



Chapter 212

Regularization of lands of the remaining quilombos communities and the memory of traditions

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ABSTRACT

Symbolically represented, the land is considered a materialization of the tradition and culture of the quilombola communities. From this perspective, it is evident the need to analyze the legal aspects that comprise its regularization, since there is legislation that recognizes the right to definitive ownership of the territories to these populations. In this context, the relevance of the theme becomes understandable when it comes to the ineffectiveness of the rights of the

remaining populations. The objective is to reflect on the social function that permeates the territories known as former quilombos, exteriorized in the preservation of memory; and to analyze how the social memory of these groups constitutes itself as an arsenal in the struggle for positive rights that lack practical effectiveness. This is a scientific production of a qualitative nature, elaborated from the inductive method and critical reflective investigation, with a corpus formed by legislation, legal and agricultural doctrine, and sociological contributions. Thus, the research points to the need to think about the land from a perspective superimposed on heritage issues, focusing on the identity of the group in its ancestry, formed by a set of symbologies incorporated into the physical space. Finally, it is considered that the preservation of the memory of tradition will only become possible when the fundamental rights and guarantees of this population group are fully achieved.

Keywords: Quilombola, Social Memory, Civil Rights, Property, Social Function.

1 INTRODUCTION

All memory is constituted in a place, “[...] there is no collective memory that does not develop in a spatial framework. Well, space is a reality that lasts” (HALBWACHS, 1990, p. 143). Under this observation, as well as for understanding the relevance of studying the memory of quilombola groups from the spatial framework in which they constitute their experiences, emerged the idealization of this work on the regularization of lands of the remaining communities of quilombos as a way of guaranteeing a space ingrained in memory and conquered over time.

This historical time, marked by oppression, is taken as a social framework endowed with an ancestry, which represents the group in its traditions and consolidates the social function of the land through social memory, the object of research reflection. In this sense, scientific production brings up the theorization of memory proposed by the sociologist Maurice Halbwachs (1990, 2004) in the works: *The*

collective memory and *Los marcos sociales de la memoria*, to confront it from the notions presented by the legal-legal doctrine. agrarian given the existing relationship between the correct economic use of land and its fair distribution, the founding bond of the social function of property, provided for in article 5, items XXII and XXIII of the Constitution of the Federative Republic of Brazil of 1988 (CRFB/1988).

Thinking about the theme of memory in a spatial perspective focused on the social function of the land as a condition for the existence of a group justifies the writing of the present work, whose motivation had its precursory impulse in the personal challenge of the authors in approaching the theme of memory in a perspective not yet experienced. In addition, by inferring the representativeness of the theme when portraying the situation that permeates the remaining communities of quilombos in Brazil. It should be noted that this reflection is not limited to prospecting the regularization of quilombola lands based on what is already discussed in legislative and social terms, as other writings on the subject do.

The need for these studies is admitted, but the discussion proposed in this study aims to encompass an analysis that contemplates deepening the theme from the perspective of social memory. Therefore, as a reference for pondering memory, the positions of sociologist Maurice Halbwachs (1990, 2004) will be used regarding collective memory and its relationship with space. In the legal area, the contributions of scholars in the field of law, legislation aimed at the exercise of property and those that cover the subject in the light of quilombola rights.

Thus, the objective is to reflect on the social function that permeates the territories known as former quilombos, exteriorized in the preservation of memory; and to analyze how the social memory of these groups is constituted as an arsenal in the fight for positive rights that lack practical effectiveness.

2 MATERIALS AND METHODS

The present study was elaborated from the inductive method and critical reflective investigation, with a corpus formed by legislation, legal-agrarian doctrine and sociological contributions. Regarding the procedures carried out, bibliographical research of a qualitative nature was used as a starting point, with analysis of the theoretical material to, through the emergence of the guiding questioning of the study theme, delimit the construction of the reflection study.

The research was conducted based on the inductive method. According to Lakatos and Marconi (2003, p. 86),

Indução é um processo mental por intermédio do qual, partindo de dados particulares, suficientemente constatados, infere-se uma verdade geral ou universal, não contida nas partes examinadas. Portanto, o objetivo dos argumentos indutivos é levar a conclusões cujo conteúdo é muito mais amplo do que o das premissas nas quais se basearam.

So, the research will address the territorial issue that permeates the quilombola communities under the legal aspects of the consolidation of property rights, and then, think about the memory of the communities in the face of the relationship between these groups and the space in which they constitute

their experiences of life. This time, the reflection leading to the writing is traced during the study, giving rise to the reflection about the social function of the land as a space for preserving the memory of these people.

3 RESULTS AND DISCUSSION

The legal nature of the allocation of quilombola lands was instituted in the normative set of the Temporary Constitutional Provisions Act (ADCT), which announces: “Art. 68. Definitive property is recognized for the remnants of quilombo communities that are occupying their lands, and the State must issue them the respective titles” (BRASIL, 1988). The rule of full effectiveness and immediate applicability announces the recognition of the property right foreseen in the list of fundamental rights and guarantees, engendering the theme under analysis.

The procedure consistent with the identification, recognition, delimitation, demarcation and titling of quilombola lands was regulated by Decree No. 4,887, dated November 20, 2003. This legislation provides in its art. 2nd, according to self-attribution criteria, the characterization of the remnants of quilombo communities, those “[...] with their historical trajectory, endowed with specific territorial relations, with the presumption of black ancestry related to resistance to the historical oppression suffered” (BRASIL, 2003). In the same sense, Decree nº 6.040, of February 7, 2007, in art. 3rd, I

I - Traditional Peoples and Communities: culturally differentiated groups that recognize themselves as such, that have their forms of social organization, that 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; (BRASIL, 2007)

The guiding concepts are comprehensive and deserve to be highlighted since they give the community the role of self-definition, as well as highlight the relationship between the group and the territory used. In addition, the Magna Carta consolidated as Brazilian cultural heritage, in art. 216, the goods “[...] carriers of reference to the identity, action, memory of the different groups that form Brazilian society” (BRASIL, 1988).

When the importance of memory becomes evident as an assumption inherent in the human condition and which is present in all activities carried out by man, the power of the environment for the formation and preservation of groups in certain places is inferred. Thus, the space denotes its strength and reveals its character as a precursor to the construction of a collective memory consolidated by tradition. Decree nº 6.040/2007, art. 3rd, II:

II - Traditional Territories: the spaces necessary for the cultural, social, and economic reproduction of traditional peoples and communities, whether used permanently or temporarily, observing, about indigenous peoples and quilombolas, respectively, the provisions of arts. 231 of the Constitution and 68 of the Transitory Constitutional Provisions Act and other regulations; (BRASIL, 2007)

Mostly constituted in rural areas, quilombola communities in Brazil are “[...] used to guarantee their physical, social, economic and cultural reproduction” (BRASIL, 2003), as pointed out in art. 2, paragraph 2 of Decree No. 4.887/2003. In legal terms, the use of space permeates aspects strongly focused on general characteristics of the human condition, such as those mentioned in the legal provision. However, what is observed in everyday experiences is the group's adherence to space based on self-recognition, in this context, the land is seen as a space represented in its formation process.

In other words, “When a group is inserted in a part of the space, it transforms it in its image, at the same time that it subjects and adapts to the material things that resist it” (HALBWACHS, 1990, p. 133). According to the theorist, the place represents the group to the same extent that it leaves its mark on the territory. Going further, it is important to bring up an example: imagine that a visitor travels to a certain community and during his visit he notices typical traits of the culture of that people, there will certainly be aspects that will be glimpsed by the visitor, on the other hand, there will be minutiae that only the community members will understand, because they go beyond external generic knowledge, as they are unique to them, even differentiating them from other communities, even if they contemplate the same tradition.

It can be said, anchored in Halbwachs (1990, p. 136) that “Local habits resist the forces that tend to transform them, and this resistance allows us to better understand the extent to which, in such groups, collective memory has its point support on space imaging”. The geographic space must, therefore, be reasoned and opposed from a limiting measure of interpretation, in which memory constitutes a fundamental arsenal in the face of the relationship between a group and its contribution space. This limitation finds a border and is observed when extending the reflection beyond a physical space, considering that the existence of the group does not occur exclusively in a certain place, it is constituted and is essentially linked to the representative ancestry of a collectivity.

Using the public object of the present study, it is possible to notice that the recognition of the right to land was consolidated due to a historical time and due to a memory space. Therefore, the continuity of living in a certain place, endowed with an inherent ancestry - one of the founding elements of the construction of memories, including traditional ones -, involves the representative symbolic value of the group, which is not necessarily physical, but which materializes in this set of symbologies, values, among other social representations.

In addition, considering the usual location of the remaining quilombo communities in rural areas, there is a double degree of land valuation, since “in the countryside, all negotiations and all agreements are related to land” (HALBWACHS, 1990, p. 141). In this way, the relationship between man and the space in which he lives and composes his history projects an interdependence that reflects an inseparability of its own, in which the community, formed by the set of family constitutions, has great representation.

Hence, it is natural that the family and the land are not separated from each other in common thought. On the other hand, since the peasant group is rooted in the land, the limited picture of the place and the village where it remains is recorded early in the minds of its members, with all its particularities, its divisions, the relative position of its houses and the coupling of their plots. (HALBWACHS, 2004, p. 189)

This space marks the daily life of its inhabitants, the roles they occupy, the food that comes from the cultivation of crops or is used for sale as a source of livelihood, as well as the places of leisure and culture, which contemplate their achievements and challenges faced. This social organization changes according to the traditions of each group and the space occupied by it, however, among those who share the same idealizations, a structure rooted in the past is maintained, especially in quilombola communities whose number of members has been little marked. by the evasion of its inhabitants, and even more, when they consolidate themselves in associations, aiming at the rights that guarantee them.

Thus, “just remain present in society and those memories that society, working on its current frameworks, can rebuild” (HALBWACHS, 2004, p. 344). In this context, the land, permeated by a set of symbols, is understood as a basic representation of the existence of quilombola communities, given that from the earliest childhood, passing through adulthood, and until the reach of old age, this space is accompanied by a social representation of conquered rights, which, unfortunately, still need to be recovered.

Therefore, the territory as a social framework pervaded by a present past is endowed with such relevance for the remaining communities of quilombos. This time, its intersection with the collective memory for this study, comprises the perspective of meeting the social function of property because the land is a space that makes possible the existence and preservation of the memory of tradition, and in this sense, it emphasizes if the need for effective titling.

In the civilized doctrine there is extensive space for discussion regarding the concept of property, some more restricted, others thought extensively. For Tartuce (2019, p. 191) “property is the right that someone has about a specific asset. It is a fundamental right, [...] but one that must always serve a social function, in favor of the entire community”. The concept presented by the jurist includes the legislative provision of the Federal Constitution, Civil Code, and Land Statute.

Specifically, the Brazilian legal system in art. 5, items XXII and XXIII of CRFB/1988 provides “XXII - the property right is guaranteed; XXIII - the property will fulfill its social function;” (BRASIL, 1988). It also points out the Civil Code of 2002 (CC/2002), art. 1,228, §1 “The property right must be exercised in line with its economic and social purposes [...]” (BRASIL, 2002). The legal provisions complement each other and bring to light the need to meet the social function of the land, which will have repercussions on the regulation process of quilombola territories.

In short, it is inferred that the social function permeates the construct of the conceptualization of property. In the meantime, four attributes: use, enjoy, dispose, and recover, emerge from the property right, as stipulated in art. 1.228, caput of CC/2002 “The owner has the faculty to use, enjoy and dispose of the thing, and the right to recover it from the power of whoever unjustly owns or holds it” (BRASIL, 2002).

These attributes encompass the full exercise of ownership, guaranteeing legislative protection to the owner of the immovable property, which is why it is important to portray, even if briefly, each of these.

The first faculty described in the writing of the text is to use, which is limited by law so that it is not used indiscriminately. The second is prenoted by the verb to enjoy, which can be understood as the fruition of the thing, which is given by the possibility of acquiring income through the direct exercise of ownership. The third is to dispose of the good, whether given the feasibility of disposing of the thing by the individual when alive or due to his death. Finally, the fourth faculty consists of the right to recover the thing from the one who unjustly owns or detains it, which aims to protect the inviolability of the right.

These attributes or faculties constitute the consolidation of the property right, however, what will consubstantiate the same will be the fulfillment of the social function towards the collectivity. In this sense, the Land Statute, dated 1964, announces in its art. 12 “Private ownership of land intrinsically has a social function and its use is conditioned to the collective well-being provided for in the Federal Constitution and characterized in this Law” (BRASIL, 1964). It is envisioned that the legal diploma is more of a legal framework that affirms this important principle, from this a question comes to the fore: how to fulfill the social function of the property?

To answer this question, it is necessary to go back to the Civil Code (2002), whose wording lists several criteria aimed at meeting the principle under consideration and adds art. 1,228, paragraph 1:

The property right must be exercised in line with its economic and social purposes and in such a way that the flora, fauna, natural beauties, ecological balance, and historical heritage and art, as well as avoiding air and water pollution. (BRASIL, 2002)

Between the correct economic use of land and its fair distribution, there are a series of specifications provided for by law so that the social function of property is met. As the legal diploma provides, the environment, historical and artistic heritage must be reasoned in complementarity. How this intersection can be done is sometimes subjective, however, there are some criteria for it to be fully performed, as stipulated in art. 2, §1 of the Land Statute (1964):

Art. 2º Everyone has assured the opportunity of access to land ownership, conditioned by their social function, as provided for in this Law. §1 The ownership of land fully performs its social function when, simultaneously: a) it favors the well-being of the owners and workers who work on it, as well as their families; b) maintains satisfactory levels of productivity; c) ensures the conservation of natural resources; d) observes the legal dispositions that regulate the fair labor relations between those who own and cultivate it. (BRASIL, 1964)

It so happens that at no time do the various legal diplomas, as well as the legal-agrarian doctrine, mention memory as a prerequisite for meeting this social function, despite its important contribution, as envisioned by the provision of art. 216 of the Magna Carta by inserting memory as a Brazilian cultural heritage. Anchored in pictures, the collective memory comprises a diversity of guiding aspects the evocation of memory, and among these, there is the spatial picture, the object of analysis of the present study.

For quilombola communities, space, thought beyond physical terms, is endowed with intrinsic relevance. It is seen that their memories are constituted and preserved in the group's thinking and in the spaces occupied by its members, in which they form their life stories, making it possible to recall them at any moment. Thus, the connection between the land and the group is endowed with such strength that it is possible to recognize that society by the space it occupies, and the opposite is also evident.

In this way, the struggle arising from an oppressive historical process strengthens and grounds the acquisition of property rights by the remaining communities over the land “from the moment the society of which they are members admits the existence of a permanent relationship between them and this land or this thing, or that this relationship is as immutable as the thing itself” (HALBWACHS, 1990, p. 145). In the meantime, the question is: what is the contribution of social memory in this process?

Based on the existing relationship between space and the group, legal or permanent spaces were consolidated, as pointed out by Halbwachs (1990), which allows the location of the memory of rights to the detriment of space. Therefore, it is said that “Any principle that we invoke to support the right of property, it only acquires some value if the collective memory intervenes to guarantee its application” (HALBWACHS, 1990, p. 145). It is thus evident that the property right presented by the sociologist is a symbolically constructed right, which reaches materiality over time so that its materialization is observed in the geographic space by the realization of the right.

Therefore, as this symbology materializes, the collective memory, representative of the communities, becomes a reflection of the Law. It is immediately observed that, throughout history, there has been an intervention regarding the consolidation of property rights for quilombola communities, which is present in the legal diplomas regulating these territories. On the other hand, despite the guaranteed right, there is no practical effectiveness regarding the title and regularization of these.

In this context, the theory presented by the sociologist assumes fundamental importance when thinking, by way of analysis, the principle of the social function of property to the detriment of social memory, whose use would encourage the regularization of quilombola lands that lack identification, recognition, delimitation, demarcation and titling, necessary procedures for the realization of this positive right.

It is corroborated in the sense that the institution of memory as a criterion aimed at the scope of the principle would contribute to these processes, by externalizing the set of symbologies of space to communities. In the intersection that stipulates meeting the social function of property in economic and social aspects, land, thought beyond heritage issues, is taken from a perspective focused on the identity of the group, endowed with a transcendence of the quilombola culture, whose value it cannot be quantified in numerical terms, but in social order values that serve the community.

In this tone, the extension of the principle finds palpable applicability, making it possible to reason the memory of tradition in the relationship between the group and the space it occupies. This space is represented in the formation process of its inhabitants, even though some of them have not even lived, or

in fact, experienced this historical time of struggles. However, as they come to understand the space in its entirety, they realize how much this represents rights denied to their ancestors, and which now, despite having been acquired, lack effectiveness.

In legal terms, this “social function” is mediated by memory as an important arsenal for an analysis that encompasses a perspective focused on meeting the well-being of the community and promoting social justice. Thus, as one of the links that contemplate the social function of property, collective memory is seen as an important subsidy for the regularization of these territories, whose use would encourage the realization of the right to property through its proper title.

In addition, it is necessary to make some considerations regarding the titling of these territories, considering that the property right is due to the remaining community of quilombos and not to a specific individual. As Urquiza and Santos (2017) point out, “before the opening of the process at INCRA, there must be a claim by the community for its identity and consequent recognition (certification) by the Palmares Cultural Foundation”, therefore, the process of self-designation must precede land regularization.

Only after the recognition of the community as a remnant of quilombos (quilombolas), the process of land regularization by the National Institute of Colonization and Agrarian Reform (INCRA) begins. This process will comprise a series of steps until it reaches the titling phase and grants ownership of the traditional territory to the remaining community.

According to data from the Secretariat for Policies for the Promotion of Racial Equality (SEPPIR), presented in July 2012, there were 1,948 (one thousand nine hundred and forty-eight) officially recognized communities in Brazil, among which, 1,834 (one thousand eight hundred and thirty-four) were certified by the Palmares Cultural Foundation (FCP). In addition to 1,167 (one thousand, one hundred and sixty-seven) open processes for land titling at INCRA and 193 (one hundred and ninety-three) titled communities with a total area of 988.6 (nine hundred and eighty-eight thousand and six) hectares.

The appreciation of traditional peoples reflects on the growth of the quilombola population and is observed in the data. In August 2022, an update was registered on the Certificates Issued to the Quilombos Remaining Communities (CRQs), which increased to the number of 2,860 (two thousand eight hundred and sixty) certified communities (FCP, 2022). Therefore, there is a jump of 1,026 (one thousand and twenty-six) new certificates in the ten years.

Another milestone worth mentioning is the 2022 Demographic Census, carried out by the Brazilian Institute of Geography and Statistics (IBGE), which brought for the first time, in 150 (one hundred and fifty) years, a count of the quilombola public as an ethnic population group. The inclusion of quilombola demography reiterates the rights conquered by traditional peoples, who had visits to their territories to carry out the 2022 Census which, in the period from August 1 to 29, 2022 - the first balance of the 2022 Census - presented a number corresponding to 386,750 (three hundred and eighty-six thousand seven hundred and fifty) quilombola people.

It is important to point out that the implementation of the 2022 Census in Quilombola territories occurred at the request of the National Coordination for Articulation of Rural Black Quilombola Communities (CONAQ) together with the Brazilian State. This process resulted from mediation between the IBGE and the United Nations Population Fund (UNFPA) to comply with the criteria of Prior, Free, and Informed Consultation provided for by Convention 169 of the International Labor Organization (ILO) (CRISÓSTOMO, 2022).

To realize the right to land, the Brasil Quilombola Program (PBQ) was launched, with actions aimed at the remaining communities. To meet the demand generated by the Program, the Quilombola Social Agenda was instituted, which provides for Axis 1: Access to Land; Axis 2: Infrastructure and Quality of Life; Axis 3: Productive Inclusion and Local Development; and Axis 4: Rights and Citizenship. About Access to Land, Axis 1 stipulates actions of:

execution and follow-up of the necessary procedures for the land tenure regularization of the quilombo areas, which constitute the collective title of possession of traditionally occupied lands. The process begins with the certification of the communities and ends with the titling process, which is the basis for implementing development alternatives for the communities, in addition to guaranteeing their physical, social, and cultural reproduction. (PBQ, 2021)

Responsible for the overall coordination of the PBQ, SEPPIR monitors these processes. Furthermore,

The notion of collective land, as the lands of quilombola communities are thought of, contradicts the model based on private property as the only form of access and use of land, which excludes other uses and relationships with the territory, as occurs among traditional peoples and communities. (SEPPIR, 2012)

In this way, the question surrounding the land regularization of the remaining quilombo communities is exteriorized in the unveiling of the memory of traditions and materializes in the space of their experiences. It should be noted that, in the current scenario, the urgency of advances in the area of public policies becomes essential to reach the constitutional provision of rights and guarantees for the remaining communities.

4 CONCLUSION

Given the reflections outlined, the present study leads to the perception that the memory of events remains in the groups and their evocation is a capacity to be thought of in terms of a much more symbolic than physical space, given its ancestral character and social relevance. Of course, it is necessary to understand that for the remaining communities of quilombos, these spaces of struggle are a representation of their formation process, which also materializes in the physical sense, therefore, the need to be thought, physical and symbolic space, in terms of complementarity.

By way of elucidation, it denotes among those who do not live in quilombos or who have distanced themselves from the group, if they become part of a community or return to these places, that they would

incorporate a memory received by their ancestors, which makes it possible to recognize the group through the set of symbologies arising from a training process. So, the intersection between the land and the individual occurs through collectivity and emerges through the memories of experiences experienced and/or passed through over generations.

In summary, due to its eccentric and inseparable character, in each use, the memory brings with it unique characteristics, sometimes focused on the individuality of the members, sometimes the collectiveness of the group. In between, it appears that the social function of property is achieved when thought beyond legal and economic terms, at the moment when space, symbolically represented, constitutes the need for materialization. At that moment, through the legislative framework and State action, it becomes possible to consolidate the right to land through the regularization of the territory, which takes place by determining its extension and form of use.

Therefore, the conservation of quilombola memory, with respect for the tradition and culture of the peoples that make up the national heritage, could be corroborated in terms of the regularization of territories. It should be noted that reasoning about the preservation of symbolic spaces is essential so that situations such as those faced in the past do not recur. On the other hand, who could say whether the ineffectiveness of a consolidated right is not a contemporary way of still doing it? Deepening the questioning regarding the symbology of space is, in addition to a reflection on memory, a consideration that extends to fundamental rights and guarantees.

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