condominiums, etc.), due to their privileged location, in areas of great scenic beauty, which have been preserved by the presence of Quilombola communities.

As with other traditional populations, there are ‘coincidences’ with ecological conservation interests. The areas that have been subjected to the main economic process, historically unsustainable, have often had their ecological, social and historical values compromised. Thus, areas that were excluded from this conversion or degradation are of ecological and social interest that are often coincident. In addition, it is common for areas of traditional populations to have ecological values because they have been conserved. Thus, there are several cases in which PAs overlapped Quilombola territories that were recognized after the creation of the unit, causing an overlap between PAs and Quilombola territories.

This situation has hindered the granting titles of several of them, as is the case of the Quilombola territories Alto Trombetas I and II, in Pará, overlapping with the FLONA of Saracá-Taquera and with the Biological Reserve (“reserva biológica –REBIO”) of the Rio Trombetas. After 30 or 40 years of benefits and conflicts generated by the overlap, today solutions for these cases are envisaged, such as the dual al-

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location and participatory elaboration of management instruments of the overlapping area, in order to allow the traditional and sustainable uses of natural resources. Benefits because the PAs helped to conserve the areas, avoid projects (such as hydroelectric plants, for example) and established a relatively positive relationship with the communities with terms of commitment that allowed the collection of Amazon-nuts in REBIO R. Trombetas, among other aspects. Losses because there is not enough freedom for the communities, submitted to the control of the management unit of the PAs, usually with more restrictive parameters for the use of ecosystems, and less power to negotiate direct compensation, as for example in the case of forest concessions of the FLONA Saracá-Taquera.

As can be seen, the conflicts are mainly related to territorial and agrarian disputes, aggravated by the government's slowness in holding Quilombola territories, ignoring the presence of communities in these spaces, "which are materially and symbolically territorialized by the remaining quilombo communities" and which have already should have been titled, as determined by the Federal Constitution of 1988, in Article 68 of the ADCT.¹²³ This delay also aggravates conflicts in the countryside and increased violence. According to data from the Non-governmental organization (NGO) "Terra de Direitos", murders against Quilombolas increased by 350% between 2016 and 2017.¹²⁴

Although there is no exclusivity at the federal level, as in the case of Indigenous Peoples, the situation of Quilombolas communities tends to worsen or paralyze in the current federal government. The current government subordinated the INCRA, the body responsible for holding Quilombola territories, to the Special Secretary for Land Affairs, of the MAPA. It turns out that the MAPA has a conservative position on Quilombola territorial rights and shows little interest in acting in granting titles of Quilombola territories, mainly because it is a topic that conflicts with the in-

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terests of ruralists and agribusiness. According to Terra de Direitos, a human rights organization, the reduction in INCRA's budget for compensation for Quilombola territories fell from 42 million reais in 2013 to 956 thousand reais in 2018 and 416 thousand reais in 2019, which made the titrations.¹²⁵

5.7.3. (C) Territories of traditional communities

In general, traditional peoples and communities are threatened mainly by major infrastructure and mining works, by the expansion of agribusiness, by deforestation, by the indiscriminate use of pesticides, which contaminate river and subsoil waters, and by land grabbing, threats that historically and currently expel them from areas of traditional occupation. As a result, they limit their occupations to hillside areas and valleys. These, however, are currently coveted by agribusiness for the purpose of proving legal reserves and permanent preservation areas, for the purpose of environmental regularization of rural properties, within the scope of the Rural Environmental Registry ("Cadastro Ambiental Rural – CAR"), an instrument for implementing the called "New Forest Code" (Law No. 12,651, of 2012). There are also threats by the expansion of real estate developments, especially in traditional territories located on the coast of the Atlantic Forest, which, due to the privileged location, scenic beauty and state of conservation, are targets of the greed of luxury condominiums, real estate expansion and hotel developments, which, together with shrimp farming, have caused deforestation and accelerated degradation of mangroves and Atlantic Forest remnants.

5.7.3.1. (C.i) Protected areas

One threat is invasions for illegal logging and mining. Criminals invade PAs and illegally exploit their natural resources. This is a serious situation that occurs with greater frequency and force in units under state man-

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agement, but also, less frequently, in units under federal responsibility.

The absence of public policies, such as technical assistance and rural extension, credit and infrastructure (water, energy etc.), can also threaten the conservation of these territories. In some situations, the lack of a viable and sustainable economic alternative has led to deforestation for cattle raising and the sale of illegal timber. In the absence of an alternative that generates economic gains with the standing forest, some extractivists have migrated to other economic activities.

The potential, in the current context, of weakening ICM-Bio, in the management of PAs, as well as in the work of the Ministry of the Environment, in the promotion of public policies for extractive communities, and even in the performance of the IBAMA preventing irregularities, such as deforestation and theft of wood, can further accentuate threats to the integrity of PAs and the interests of extractive communities.

Another threat is related to the slowness of land regularization processes. This is an important element for the security of extractive communities and for ensuring access to natural resources. There are cases in which the delay in land tenure regularization of these PAs represents a serious risk to their integrity and to the right of exclusive use by traditional communities, provided for by the “Law of SNUC”. There are cases in which private non-compensated properties remain inside PAs, carrying out their agricultural activities and often prevent traditional communities from accessing the natural resources of the territory decreed by law and destined for them. This is the case of RESEX Extremo Norte do Tocantins, which, after 24 years of creation, did not promote land regularization and extractive families, mostly quebradeiras de coco-babaçu, have no guarantee of babaçu extraction or even access to the territory. Deforestation

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in RESEX Extremo Norte has been increasing annually due to the expansion of livestock and also the conflicts between farmers and traditional communities. The delay in regularization puts at risk the environmental conservation of the territories and the way of life of these communities, which have babassu as their main source of income.

There are conflicts in management, including the sustainable use reserves, which are mainly marked by the difficulty of dialogue between local government managers and local extractive communities. They usually concern conflicts related to the “relative” autonomy of communities, frustrated demands for support and conflicts with institutional roles. There is strong criticism from grassroots associations or social movements about gaps or shortcomings and misunderstandings in the creation and implementation of PAs with traditional extractive populations. Rightly so. We highlight, for example, the insufficiency of fisheries management, in the supply of energy for sustainable production, the irregularity of various elements of other public policies, such as extractive extension, education, support to commercialization, (rapid) solution of conflicts, inspection of wood theft, among others.

On the other hand, although less publicly, these same social actors recognize that, in most cases, there is a significant improvement in the living conditions of the extractive populations with the creation of extractive reserves and PAs of other categories and with the implementation of its management instruments and association with other public policies. Noteworthy are the reduction of the invisibility of these communities, the relative greater security in land tenure, support for commercialization, the increase in energy supply, etc. Obviously many of these improvements are the product of the demands of these communities, but there have also been positive responses from various agencies, although this has often happened in recent decades and the current outlook is more uncertain.

These conflicts also occur in the categories of the group of sustainable use, but above all in the categories of the group of strict preservation areas, when the creation of the unit overlaps the areas of traditional communities. Often this relationship is marked by the conflict between laws and norms, as well as their interpretations, not only between what would be possible in PAs of categories of the strict preservation areas, which do not allow the use of natural resources (the so-called “use direct”) and the rights of traditional communities, but also between what a public servant can and cannot do and how much a management body can decentralize, delegate or pass on responsibilities, or assume that part of the decisions are the communities themselves. This is sometimes compounded by difficulties for professionals with little experience in engaging in dialogue with traditional groups.

In general, when social actors feel included and valued, the possibilities of becoming important allies of PAs are expanded.¹²⁶

6. Resistance,

organization and participation

There has always been resistance from the Indigenous Peoples and traditional communities, through different formats along history, in which sometimes they were beaten, but in others achieved important advances. There has been important steps forward since the reinstallation of democracy at the 1980s, including the process for and the promulgation of the new Brazilian Constitution in 1988.

The **Indigenous Peoples** movements know the laws and rights related to them. And has increased their organization in the last 30 years, including in relation to the demand and participation in public policies. Those national level needs promoted the blooming of the “*União Nacional Indígena (UNI)*” and its participation in the new Constitution building, including through the campaign “*Povos Indígenas no Futuro do Brasil*”. Since then, several Indigenous Peoples organizations have appeared, including the Amazon coordination one (“*Coordenação das Organizações Indígenas da Amazônia Brasileira – COIAB*”)¹²⁷, as well as several regional ones. More recently, “*Articulação dos Povos Indígenas do Brasil (APIB)*” has taken the leadership in relation to demands for good legislation and policies.

It is also important the reoccupation of ancient lands, as well as self-demarcation of their territories.¹²⁸ Those actions represent a reaction to the slowness of recognition and demarcation processes by the National Government, with support from civil society organizations or not. The Indigenous Peoples movements have also organization

Resistance, organization and participation

some national level demonstrations – such as “Abril Indígena”, “Acampamento Terra Livre” and “Marcha das Mulheres Indígenas”, as well as participating in national and international events. Even if yet in small absolute numbers, there has been an increase in the numbers of Indigenous Peoples candidates in local, state and national level elections.

In order to be able to defend their rights, the **Quilombola** movement has joint efforts with the black people movements, including in the new Constitution building process. It has organized a national level coordination (“Coordenação Nacional de Articulação das Comunidades Rurais Negras Quilombolas – CONAQ”), since 1966, as well as state and local level ones. It keeps participating in racial related spaces (such as the “Conselho Nacional de Políticas de Igualdade Racial – CNPIR”).¹²⁹ There has been also the National Equal Race Rights Conferences (“Conferências Nacionais de Igualdade Racial”).

The movement for the **communities traditional** is strongly related to the leadership of Chico Mendes, in what was called “empate” to defend their interests and stop deforestation, resulting in the creation of the model of extractive reserves and agro-extractive settlements. They have organized themselves nationally, with the Extrativist Communities National Council (“Conselho Nacional das Populações Extrativistas - CNS”, previously “Conselho Nacional dos Seringueiros”) working more in the Amazon and CONFREM (“Comissão Nacional de Fortalecimento das Reservas Extrativistas e Povos Tradicionais Extrativistas Costeiros e Marinhos”) working more at the coastal zone¹³⁰, with several other subnational efforts (for instance, “Articulação Pacari”, “Confederação das Comunidades de Fundo e Fecho de Pasto da Bahia”, etc.) An important symbol of resistance comes from the women at the “Movimento Interestadual das Quebradeiras de Coco Babaçu (MIQCB)”.

Resistance, organization and participation

Some traditional communities have also followed the processes of reoccupation of their lands and self-demarcation of their territories.¹³¹ Alliances with scientists it is also a strategy, as in the New Social Cartography (“Nova Cartografia Social”). They have built a national organization and claimed space in national policies, for instance related to their National Commission (“Comissão Nacional de Povos e Comunidades Tradicionais – CNPCT”), still working despite the efforts against by the current Federal Government (or Administration).

All them participate in several commissions and committees related to national and subnational policies related to their interests.

7. Conclusions



Conclusions

There is a significative set of laws and regulations recognizing the rights of Indigenous Peoples and traditional communities in Brazil, as well as several policies to support them. And support from a considerable part of the Brazilian society. Those are related to the long stating struggles of those social groups. As a result of those, there are a sizable total area of traditional territories.

Those rights and recognitions, though, are not linear across those peoples and communities. Both the national legal context and the national and international consider more clearly the Indigenous Peoples, particularly those from the Amazon, than other social groups. Other Indigenous Peoples, not from the Amazon, and the Quilombola communities are in intermediary level, as well as traditional extractive communities within extractive and similar reserves and environmentally differentiated agrarian reform “settlements” or land tenure recognition projects. The whole group of other traditional communities have much less recognition and clear rights.

Nevertheless, this does not mean the Indigenous Peoples and traditional communities are well respected throughout the country event today. The implementation of their rights is too slow to be fair. And in any specific concrete conflict (regarding land, natural resources, infrastructure works etc.), several forces are mobilized against them. Therefore, they yet live in permanent struggle conditions. All too often there are also legal attempts to undermine their rights through the National Congress. Since late 2018 and early 2019, federal government related policies, programs and actions in favor of those peoples and communities have been weakening and their enemies encouraged to rise against their rights.

Even with the long-term standing difficulties and the obstacles increasing in recent times, the Indigenous Peoples and traditional communities keep their movements claim-

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ing for their rights, despite the fact that not all of them have the same level of resistance and of self-determination conditions, as well as of management of their territories (including, in some cases, struggles among themselves).

Based on ICCA definition, we considered for this report the Brazilian traditional peoples and communities and their rights for their territories. It is important not to try to replace their usual Brazilian territories types and names, but associate them to the ICCA concept, as well as the possibility of better international recognition. ICCAs are also related to conservation results, and these are often important and should be recognized. But the rights of Indigenous Peoples and local and traditional communities are not only related to the conservation results of the management of their territories. In some Brazilian cases, the regulations and the social groups consider access to natural resources even without the land ownership.

8. Recommendations

There are recommendations to the Parliaments, but particularly o the federal level, to stop processes of bills related to risks of undermine rights of the Indigenous Peoples and traditional communities. But Parliaments could also pass legislations related to the traditional communities free access to the natural resources they need.

There are recommendations to the three levels of governments, but particularly o the federal level, to strengthen and speed the process of recognition and implementation of Indigenous Peoples and traditional communities' rights, specially to their territories – including for those social groups which territories recognition is currently not yet established, without a past time boundary. Those territories should include all conditions for their economic, social and cultural reproduction, not only the areas under direct use (such as housing and agriculture fields) but including natural ecosystems and mythical sites. It should be established a national register for their traditional territories. And self-demarcation should be considered.

The National Plan of Climate Change Adaptation should be implemented, particularly in relation to the needs of Indigenous Peoples and traditional communities, with special attention to those under more risk such as the coastal zone and fishermen communities.

All committees and commissions concerning policies related to Indigenous Peoples and traditional communities should be restored. The National Policy of Environmental and Territorial Management of Indigenous Lands should be kept and the proposal to a similar policy to Quilombola communities should be pursued. The National Commission on Extractive Reserves should be enlarged and strengthened and the protected area categories of interest for traditional

Recommendations

communities should have national regulation (beyond the Law of SNUC). Interinstitutional commissions to address conflicts between Indigenous Peoples and traditional communities and PAs should be kept and strengthened. Prior and informed consent from Indigenous Peoples and traditional communities to any project related to their rights or their territories, including considering ILO Convention No. 169.

There are also recommendations to any interested social actor, as the Indigenous Peoples and traditional communities themselves and civil society. Consider ICCAs as a way to strengthen local and national level process for the recognition of Indigenous Peoples and traditional communities' rights, particularly over their territories. Consider Indigenous Peoples and traditional communities in processes of self-determination or in struggle for their territories and, therefore, not able yet to assure conservation results.

A national strategy should be built by the Indigenous Peoples and traditional communities, with support from civil society organizations, considering particularly the traditional communities less protected, to strengthen their local and national self-determination struggles and the governance of their territories, and to recognize their traditionality and the ecosystem services provided to all society, including international register and recognition as ICCAs, traditional territories identification and mapping and a strong program with international financial support.

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