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STRATEGIC LITIGATION IN THE RIGHTS OF CAIÇARA PEOPLES: THE SEARCH FOR A PRECEDENT IN THE FEDERAL SUPREME COURT

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Abstract: This article presents the process of constructing, alongside the caiçara communities of Praia do Sono and Praia da Ponta Negra in Paraty, Rio de Janeiro, Brazil, of the legal arguments regarding the right to their territories. This issue was taken to the Supreme Federal Court of Brazil (STF) by the legal counsel of the Forum of Traditional Communities of Angra dos Reis, Paraty and Ubatuba, with technical support provided by the Observatory for Sustainable and Healthy Territories. The methodology used was research-action, using workshops and organizing the communities' memoir in legal documents. Through these actions, we aim to build the Supreme Federal Court's first precedent regarding the caiçara territory, using the legal repertory as an instrument for political change. So far, the partial results have been the communities' formation as to the legal terms and procedures, the organizing of written and visual documents that picture the cultural memory of these communities and their relationship with their territory, as well as their qualification in the ongoing process at the Federal Supreme Court. The petition was also signed by a caiçara lawyer, who is also co-author of this article. We have concluded so far that this possible precedent could open doors for other caiçara communities and other traditional communities to access the Supreme Federal Court. Furthermore, the active formation of these communities, with participatory methodology and centered in autonomy enhances, qualifies and legitimates the legal work.

Keywords: Traditional peoples. Caiçara. Territory. Strategic litigation.

INTRODUCTION

The Forum of Traditional Communities of Angra dos Reis, Paraty and Ubatuba (FCT) is a space for the articulation of indigenous, quilombola and caiçara communities in this region, established in 2007. Their struggle is for the right to territory, health and differentiated education, as well as for the appreciation of culture and respect for the traditions and ways of life of traditional communities, seeking to strengthen common struggles and confrontations.

In 2009, FCT entered a partnership with the Oswaldo Cruz Foundation (Fiocruz), culminating in the creation of the Observatory for Sustainable and Healthy Territories (OTSS), a “technopolitical space for the generation of critical knowledge, based on the dialogue between traditional and scientific knowledge, for the development of strategies that promote sustainability, health and rights for the well-being of traditional communities in their territories”¹

Divided into eight Coordinations², the OTSS develops action research and various activities on various fronts of struggle of the social movement. Among these coordinations is the Coordination of Socio-Environmental Justice (CJSA), which has as a subdivision the Legal Counsel (AJUR).

AJUR is currently formed by four lawyers, one of whom is a caiçara, originally from Praia do Sono and co-author of this article, Luara dos Santos Sampaio. The Counsel acts in judicial and administrative proceedings, supports partner networks, occupies seats on key councils for Traditional Peoples and Communities (PCTs), among other attributions.

In 2022, the AJUR team turned its attention to the land regularization of Praia do Sono and Praia da Ponta Negra in Paraty, Rio de Janeiro. Together with the CJSA, the FCT coordination and the communities, we qualified in ongoing Original Civil Actions (ACOs) 586 and 594, which discuss the right to the caiçara territory of these communities and are being processed in the Federal Supreme Court (STF).

Considering that this mobilization was based on the idea of strategic litigation, we believe it is essential that the reader understands this concept. According to Nunes Neto (2020):

It is common to describe the phenomenon of strategic litigation in human rights as a product of social articulation to overcome a situation of serious systematic violation of treaties and conventions on the matter. In addition, there is talk of the handling of strategies that impose constraint on public authorities, with the purpose of being able to implement rights already enshrined in national and international diplomas, change the interpretation given to them or also the generalized social understanding in the community understanding of them, in addition to the conquest of new rights. (...) Strategic litigation in human rights tends to be marked by the coexistence and mutual cooperation between the litigants' own interests with a direct link to the cause undertaken and the claim of a movement as a whole, that is, of a social segment or contingent that shares the same violation or threat of injury to a common human right.³

Therefore, strategic litigation in human rights is a tool for social change, used by organized civil society to empower and pressure strategic sectors of the government to achieve a certain objective defined by the

1. OBSERVATORY FOR SUSTAINABLE AND HEALTHY TERRITORIES. OTSS Bocaina, 2018. Who we are. Available at: <<https://www.otss.org.br/observatorio>>. Accessed: 07. ten. 2023.

2. General Coordination, Governance and Management, Executive, Communication, Socio-environmental Justice, Knowledge Management, Territorialized Management and Social Technologies Incubator.

3. NETO, Jocelino Nunes. Strategic Litigation of Persons with Disabilities in the Federal Supreme Court: a diagnosis of institutional arrangements. **Dissertation presented to the Graduate Program in Law of the Federal University of Pernambuco (UFPE)**, 2020, p. 55.

social movement. In this case, the objective is to create a precedent in the Supreme Court on the right to the ancestral territory of the caiçara peoples.

Thus, the main objective of this article is to describe the process of construction of the qualification of caiçara communities in ongoing processes in the STF, the legal arguments used and the perspectives that the OTSS' Legal Counsel envisions for the creation of the first precedent on caiçara territories in the STF.

To this end, in the first section we will tell a little about the history of land disputes in Praia do Sono and Ponta Negra, which culminated in ACOs 586 and 594. Next, we will describe the methodology used for the process of appropriation of the land theme by the community members. Finally, we will point out the main legal and strategic arguments that structured our petition for admission.

PRAIA DO SONO, PONTA NEGRA, LAND DISPUTE AND ORIGINAL CIVIL ACTIONS 586 AND 594

The caiçara communities of Praia do Sono and Praia da Ponta Negra have lived in the territory of southern Paraty (Rio de Janeiro) for more than three centuries⁴ and share cultural, social, and environmental traditions. Both beaches are overlapped by the Cairuçu Environmental Protection Area (APA Cairuçu) and the Juatinga State Ecological Reserve (REEJ).

4. VEDOVATTO, Diego; CAVALCANTE, Julia; VARALLO, Leonardo; MOURA, Rodolfo; SOLLERO, Gabriel (org.). Land and notarial diagnosis of the APA Cairuçu. Sono Beach, p. 8; Praia da Ponta Negra, pp. 8 and 9.

5. *Povos* means "peoples" in Portuguese.

6. OBSERVATORY FOR SUSTAINABLE AND HEALTHY TERRITORIES. *Povos Project: Territory, Identity and Tradition. Territórios Caiçaras do Sul de Paraty*, p. 27. Rio de Janeiro, 2023. Available at: <https://www.otss.org.br/publicacoes>. Accessed: 05. ten. 2023.

7. Ditto. p. 83.

8. VEDOVATTO, Diego; CAVALCANTE, Julia; VARALLO, Leonardo; MOURA, Rodolfo; SOLLERO, Gabriel (org.). Land and notarial diagnosis of the APA Cairuçu. Praia da Ponta Negra, p. 8.

9. FRANCESCO, Ana Alves de. This is our place: an ethnography of caiçara territoriality in Cajaíba (Paraty, RJ). Master's dissertation submitted to the Graduate Program in Anthropology at the State University of Campinas (Unicamp), 2012. Available at: < <https://repositorio.unicamp.br/acervo/detalhe/879801> >. Accessed: 05. ten. 2023.

10. Lending is a free loan agreement for non-fungible things, that is, things that cannot be replaced by others. It is provided for in articles 579 to 585 of the Brazilian Civil Code.

According to estimates from the *Povos Project*⁵: territory, identity and tradition⁶, Praia do Sono has a total population of 450 people, 400 of whom are caiçaras. Ponta Negra, on the other hand, 250, of which 240 identify themselves as caiçaras.

Praia do Sono is around 1,200 meters long⁷ and Ponta Negra, 50, both accessible mainly by sea.⁸ Praia do Sono and Ponta Negra can also be accessed by trail, with the trail to Sono being approximately forty minutes of walking and inappropriate for the elderly and people with disabilities. On the other hand, the trail access to Ponta Negra Beach is more extensive, since residents need to pass through the trails of Sono, Antigos, Antiguinhos and Galhetas Beaches to then reach their community, being approximately two hours of walking.

Both communities suffer several threats from big business: large enterprises, predatory tourism and real estate speculation. Among the three, the one that mainly interests us in this article is the last one, largely personified by the Tannus family in the region.

According to Francesco (2012)⁹, land conflicts in the territory began mainly in the 1950s, when the land grabber Gibrail Nubile Tannus arrived in the region, claiming to be the legitimate owner of the lands of Praia do Sono and Ponta Negra. At the time, several caiçara families were forced to sign lending contracts¹⁰, formally passing from owners to mere holders of their territory.

Despite Tannus' violent attacks, the communities resisted his pressures, until he was expelled from the place by the caçaras in 1987. Since then, he has never returned to the locality and ended up dying during this distancing. However, his heirs continued their predatory land grabbing through the justice system, filing several repossession lawsuits against caçara families, many of which rely on the Legal Counsel of the Observatory for Sustainable and Healthy Territories (OTSS).

In 1998, the State of Rio de Janeiro filed a discriminatory action¹¹ against Gibrail Tannus, whose object was plots of land improperly registered in Registration No. 0183, related to the so-called Santa Maria Farm, which covers 94% of the territory of Ponta Negra and 66% of the territory of Praia do Sono.¹² The Farm is currently owned by Gibrail's legatee widow, Maria Leny de Andrade Tannus, who has also passed away, but the property registration has not been updated.

According to a petition filed by the State of Rio de Janeiro, State Decree No. 9.655/1987 declared the area of Praia do Sono to be of public utility for expropriation purposes, and there was even an annotation of cancellation of the registration of the property in December 1988¹³. According to Soares (2019),¹⁴ the area decreed of public utility is approximately 93 hectares, intended for population improvement and supply of the community through its means of subsistence.

Sometime after the lawsuit was filed, the Federal Government filed an opposition, expressing interest in the area. Due to the conflict between federative entities and

the consequent competence of the Federal Supreme Court (STF),¹⁵ the discriminatory action and the opposition generated, respectively, the Original Civil Actions (ACOs) 594 and 586, that have been pending in the STF for twenty-three years, since 2000.

Although the caçara communities of Praia do Sono and Praia da Ponta Negra have lived in the disputed territory for more than three hundred years, they did not participate directly in the aforementioned judicial processes, being at the mercy of any decisions that could harm them. In view of this, as we mentioned in the Introduction, the OTSS' Legal Counsel acted, together with the coordination of the FCT and the communities, to qualify the caçara peoples of Praia do Sono and Praia da Ponta Negra in the proceeding.

This mobilization involved a long process of dialogue with leaders and community training, as well as exchanges of experience with partner lawyers, culminating in the preparation of the admission petition, filed in May 2023. This construction process will be reported in more detail in the following topic.

THE PROCESS OF COMMUNITY APPROPRIATION OF THE LAND THEME

In 2022, the Land and Notary Diagnosis of the Cairuçu Environmental Protection Area (APA Cairuçu) was launched, a condition imposed on Petrobras due to the exploration of Stage 3 of the Pre-Salt in the region. This condition was formalized by the Chico Mendes Institute for Biodiversity Conservation (ICMBio) and instituted by

11. Lawsuit seeking to separate public lands from private lands, currently regulated by Federal Law No. 6.383/1976 (Brazil).

12. VEDOVATTO, Diego; CAVALCANTE, Julia; VARALLO, Leonardo; MOURA, Rodolfo; SOLLERO, Gabriel (org.). Land and notarial diagnosis of the APA Cairuçu. Ponta Negra Beach, p. 19; Praia do Sono, p. 20.

13. Ditto. p. 21.

14. SOARES, Tainá Miê Seto. Caçara territory: dialogues on the creation of a protected area for traditional caçara communities. **Master's thesis submitted to the Graduate Program in Ecotourism and Conservation of the Federal University of the State of Rio de Janeiro (UNIRIO)**, p. 106, 2019. Available at: <file:///D:/Downloads/7_Dissertacao%20territorio%20caicara%20taina%20mie%20final%2008.04.2020_corrígida.pdf>. Accessed on: 05 dez. 2023.

15. In accordance with the provisions of Article 102, I, f of the Federal Constitution of Brazil.

the Brazilian Institute of Environment and Natural Resources (IBAMA), being executed by Mineral, a company contracted by Petrobras. This diagnosis surveyed the land tenure situation of the communities of APA Cairuçu and the necessary actions for the regularization of the caçara lands.

The result of the Diagnosis, among other things, identified the Original Civil Actions 586 and 594, mentioned above, in progress at the Federal Supreme Court (STF) and about to be judged. As the object of the lawsuits is the territory of the caçara communities of Praia do Sono and Praia de Ponta Negra, the Legal Counsel (AJUR) of the OTSS, together with the partner lawyers of the company Mineral – who had identified the actions – came together to mobilize and inform the communities. We emphasize that most of the population of these communities was not even aware of the ongoing processes.

Also in 2022, community leaders were called to a meeting at the headquarters of APA Cairuçu in Paraty, to learn about the information collected. As a result of this meeting, it was agreed that the Diagnosis would be presented and widely disseminated to all, in the form of a physical document, as well as that AJUR/OTSS would provide training with the communities on the land theme.

After the distribution of the Diagnosis in the communities, a training workshop was scheduled at Praia do Sono, which took place on November 7, 2022 and was attended by leaders and members of both communities. The methodology began with an opening dynamic, sensitizing those present on the theme of land regularization, boosting a process of appropriation of the territorial theme.

A timeline was presented with the historical context of territorial conflicts, based on a brief contextualization of the

struggle and conflicts experienced by these communities. In addition, the history of the ongoing processes was presented, facilitating the dynamics of the community's ownership of the legal-procedural issue.

At that moment, it became clear to us that the communities until then were unaware of the risks that the outcome of the lawsuits could bring to their lives. In a participatory and synergistic process between traditional knowledge and technical knowledge, an analysis of the process and the possibilities of intervention was made, evaluating the potential risks of the ongoing actions.

At the end of this analysis, it was agreed with the communities that AJUR would act in the process, representing the communities of Praia do Sono and Ponta Negra. As a way forward, it was defined that a working group would be created for the communities to receive information on the next steps and what would be requested based on AJUR's evaluation, ensuring collective participation and continuous training regarding the processes.

Initially, it was agreed that the petition would be filed in December 2022. However, due to the unfavorable political scenario for the defense of human rights at the time, the AJUR team assessed that it would be more strategic to wait for the change of government to move the case file.

Despite this, dialogue with the communities remained open. There were some face-to-face meetings and telephone contacts with the leaders to collect specific documentation regarding their territory, such as photos that refer to the history of the communities, videos that prove the struggle experienced by the communities, recorded caçara narratives, reports of ancestors of the communities, etc. With the help of the Paraty Fishermen's Colony, we were also able to collect registration data from the fishermen of the communities,

proving the length of stay in the territory and their traditional ways of life.

In May 2023, the signatures of the caiçara leaders of Praia do Sono and Praia da Ponta Negra were collected for the respective powers of attorney, confirming that the petition would be filed soon. It was also reinforced that the next steps would continue to be in common agreement with the communities.

It is essential to emphasize that the training process in the communities has not stopped, since the intention is to take leaders to the Supreme Court to be heard. We understand that the story needs to be told by people who actually live in the territory that is the object of the process, and it is AJUR's responsibility to make each step of this journey even more transparent and in line with the reality experienced by each caiçara family.

STRATEGIC LITIGATION: THE INCIDENCE BEFORE THE FEDERAL SUPREME COURT

After the exchanges with other fellow lawyers and the process of constructive dialogue with the communities, the AJUR/OTSS team, in this case led by the authors of this article, began to outline the strategies for incidence in the STF. Various procedural forms of qualification of the caiçara communities were discussed in the records, with the intervention as necessary passive co-defendant being elected.

Provided for in articles 113 to 118 of the Code of Civil Procedure (CPC), joinder is the participation of several people in the same proceeding, either as plaintiffs (active joinder) or defendants (passive joinder). The necessary joinder obliges the parties to litigate together, either by force of law or because the effectiveness of the judgment depends on the summons of all, due to the nature of the legal relationship discussed in the proceedings.

Initially, in order to construct the argument of the joinder of parties, we stated that the caiçara communities of Sono and Ponta Negra would fall under items I and III of article 113 of the CPC:

Art. 113. Two or more persons may litigate, in the same proceedings, jointly, actively or passively, when:

I - there is a common right or obligation between them in relation to the dispute;

(...)

III - there is affinity of issues by common point of fact or law

(...) (BRAZIL, 2015).

In this sense, we affirm that there is a communion of rights in relation to the litigation, since the obligations arising from a future sentence issued by the STF derive from the same fact and right debated in the records, that is, nullity of the registration of the Fazenda Santa Maria property.

Regarding the need for joinder of parties, provided for in article 114 of the CPC, we put forward the argument in the sense that any decision in the case file would directly affect rights, as well as generate obligations for the caiçara communities of Sono and Ponta Negra. This argument is supported by the abundant jurisprudence of the STF and the Superior Court of Justice (STJ), which understand that the subjective regularity of the process is only configured in cases of impairment of the legal sphere of a third party by a judicial decision when this third party is part of the litigation.¹⁶

On this point, we cite in the petition for qualification some precedents of the STF that admitted the entry of indigenous peoples as necessary passive parties in disputes that dealt with their territorial area. In ACO 2323, written by Justice Alexandre de Moraes, the following decision was issued:

16. See, for example, STF-RT 594/248; STF-MS 24.414-DF; REsp 965.933 DF (2007/0154762-0); STJ- RMS 4127/SC etc.

This is an internal appeal filed by the Guarani Indigenous Community of Morro dos Cavalos against a monocratic decision that, among other determinations, granted the request for the appellant to be included in the proceedings, as a simple assistant to the defendants (...).

The aggravating party objected to the form of admission to the procedural relationship on the grounds that it should, in the present case, be part of the litigation as a joint party, based on Article 231 of the Federal Constitution, considering that the rejection of the request “generates evident prejudice to the right of defense of the appellant herein, as well as violates her fundamental right to adversarial proceedings (Article 5, LV, of the Constitution of the Federative Republic of Brazil) and, consequently, the fundamental right to a fair trial, which has as a corollary Article 5, LIV, of the Constitution, which establishes that no one shall be deprived of liberty or property without due process of law” (...)

However, this Supreme Court, in similar cases that also involve the legality of demarcation procedures for indigenous lands, has admitted the intervention of these entities representing indigenous communities as joint parties, as can be inferred from the following precedents: MS 33.922, Rel. Min. EDSON FACHIN, DJe of 2/25/2016; MS 28.541, Rel. Min. MARCO AURÉLIO, DJe of 11/05/2018; and MS 28.574, Rel. Min. MARCO AURÉLIO, DJe of 12/18/2018, from which I highlight the following excerpt from the decision:

“2. In view of the legal situation of the applicant, which can be reached by decision if the initial request in this writ of mandamus is accepted, there is an interest in participating in the procedural relationship as a passive party” (BRASIL, 2019, emphasis added).¹⁷

Having established the procedural issue of admission, we proceed to the introduction of the arguments on the merits of our request. We describe the history of the traditional communities of Sono and Ponta Negra, emphasizing their cultural and ancestral aspects and their communal relationship with their territory.

We also mentioned the history of dispute between these communities and the Tannus family, whose account appears not only in the speeches of the natives, but also in local cultural manifestations, such as cordels and documentaries.¹⁸

Moving on to the legal arguments themselves, these were divided into three main fronts of legislative protection for traditional caiçara communities: (i) international protection; (ii) constitutional protection and; (iii) Legal Protection.

With regard to international protection, we highlight the subsumption of the concept of “caiçara” to the legal category of “tribal peoples”, protected by Convention 169 of the International Labor Organization (ILO) on Indigenous and Tribal Peoples. This Convention was internalized by Brazil through Legislative Decree 143 of 2002, entering into force in the country in 2003.

According to Article 14, item 1 of Convention 169, to the peoples covered by it must be recognized the rights of possession and ownership over the lands they traditionally occupy, if they so wish, in accordance with their cultural organization (INTERNATIONAL LABOR ORGANIZATION, 1989).

We highlight that the 6th Chamber of Coordination and Review of the Federal Public Prosecutor’s Office issued Statement 17, which states that traditional communities are subsumed to the concept of tribal peoples

17. BRAZIL. Supreme Court. Interlocutory Appeal in Original Civil Action 2323. Rapporteur: Minister Alexandre de Moraes. Brasília, 13/02/2019.

18. See Cordel O Sono, o Caiçara e a Luta (2019) and documentaries Vento Contra, by Adriana Mattoso; Caiçaras Narratives – episode 1: Praia do Sono;

of ILO Convention 169.

Another argument brought up on the first protection front was the granting of the title of World Heritage Site to the Paraty and Ilha Grande Mixed Site by the United Nations Educational, Scientific and Cultural Organization (UNESCO). The locality was called a Mixed Site precisely because of the combination of exuberant biodiversity and living culture, led by the traditional communities residing in the territory. According to the Declaration of Outstanding Universal Value of the Paraty and Ilha Grande Mixed Site:

The Paraty Mixed Site has exceptional universal value for its natural and cultural characteristics, as well as for the relationship between them. **Being a site where the cultural system related to traditional communities is still present, giving the mixed site the differentiation in relation to the living culture integrated with the natural environment.** (...)

Unique Human Occupation/Traditional Communities - **The Mixed Site of Paraty is also home of traditional Quilombola, Guarani and Caiçara communities that maintain the way of life of their ancestors, in addition to preserving most of their relationships, rites, festivals and religions, whose tangible and intangible elements contribute to the characterization of the “cultural system”** (emphasis added).¹⁹

Finally, still on international protection, we cite the understanding of the Inter-American Court of Human Rights in the case of the Saramaka People vs. Suriname, which states that the State's disrespect for the spatial relations of indigenous peoples with their territories constitutes a violation of the right to private property, provided for in Articles 21 c/c 1.1 and 2 of the American Convention on Human Rights.

19. GUIMARÃES, Ana; PULLEN, Fabiana. Paraty and Ilha Grande become the first mixed World Heritage site located in Brazil. UNESCO, 2019. Available at: <http://www.unesco.org/new/pt/rio-20/single-view/news/paraty_becomes_the_first_mixed_world_heritage_site_in_brazil/>. Accessed: 06. ten. 2023.

20. IPHAN Ordinance 402/2012.

With regard to constitutional protection, we highlight the caiçara culture, which manifests itself through tales, music, dances, cultural festivals, etc., and the protection that article 215 of the Federal Constitution confers on cultural practices, generating a power-duty of the State to support, value and encourage culture. Article 216 of the Constitution complements the idea, with the subsumption of the concept of “caiçara” to that of Brazilian cultural heritage, a thesis also reinforced by the existence of listing by the National Institute of Historical and Artistic Heritage (IPHAN) in the territory.²⁰

Finally, regarding legal protection, we list Federal Decree 6.040/2007, which establishes the National Policy for the Sustainable Development of Traditional Peoples and Communities (PNPCT). Such legislation brings the legal concepts of “traditional community” and “traditional territory”:

Article 3 For the purposes of this Decree and its Annex, the following definitions shall apply:

I - **Traditional Peoples and Communities: culturally differentiated groups** that recognize themselves as such, that have their own forms of social organization, **which 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;**

II - **Traditional Territories: the spaces necessary for the cultural, social and economic reproduction of traditional peoples and communities, whether they are used permanently or temporarily,** observing, with regard to indigenous peoples and quilombolas, respectively, the provisions of arts. 231 of the Constitution and 68 of the

We also highlight the State Law of Rio de Janeiro 2.393/1995, which guarantees the native populations residing for more than fifty years in conservation units of the State of Rio de Janeiro the real right to use the occupied areas, this concession being non-negotiable for an indefinite period, transferable only to the direct descendants of the members of the traditional communities.²¹

Finally, we mention the Municipal Law of Paraty 1.835/2012, which establishes guidelines for public policies for the sustainable development of traditional peoples and communities in Paraty. Article 7 of this law guarantees the traditional peoples and communities of the region the right to remain in their territory.²²

Under these three legal pillars – international, constitutional and legal protection – we argue the need for the Judiciary to analyze disputes such as those of Praia do Sono and Ponta Negra from the perspective of communal and territorial traditionality and ancestry.

To instruct the initial petition, we gathered several proofs of the traditionality of the caíças of the Sono and Ponta Negra beaches: documentaries that deal with the subject²³, old photos of the caíças performing traditional activities, ancient records of the Fishermen's Colony, written reports of interviews carried out by the OTSS in the communities over the years, the Land and Notary Diagnosis of the APA Cairuçu, among others.

21. At this point, we would like to point out that in the text justifying this state law, the damage caused to traditional communities by real estate speculation is mentioned, as well as the importance of their ancestral knowledge for the protection of nature.

22. Article 7 – Public policies aimed at ensuring the sustainable development of traditional peoples and communities shall have the following specific objectives:

I - guarantee traditional peoples and communities their territories access to the natural resources they traditionally use for their physical, cultural and economic reproduction;
(...)

23. Referenced in this article for reference.

More recently, the publication of the *Povos* Project, already mentioned above, which covers the territory in question, was added to the case file. The *Povos* Project is a social cartography initiative, carried out as a mitigation measure required by the Brazilian Institute of Environment and Renewable Resources (IBAMA) to Petrobras, due to the oil and gas production activity in the Pre-Salt Cluster (OTSS, 2019).

Based on the social cartography carried out with the active participation of the communities, the *Povos* Project provides AJUR with valuable information about traditional ways of life, the conflicts identified by the leaders and the threats to their territories. Therefore, it produces official documents that attest to the ancestry of the peoples.

Unfortunately, at the time of writing this article, the petition for qualification has not yet been considered by the rapporteur of the case, Justice Dias Toffóli, even though it has already been dispatched with his advisory. In any case, we look with optimism to the future decision of admission and plan the trip of the community leaders, alongside the lawyers of AJUR/OTSS to Brasília, to meet with the reporting minister.

CONCLUSION

Throughout this article, we have tried to present the process of dialogical and collective construction for the qualification of the caíçara communities of Praia do Sono and Ponta Negra in lawsuits pending before the Federal Supreme Court (STF) that concern their territory. We also sought to point out the main legal and strategic arguments that

supported the qualification petition, carefully designed to create a precedent in the STF favorable to traditional caiçara communities.

We highlight the importance of the presence of these communities in spaces such as the Supreme Court and the indispensability of the place at the table that they must occupy when it comes to their territory. Until the manifestation of AJUR/OTSS in the process, the caiçaras were not parties to the lawsuit, even though they are the most affected by the result of the process. Eleven Justices were about to judge the validity of a real estate registration in caiçara territory and only the Federal Government, the State of Rio de Janeiro and a private land grabber were involved in the process. Meanwhile, the caiçara people progressively lost control over the narrative of their own history.

In a more macro way, we know that historically the Judiciary is an elitist space and distant from society. With regard to traditional communities, decisions often take place without the participation of community leaders. In recent years, fortunately, traditional communities, inspired by indigenous peoples, have been politically articulating themselves to occupy spaces such as the Supreme Court, reminding the Ministers that there are people in these territories.

The dispute process waged in the STF in ACOs 586 and 594 with the presence of the caiçara communities is powerful in itself. With the admission of the qualification and eventual favorable judgment to the traditional peoples, a precedent is set for the recognition of the right to the caiçara territory and broadens the eyes of the country to these communities, which are still very invisible.

Caiçara communities need to be heard, their tradition and ways of life need to be maintained and respected. The existence of an aspect of caiçara life depends on its territory: to take away the caiçara territory is to silence its tradition.

What we expect, therefore, as a result from the judgment of ACOs 586 and 594 is the recognition of the existence and the right of permanence of the caiçara communities in the area in dispute. We hope that the registration of Fazenda Santa Maria will be definitively canceled, which will represent a historic victory for traditional communities in the face of land grabbers.

We emphasize that the communities, the FCT and the OTSS are fully opposed to the validity of the registration of the Santa Maria Farm, as it is a result that privileges a history of land grabbing and legitimates illegal practices against traditional peoples and communities.

That said, we understand that if it is decided that the lands belong to the Union or the State of Rio de Janeiro, in both cases it will be necessary to have a broad, participatory and constructive dialogue between the public entity, the responsible environmental agency, the communities of Sono and Ponta Negra, AJUR/OTSS and FCT for the forwarding of the land regularization of the caiçara territory.

Finally, we emphasize that the petition for qualification in the STF is not an isolated action. Parallel to its litigation work, AJUR articulates itself politically, seeks social and educational mobilization to reinforce the struggle of the communities, mapping institutional partners and strategies for communication and dissemination of processes, always seeking to safeguard the traditional territory.

The struggle is arduous and continuous, but necessary and urgent. Land grabbing, predatory tourism and the systematic violation of the rights of the caiçara peoples cannot be tolerated. Only the struggle changes life!

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