


**TERRITORIAL CONSTITUTIONAL RIGHTS OF INDIGENOUS PEOPLES AND QUILOMBOLAS IN BRAZIL**

 <https://doi.org/10.56238/sevened2024.031-013>

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**ABSTRACT**

The territorial rights of indigenous peoples and quilombolas in Brazil have gone through several stages of effectiveness and fulfill an elementary function in the construction of a more just and democratic society. This article analyzes the current status of these rights, highlighting advances, permanences and contradictions in the Brazilian legal and political system. From an interdisciplinary approach, which unites concepts of Constitutional Law, Human Rights, Anthropology and History, the normative and constitutional bases of these rights are investigated, as well as the impact of political and social pressures on their guarantee. In addition, institutional initiatives aimed at the protection of these rights are examined, with a focus on promoting social justice and the recognition of cultural diversity. Through a qualitative methodology, based on bibliographic and documentary research, this study aims to contribute to a deeper understanding of the transformations of the territorial rights of these communities. The results denote that the demarcation and regularization of indigenous and quilombola lands face significant obstacles, with political and social obstacles. Despite institutional initiatives, obstacles persist, compromising the realization of these rights and the promotion of social justice.

**Keywords:** Territorial rights. Indigenous peoples. Quilombolas. Social justice. Cultural diversity.

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## INTRODUCTION

The territorial rights of indigenous peoples and quilombolas in Brazil are consolidated as a vital element in the construction of a society that aims to be just, democratic and inclusive, evidencing the continuous trajectory of recognition and safeguarding of the cultural identities and forms of existence of these ancestral communities.

Since the promulgation of the Magna Carta of 1988, such rights have been the subject of intense debates, marked by clashes and metamorphoses that testify to both significant achievements and persistent challenges. The guidelines enshrined in the current constitutional text mark a historical milestone for the country, evidencing a break with the colonial legacy and the search for a democratic legal order.

The *Brazilian Lex Maxima* instituted the right of these communities to perennial possession and exclusive enjoyment of the lands they occupy ancestrally, thus conferring a solemn recognition of their unique and secular relationship with their territories. However, despite the advances made, the materialization of these issues faces a myriad of difficulties.

In this context, the relevance of analyzing the changes and permanence of the territorial rights of indigenous peoples and quilombolas in the homeland is justified, with a view to understanding the challenges faced and the strategies adopted for their implementation. The general objective of this study is to reflect on the *status* of these rights, highlighting the progress, gaps and antinomies evident in the legal framework and *in Brazilian political praxis*.

To this end, the following specific objectives were established: To identify the normative bases and legal and constitutional assumptions related to the territorial rights of indigenous peoples and quilombolas; analyse the impact of political and social pressures on the guarantee of these rights; and to verify institutional initiatives in the protection of territorial rights, with a focus on promoting social justice and the recognition of cultural diversity.

Through an interdisciplinary approach, amalgamating concepts of Constitutional Law, Human Rights, Anthropology and History, this article is established on a qualitative and exploratory methodological basis, developed through bibliographic and documentary research, with incursions into the current legislation.

## HISTORICAL-NORMATIVE BASES OF THE TERRITORIAL RIGHTS OF INDIGENOUS PEOPLES AND QUILOMBOLAS

The preliminary section of this study delves into the complex panorama of the territorial rights of indigenous peoples and quilombolas in Brazil. Exploring the panorama of



history and legislation, the core of such rights is examined, from the colonial periods to the present day.

Then, it focuses on the legal-constitutional foundation, essential for understanding the framework that sustains these communities in the contemporary Brazilian democratic context. The historical-normative dive is essential for the apprehension of the challenges and achievements faced by these populations, as well as for the guidance of public policies that promote social justice and the recognition of cultural diversity.

It is important to highlight that issues such as disagreements in land demarcation and regularization, conflicts with economic interests, political and social pressures, in addition to the fragility of the institutions responsible for the protection of these rights, have strained the full guarantee of these rights. In the course of time, transformations in the legal and political scenario are envisioned.

Legislative measures, such as the demarcation of indigenous and quilombola lands, the creation of environmental reserves and adherence to international conventions, preponderate in this process. However, advances are often accompanied by setbacks, such as the paralysis of demarcation processes, the relaxation of environmental regulations, and the repeated violation of the human rights of these communities (Penna, 2023).

## HISTORICAL CONTEXT

The historical path of indigenous peoples and quilombolas in Brazil dates back to the early days of colonization, marked by violence, exploitation and marginalization of these ancestral communities. Since the arrival of the first European colonizers to Brazilian lands, indigenous peoples have been subjected to a systematic process of dispossession of their lands, cultural persecution and genocide.

Since the beginning of the colonization of Brazil, the Indigenous have been treated with tutelary racism, that is, as incapable of managing their lives, as if cultural difference were synonymous with incapacity for the acts of civil life. So the solution found at the time, by the colonizers, was to integrate him into civilization in order to make him assimilate the dominant culture, abandoning his traditions so that he could be considered a Brazilian citizen. Only then could he manage his life, without the assistance of a state agency (Penna, 2023, p. 654).

The imposition of the sesmaria regime and the advance of the agricultural frontier embodied constant threats to the survival and autonomy of these communities, which bravely resisted colonial clashes (Santos Júnior, 2019). With the institution of the slave system, the presence of quilombos became an active resistance to oppression and unbridled exploitation.



The quilombolas represent the descendants of runaway slaves and other ethnic-racial groups that inhabited the quilombos during the time of slavery in the country. They have a unique identity, which underlies their social and cultural structures developed throughout history, which distinguishes them from other social strata (Silva, 2022).

Fugitives from the mills and farms, they established autonomous communities in remote areas, where they maintained their ways of life and cultural traditions, even under constant threat of persecution and violence by the colonial authorities. These groups, often composed of people of diverse ethnic origins, were decisive in the fight against slavery and in the search for freedom and dignity.

Quilombola communities in Brazil are recognized as traditional peoples, whose rights have historically been disregarded, leading them to a precarious condition due to various structural violations. The concept of quilombola communities, the result of a cultural and historical construction, is influenced by various symbolic representations within the social context to which they belong (Costa; Edmundo, 2021).

However, even after the abolition of slavery in 1888, indigenous and quilombola communities continued to go through major setbacks to preserve their lands and cultures. The expansion of capitalism and the intensification of economic exploitation have resulted in new forms of expropriation and marginalization of these communities, which have been forced to resist increasingly intense pressures on their traditional territories (Rapozo *et al.*, 2019).

From the second half of the twentieth century, social and political movements gained strength, claiming the recognition and protection of the territorial rights of indigenous peoples and quilombolas. The promulgation of the Federal Constitution of 1988 emerges as a beacon in this sense, by enshrining the right of these communities to permanent possession and exclusive usufruct of their ancestral lands (Souza; Prioste, 2017).

However, despite legal and constitutional advances, threats to the sovereignty and autonomy of these communities persist, reflecting the continued need for struggle and resistance to guarantee their territorial rights. It is essential to understand this phenomenology and the repercussion that the dynamics interpose, having in the short and medium and long term, in the preservation of the experience and rights of such traditional communities.



## LEGAL-CONSTITUTIONAL FOUNDATION IN THE BRAZILIAN DEMOCRATIC PANORAMA

In the Brazilian legal-constitutional sediment, the patenting of the territorial rights of indigenous peoples and quilombolas, as an imperative of social justice and recognition of cultural diversity, has been raising debates and reflections both in spaces of academic discussion, as well as in the political and social spheres of the country.

The Political Charter promulgated in 1988, after the democratic reopening of the country, was consolidated as a historical milestone by enshrining these rights in an explicit and comprehensive way, reflecting the desires of a heterogeneous and diverse society.

Since its chapter 1, the conceptual bases of citizenship and the republican assumption are established and, throughout its *corpus*, it is an intransigent safeguard of equality and freedom and the overcoming of discrimination, inscribed as fundamental objectives of the Federative Republic of Brazil.

Article 1 - The Brazilian Nation adopts as a form of Government, under the representative regime, the Federative Republic, proclaimed on November 15, 1889, and is constituted, by perpetual and indissoluble union of its former Provinces, in the United States of Brazil. (Brazil, 1988).

In addition to this, Article 4 states that Brazil is a country that governs international relations, by the principles of the prevalence of self-determination of peoples, repudiation of racism and cooperation among peoples for the development of humanity, with special emphasis offered by its sole paragraph to the Latin American peoples, *verbis*:

Article 4 The Federative Republic of Brazil is governed in its international relations by the following principles:

- I - national independence;
- II - prevalence of human rights; III - self-determination of peoples;
- IV - non-intervention;
- V - equality between States; VI – defense of peace;
- VII - peaceful resolution of conflicts;
- VIII - repudiation of terrorism and racism;
- IX - cooperation among peoples for the progress of humanity; X - granting of political asylum.

Sole Paragraph. The Federative Republic of Brazil will seek the economic, political, social and cultural integration of the peoples of Latin America, aiming at the formation of a Latin American community of nations (Brasil, 1988).

In its meaning, Article 5 states: "**Article 5** - All are equal before the law, without distinction of any kind, guaranteeing to Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, in the following terms: [...]". According to this provision, there should be no type of differential treatment, in the



sense of inferiorizing or mitigating the rights of any minority groups in the country (Brasil, 1988).

The doctrine perceives as minorities numerically inferior demographic groups, made up of individuals who stand out for distinctive characteristics in relation to the majority of the country's population. Defining minorities is challenging, as their identity cannot be limited only to ethnic, religious, linguistic, or cultural criteria. It is necessary to consider its legal status in the light of contemporary developments (Séguin, 2002).

It is credible to argue that the concept of minority brings linked to itself, in terms of social and political rights and guarantees, the bias of vulnerability, thus lacking special protection in the face of the dissimilarities that arise in relation to society (Penna, 2023). What is really important is to ensure that these segments have the right to express their uniqueness, and, for this reason, they must be approached in a different way, receiving special protection from the State that integrates them.

Minorities and vulnerable groups are not synonymous expressions, but due to the fact that their members are in the same factual situations of discrimination, intolerance and fragility on the part of a portion of society, the conceptual differentiation becomes irrelevant and the jurisdictional protection that can be offered to these excluded becomes irrelevant (Bastos, 2011, p. 66).

Thus, indigenous peoples and quilombolas in Brazil are confronted with a situation of multidimensional vulnerability, encompassing legal, sociopolitical and economic dimensions. As ethnic minorities, their representativeness is limited, reflected in legislative gaps and restrictions on effective participation in the spheres of power. Furthermore, they cross socioeconomic inequalities, which perpetuate their marginalization and social fragility (Rodrigues, 2023).

Articles 215 and 216 of the Major Law contemplate the protection of Brazilian cultural heritage, covering artistic, cultural and historical manifestations of the different groups that form Brazilian society:

Article 215. The State shall guarantee to all the full exercise of cultural rights and access to the sources of national culture, and shall support and encourage the appreciation and dissemination of cultural manifestations.

Paragraph 1 - The State shall protect the manifestations of popular, indigenous and Afro-Brazilian cultures, and those of other groups participating in the national civilizing process.

Paragraph 2 - The law shall provide for the establishment of commemorative dates of high significance for the different national ethnic segments.

[...]

Article 216. Brazilian cultural heritage is the assets of a material and immaterial nature, taken individually or as a whole, bearers of reference to the identity, action, and memory of the different groups that form Brazilian society, which include:

[...] (Brazil, 1988).



Such provisions enshrine the importance of preserving and valuing the country's cultural legacy, promoting its dissemination and public access, safeguarding the cultural and ethnic diversity of the nation, which includes indigenous and Afro-descendant peoples.

However, preliminary legislations, such as the Civil Code of 1916 and the Statute of the Indian of 1973, had a bias towards indigenist assimilation, in which the civil capacity of the indigenous would only be recognized through their integration into the dominant society, abandoning their culture and tradition and gradually adopting the customs established therein.

Due to its progressive nature, the 1988 Constitution, regarding the rights of indigenous peoples in Brazil, established a new relationship between the State, Brazilian society and these communities. In contrast to laws prior to its enactment, the text began to guarantee respect and protection for the culture of native peoples.

In it, the rights of the indigenous people are addressed in a specific chapter - Title VIII, On Social Order, Chapter VIII, On the Indians - which contains provisions that guarantee respect for social organization, customs, languages, beliefs and traditions. However, one of the most significant aspects is the recognition of the territorial rights of the indigenous peoples, considered as "original rights", that is, prior to the very formation of the Brazilian State, taking into account the history of oppression to which they were subjected during the colonial period (Brasil, 1988).

The right to the territory and its uses and customs was guaranteed to the indigenous peoples: "**Art. 231**. The Indians are recognized for their social organization, customs, languages, beliefs and traditions, and the original rights over the lands they traditionally occupy, and it is up to the Union to demarcate them, protect and ensure respect for all their assets" (Brasil, 1988).

Article 232, on the other hand, dealt with the guarantee to indigenous peoples of the procedural capacity: "**Article 232**: The Indians, their communities and organizations are legitimate parties to file a lawsuit in defense of their rights and interests, with the Public Prosecutor's Office intervening in all acts of the process. (Brazil, 1988).

In the same vein, the descendants of quilombos were guaranteed, by virtue of article 68 of the Act of Transitory Constitutional Provisions, the territory they occupied and a new advent of consideration of the ethnic, cultural and legal plurality of Brazilian society emerges:

"**Article 68**. The remnants of the quilombo communities that are occupying their lands are recognized as the definitive property, and the State must issue them the respective titles" (Brasil, 1988).





[...] the main objective of article 68 of the ADCT is to ensure the possibility of survival and flourishing of groups endowed with their own culture and ethnic identity, linked to a past of resistance to oppression, which, deprived of the territory in which they are settled, would tend to disappear, absorbed by the surrounding society. For the quilombolas, the inhabited land, much more than a patrimonial asset, is an integral element of their own collective identity, as it is vital to keep the members of the group united, living according to their customs and traditions. (Sarmiento, 2008, p.06).

Decree 4887, of November 20, 2003, was enacted with the objective of regulating the aforementioned article, indoctrinating the procedure for identification, recognition, delimitation, demarcation and titling of lands occupied by remnants of quilombo communities (Brasil, 2003).

Its purpose was to establish rules for delimiting, identifying, demarcating and titling the lands occupied by the quilombolas. The National Institute of Agrarian Reform - INCRA is responsible for carrying out these actions, while the Palmares Foundation is in charge of certification (Brasil, 2003).

Therefore, the Decree understands in a functional way the process of land regularization, aiming to materialize the human and fundamental rights of quilombola communities, especially with regard to quilombola property and possession, which fulfills a crystalline function in the realization of other fundamental and human rights, such as the right to life, liberty, housing, work, food, among others.

Based on the international perspective of Human Rights, Ribeiro (2021, p. 123) states, regarding the territorial rights of the populations circumscribed here, that:

It is argued that the internal reconfigurations observed in territorial rights were influenced by the dynamics of production and reevaluation of international normative standards, through the circulation of ideas among international organizations, state agents, activists, intellectuals and movements dedicated to indigenous, ethnic-racial and socio-environmental causes. As an effect of the socialization of norms and theoretical perspectives, there is a formal break between the national legal system and the integrationist paradigm and the creation and re-semanticization of theoretical and political-normative categories, expanding the list of groups holding specific territorial rights.

The discussion brought to light by the excerpt from the study reconstructed above points out that international norms for the protection of socially vulnerable groups result from the institutional recognition that certain issues concerning these populations must be incorporated into the international human rights agenda, such as the norms that establish and safeguard the territorial rights of the groups focused here.

Thus, through the institutionalization of protection standards by international organizations, the need to ensure their effectiveness at the level of States emerges. Thus, as intricate as the mechanisms for conforming and accepting these standards at the





international level, are the institutional and socio-political engenderments aimed at internalizing the rights they aim to protect (Ribeiro, 2021).

It is worth noting the Convention on Biological Diversity, also known as the Convention on Biodiversity, a multilateral international treaty ratified by Brazil through Decree No. 2,519 of March 16, 1998. This convention confers on traditional communities the right to their knowledge, that is, the framework of knowledge related to their culture and traditions, among other aspects (Brasil, 1998).

The universe of this knowledge must be linked to biodiversity, aiming to establish respect, preservation, maintenance, innovations and practices of local and indigenous communities. In addition, the benefits arising from it and its practices must be shared equally among the members of the community (Brasil, 1998).

Despite all this, the setbacks that stand in the way of the full realization of these rights are still numerous. The lack of land demarcation and regularization, conflicts with economic interests, political and social dichotomies, and the fragility of the institutions responsible for protecting these rights are obstacles that demand urgent and effective measures (Santos *et al.*, 2021).

## **POLITICAL AND INSTITUTIONAL CONTEXT OF THE IMPLEMENTATION OF SOCIAL POLICIES**

It is essential to admit that the traditional territories located within the Brazilian territory, belonging to traditional communities, specifically those discussed here, in addition to all the symbolic aspect inherited from their ancestors, constitute the link that connects them with the world, allowing them to live in the present, revere the past and preserve the entire historical structure for future generations (Penna, 2023).

The historical construction of the territorial rights of indigenous peoples and quilombolas in Brazil is marked by an uninterrupted clash in antagonism to the political and social pressures that threaten their existence and autonomy. These communities are going through strenuous impasses aimed at preserving their territories and traditional ways of life.

Political pressures, daily riddled with economic and ideological interests, manifest themselves under diversified guises, from the violent expulsion from their lands to the criminalization of their cultural practices and forms of social organization.

The difficulty of government agencies and institutions in charge of the development of projects, of promoting initiatives to meet the demands and claims of the subjects of this Brazilian national policy is already known. This represents one of the obstacles to the realization of rights, such as conflicts of interest that recurrently contradict the expectations of *terreiro* peoples and traditional communities. This operational difficulty of public institutions and conflicts with economic agents are two



sides of the same coin. Divergences of interests often play against the realization of rights that are guaranteed, but need many struggles to be realized (Lucinda, 2017, p. 229).

The dichotomy highlighted above often impedes the realization of the rights of the communities described, evidencing a persistent conflict that compromises the effectiveness of national policies aimed at protecting and promoting these minorities. According to the scenario constituted, it is imperative to adopt more effective social policies, committed to the promotion of social justice and the recognition of cultural diversity.

Financial contributions and better management of land demarcation and regularization programs, strengthening of the institutions assigned to the safeguarding of these rights, combined with the expansion of dialogue and the participation of these communities at decision-making levels that affect their lives become essential. In fact, the inexcusable commitment of the State and the cooperative throughout society to respect the human rights and dignity of these communities is fundamental.

## IMPACT OF POLITICAL AND SOCIAL PRESSURES ON THE RIGHT TO TERRITORIALITY

Today, political and social pressures continue to pose a constant threat to the territorial rights of indigenous peoples and quilombolas. The intensification of economic exploitation, especially in the agricultural and mining sectors, has resulted in increasingly frequent and violent conflicts over their lands.

In addition to this phenomenology, the rise of discriminatory and racist discourses and practices has contributed to the increase in violence and marginalization of these communities.

Indigenous peoples in Latin America, since colonial times, have suffered from numerous and continuous violations of their rights, including and most intensely the collective right to their ancestral lands. Aggregated without the recognition of their particularities or separated in disregard of the unequal conditions to which they are exposed, indigenous peoples bear the precariousness of weighing difference and equality (Gonçalves; Espinoza, 2020, p. 72).

Given this scenario, it is essential that effective measures be adopted to protect the territorial rights of indigenous peoples and quilombolas. This includes the demarcation and regularization of lands, the strengthening of institutions responsible for the protection of these rights, and the promotion of dialogue and participation of these communities in decisions that affect their lives and in the development of public policies.

It is necessary to actively combat hate speech and racial discrimination, promoting a culture of respect for diversity and human rights, with a view to ensuring the survival and



dignity of these communities and the construction of a diverse, but fair and inclusive societal ideal.

Institutional initiatives play a crucial role in protecting and promoting the territorial rights of indigenous peoples and quilombolas in Brazil. Both in the public and private spheres, several organizations and institutions have developed projects and programs aimed at the preservation and realization of these rights.

Penna (2023, p. 659) points out that:

[...] Public policies cannot be confused with public service provision. The concept of public policies is much broader than that of public service. The concept of public policy is closely related to the fulfillment of fundamental rights, which aim to achieve the objectives of the Democratic Rule of Law.

In the public sphere, the government agencies responsible for the demarcation and regularization of lands stand out, such as the National Indian Foundation (FUNAI) and the Palmares Cultural Foundation (FCP). These institutions play a fundamental role in identifying and protecting the traditional territories of these communities, guaranteeing them legal certainty and territorial autonomy.

Consequently, policies for sustainable development and the strengthening of family farming must be implemented with the objective of promoting the socioeconomic inclusion of these populations and ensuring their subsistence, since "environmental agendas are also added to the common claim for land, since the protection of nature and the realization of the territorial rights of indigenous peoples are intertwined in a visceral way" (GONÇALVES *et al.*, 2020, p.315).

In the private sector, several non-governmental organizations (NGOs), foundations and companies have developed projects and partnerships aimed at promoting the territorial rights of indigenous peoples and quilombolas. These initiatives include programs to support environmental and territorial management, strengthen education and health in communities, and encourage the development of sustainable economic activities, such as ecotourism and agroecological production.

In addition, training and empowerment programs for community leaders have been implemented with the aim of strengthening the participation of these communities in the defense of their rights and interests.

From their mobilization for recognition and access to ethnically configured territories, new political-organizational forms emerge. These collectives try to adapt to the normative issues of Brazilian law, resulting in continuous changes driven by needs, projects, struggles,



and territorial claims, while at the same time processes of judicialization of conflicts persist (Rodrigues, 2023).

Despite the advances provided by these initiatives, there are still significant challenges to be addressed in protecting the territorial rights of indigenous peoples and quilombolas. The lack of financial resources, government bureaucracy and the resistance of economic sectors interested in the predatory exploitation of natural resources represent obstacles to the realization of these rights.

The indigenous or quilombola territorial demarcation implies the accreditation of a political space for the realization of difference and the idealization of a future of ethnic perpetuity, within a plural society, in which equality is not restricted to the inferiorization and pauperization of differences, but which can enable emancipation and for the effective and equitable exercise of differences that, together, they constitute the cultural diversity of a national society (Neves, 2012).

In fact, it is essential that the Brazilian State and civil society continue to invest in policies and projects that guarantee the protection and promotion of the territorial rights of these communities, ensuring them the fundamental right to land and self-determination.

## FINAL CONSIDERATIONS

The territorial constitutional rights of indigenous peoples and quilombolas in Brazil represent an issue of undoubted relevance for the construction of a society based on equity and inclusion. Within the scope of this study, the analysis focused on the current state of these rights, considering their historical evolution, the legal and political vicissitudes over time, and the challenges faced by these communities.

In the course of the research, it was found that, despite the progress made since the promulgation of the 1988 Constitution, the territorial rights of these ethnic groups still face significant obstacles. Although the Brazilian Magna Carta has stated the importance of safeguarding these rights, their realization has been obstructed by a myriad of factors, including conflicts of economic interest, institutional fragility, and political and social pressures.

It is concluded, therefore, that even evolving over time, legislation and public policies aimed at protecting the territorial rights of indigenous peoples and quilombolas lack refinement and strengthening. It is essential that the Brazilian State promotes the demarcation and fair regularization of the lands of these communities, ensuring full respect for their cultural identity and ancestry.



In addition, it is proposed to carry out new research that deepens the understanding of the social, legal and political dynamics involved in the realization of the territorial rights of these ethnic groups. Research on the means of overcoming obstacles and ensuring the full realization of these rights is essential to foster a more just, inclusive and respectful society towards Brazil's cultural and ethnic diversity.

Therefore, in view of the panorama outlined here and the gaps identified, the need for public policies and affirmative measures that reinforce and safeguard the territorial constitutional rights of the peoples in question is reaffirmed, with a view to putting into effect the principles of effective equity.



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