

LAW AND PUBLIC POLICIES: THE COLLECTIVE CONSTRUCTION PROCESS OF PROTOCOLS FOR PRIOR, FREE AND INFORMED CONSULTATION IN TRADITIONAL COMMUNITIES IN/OF MARANHÃO

DIREITO E POLÍTICAS PÚBLICAS: O PROCESSO DE CONSTRUÇÃO COLETIVA DE PROTOCOLOS DE CONSULTA PRÉVIA, LIVRE E INFORMADA EM COMUNIDADES TRADICIONAIS NO/DO MARANHÃO

DERECHO Y POLÍTICAS PÚBLICAS: EL PROCESO DE CONSTRUCCIÓN COLECTIVA DE PROTOCOLOS DE CONSULTA PREVIA, LIBRE E INFORMADA EN COMUNIDADES TRADICIONALES DE MARANHÃO



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ABSTRACT

This research analyzes the experience of producing and executing the Law and Public Policy Workshop held in 2024 in the Lagoa Amarela community, located in the municipality of Chapadinha, in the state of Maranhão. This workshop was linked to the process of constructing Protocols for Prior, Free and Informed Consultation to strengthen rights and contribute to combating threats to the ways of life of traditional communities in Maranhão. The research used a methodological approach inspired by action research. It concludes by reaffirming the relevance of the action, given its potential for collective reflection on identity, challenges, and rights in a community lacking access to public services and experiencing an advanced stage of destruction of its conditions for economic and social reproduction.

Keywords: Law. Public Policies. Traditional Communities.

RESUMO

Essa pesquisa analisa a experiência de produção e execução da Oficina de Direito e Políticas Públicas realizada em 2024 na comunidade de Lagoa Amarela, localizada no município de Chapadinha, no estado do Maranhão. Tal oficina estava vinculada ao processo de construção de Protocolos de Consulta Prévia, Livre e Informada para fortalecer direitos e contribuir no combate às ameaças aos modos de vida de comunidades tradicionais maranhenses. A pesquisa fez uso de uma abordagem metodológica inspirada na pesquisa-

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ação. Conclui reafirmando a relevância da ação, tendo em vista o seu potencial para reflexão coletiva sobre a identidade, desafios e direitos em uma comunidade carente de acesso a serviços públicos e que vivencia um estágio avançado de destruição das suas condições de reprodução econômica e social.

Palavras-chave: Direito. Políticas Públicas. Comunidades Tradicionais.

RESUMEN

Esta investigación analiza la experiencia de producción y ejecución del Taller de Derecho y Políticas Públicas, realizado en 2024 en la comunidad de Lagoa Amarela, ubicada en el municipio de Chapadinha, estado de Maranhão. Este taller se vinculó al proceso de elaboración de Protocolos de Consulta Previa, Libre e Informada para fortalecer los derechos y contribuir a combatir las amenazas a las formas de vida de las comunidades tradicionales de Maranhão. La investigación utilizó un enfoque metodológico inspirado en la investigación-acción. Concluye reafirmando la relevancia de la acción, dado su potencial para la reflexión colectiva sobre la identidad, los desafíos y los derechos en una comunidad sin acceso a servicios públicos y que experimenta una etapa avanzada de destrucción de sus condiciones de reproducción económica y social.

Palabras clave: Derecho. Políticas Públicas. Comunidades Tradicionales.

1 INTRODUCTION

The objective of this work was to analyze the experience of participatory production and execution of Law and Public Policy Workshops in 2024 in quilombola and traditional communities in Maranhão. At its starting point, the action was part of the Project "Collective Construction of Consultation Protocols and Territorial Protection Plans in Quilombola and Traditional Communities in Situations of Threat in the State of Maranhão", which originates from a partnership between the Ministry of Human Rights and Citizenship - MDHC, the Ministry of Agrarian Development and Family Agriculture - MDA and the Federal University of Maranhão - UFMA, with the main objective of supporting the development of Prior, Free and Informed Consultation Protocols to strengthen rights and contribute to combating threats to the ways of life of traditional communities in the State of Maranhão.

Encompassing a multidisciplinary technical team with different levels of research experience, this cooperation carried out actions in communities belonging to seven municipalities in the State of Maranhão during the year 2024, namely: 1. Quilombo Boa Vista (Rosário); 2. Quilombo Munim-Mirim (Axixá); 3. Camaputua Quilombola Territory (Cajari); 4. Quilombo Lagoa Amarela (Chapadinha); 5. Quilombo São Benedito dos Colocados (Codó); 6. Jacarezinho Quilombola Territory (São João do Sóter); 7. Pericumã Quilombola Territory (Peri-Mirim). In each of them, in addition to a meeting to present the project and community mobilization in the initial stage, 04 (four) mandatory workshops and 01 (one) assembly were held to approve the basic text of the protocol.

In this text, we deal with the process of construction and execution of the Law and Public Policies Workshop, one of the four workshops mentioned above, specifically focusing on its realization in 2024 in the Community of Lagoa Amarela, located in the municipality of Chapadinha - MA. This is a community basically composed of rural workers, from family farming, and who carry out various productive activities, such as "farm work, raising pigs, chickens, fishing, hunting, making flour, etc.". The lands of Lagoa Amarela are divided into about 46 units and the effective number of people living in the community is around 25 families, with about 50 children.

In view of the above, this text is divided into three parts. In the first, we explore part of the process of formation of Lagoa Amarela, highlighting some of the main challenges faced by its residents today. In the second, we reflected on the process of building and carrying out the workshop, emphasizing the strategies and themes selected. Finally, we draw some conclusions about the consultation process and the importance of carrying out this action for a community with no history of mobilization.

2 THE PROCESS OF FORMATION OF LAGOA AMARELA: SUBSIDIES FOR THE RECONSTITUTION OF A LOCAL HISTORY

Lagoa Amarela is a community in the rural area of the municipality of Chapadinha - MA, about 20km from the administrative center, which defines itself as a remnant of quilombos and was certified by the Palmares Foundation in 2024. The locality is recognized as the locus of the largest and most recognized Quilombo in the History of Balaiada in Maranhão (1838-1841) and for being associated with the figure of Cosme Bento das Chagas, the Negro Cosme, who is a unique piece in the imagination of black resistance in Maranhão and in Brazil.

Currently, the situation of Lagoa Amarela is quite representative in terms of the aggravation of socio-environmental problems caused by the expansion of soybean production in Maranhão and its effects on traditional communities. As is known, initially concentrated in the municipality of Balsas, soybean production moved, from the 2000s onwards, to the Eastern Maranhão mesoregion, where the micro-region and municipality of Chapadinha are located (Almeida; Júnior, 2019). Located in a zone bordering Piauí, the area is strongly marked by the intrusion of business agents and the so-called Gauchos (Gaspar, 2013) to which a series of conflicts and environmental threats are linked, the destructuring of territories, deforestation, expropriation and dismantling of the conditions of community permanence and reproduction.

From a historiographical perspective, based on the memorialistic reports collected and on various other materials produced in the workshops, we can sketch a characterization of the formation of the Community of Lagoa Amarela divided into three major interdependent moments. The first corresponds to the more distant past of colonization of the area in question and to the very dynamics and particularity of the formation of the peasantry in eastern Maranhão, marked by occupation by peasants of different origins, who joined and eventually mixed with detribalized indigenous people, forros and their descendants, aquilombados of African slaves (Assunção, 2015; Almeida, 2017). As seen in the works of Mathias Assunção (2008), this occupation could be traced back to the first quarter of the nineteenth century, if not earlier, being marked by the development of complex systems of common use, also demarcating various forms of access to land.

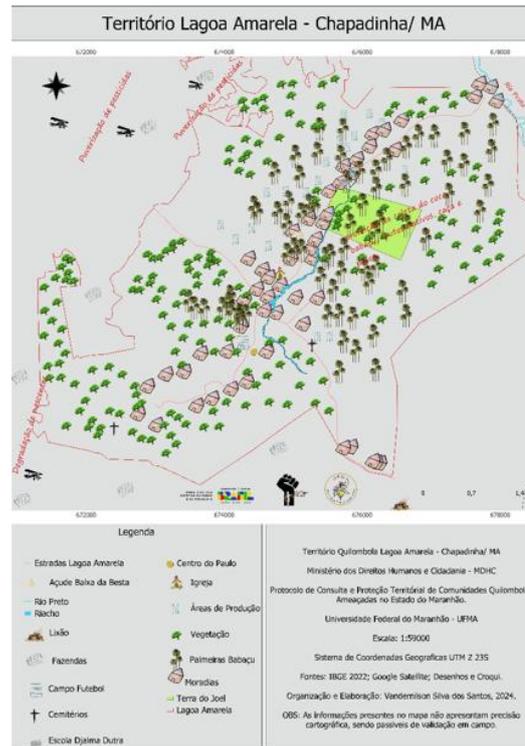
In fact, it is relatively well known and documented that the significant presence of northeastern migrants, together with caboclos, forros and their descendants, are important elements for understanding both the insurrection of the balaios in the nineteenth century, and the very complexity of the process of formation of the peasantry in this region (Assunção, 2015). For what interests us here more directly, it is important to emphasize that this is a

heterogeneous peasantry that received continuous waves of northeastern migrants who joined and eventually mixed, while they conform unique modalities of access and occupation of the lands. With regard to the memorialistic reconstruction of our informants, their ancestors seem to have settled in the vicinity of the plantations, being incorporated as aggregates and/or tenants. This corresponds to the second moment of our reconstitution.

In fact, it is the existence of this social structure that goes back to the most distant and detailed memories of the oldest residents of Lagoa Amarela. Their reminiscences are directly linked to a structure of relations between their parents - peasants, aggregates/indentured - and those considered owners who, although they were marked by exploitation, nevertheless allowed management and access to land in a relatively free way. Thus, in the reports of the oldest residents, although the area was already considered privatized and the use of the resources involved the mediation of landowners, who required payment of rent or provision of services, agroextractivist production was not unfeasible as it happens today. And in fact, the configuration of this structure of social relations is very reminiscent of the description made in fieldwork in the 1990s by Maristela de Paula Andrade, who identified at least seven ecosystems of relations between peasants and landowners in the region in question:

(...) small landowners who hold the title to the land, generally older men; the heirs of land of inheritance without division; the relatives of these heirs who, although they do not have the right to the land, continue to live and cultivate on the lands of the relatives, within the limits of the villages; the relatives of these heirs who only reside within the limits of these villages, but pay income to cultivate on other lands, from landowners or other small proprietors; heirs of inheritance land who pay rent to cultivate land on other properties when their land is exhausted (...); the inhabitants of terra de preto, who enjoy them in common; the heirs, or small landowners who occupy the lands of the plateau bordering the properties, also becoming squatters (Andrade, 1995a, p. 34)

Figure 1



Sources: IBGE 2022; Google Satellite; Drawings and Sketch. Organization and Elaboration: Vandemilson Silva dos Santos, 2024.

Finally, the third period is characterized by the intensification of changes in the land structure, driven by the massive arrival of individuals and/or businessmen in the region, mainly soybeans, and which alters the pattern of forces between peasants and traditional landowners. Encouraged by the vicissitudes of inheritance transmissions in the families of the so-called owners, part of Lagoa Amarela then began to be marketed to individuals and/or businessmen who tried to implement monoculture tree plantations in the region, especially soybeans, affecting the reproductive conditions of its inhabitants. Once surrounded by the ongoing land concentration, these tenants, descendants of the old aggregates, became the weakest link in the chain of concentration in question, leaving them only the alternative of complying with the ultimatum of the landowners who "granted" them a hectare of land and the opportunity to buy as many and as many other hectares as their economic resources made possible, before they were sold to third parties. These acquisitions thus demarcate the last and most dramatic period of changes in the local land structure and in the history of the community itself, when the lands of Lagoa Amarela passed almost entirely to private use and the individual conquest of a land to "call their own" occurs in parallel with the almost unfeasibility of the permanence and (re)production of the existence of these families.

Here, then, is a significant part of the problems reported regarding the use of common areas and natural resources and in relation to the very conditions of reproduction of the peasant economy in question. Family farmers born and raised in an environment of natural resource management on free and/or private lands today face difficulties in making a swidden line, carrying out extractive collection and even fishing, since access to lakes and streams has been prevented by the "owners". To make matters worse, as can be seen in the cartographic representation above, the expansion of soybean production is a real siege of the community, which creates obstacles for animal husbandry, for the cultivation of food and has even affected lakes and streams, making them unfeasible for bathing and fishing, since they course with the emergence of skin irritation problems. It is difficult to think of such a complex and accelerated picture of the complete destruction of the conditions of peasant reproduction as the one at stake.

3 THE WORKSHOP IN ACTION: PROBLEMATIZING LAW AND PUBLIC POLICIES IN LAGOA AMARELA

The Public Rights and Policies workshop was conceived as one of the cornerstones of the process of collective reflection on the specific rights of communities, based on the sharing of legal knowledge and exchange of local knowledge, focusing on the following aspects: the right to property title, the right to self-determination, the right to prior, free and informed consultation and other constitutional rights of quilombolas. Public Policies aimed at quilombola communities were another topic discussed in the workshop, whose approach was oriented to the debate of themes that the communities themselves conceived as relevant for decision-making in accordance with their priorities. It is important to note, in fact, that in addition to the execution of the aforementioned workshop, a booklet was produced as reference material for didactic and informative support for the participants of the action. The guiding questions of the Workshop were the following: What is the origin of our rights? What are the rights of quilombolas? What are the public policies for quilombola communities? What is the role of the 1988 constitution?

Seen together, the Workshop was planned for three interdependent moments. In the first, the exposition on concepts and regulations concerning law, public policies and national and international legislation. At this time, the workshop participants highlighted quilombola rights in the Federal Constitution of 1988, presented Decree No. 4,887/2003, which regulates the procedure for identification, recognition, delimitation, demarcation, and titling of lands occupied by quilombola communities, and Decree No. 11,447/2023, which instituted the Aquilomba Brasil Program. In the second moment, public policies were explored, pointing to

a new legal diploma: Decree No. 11,786/2023, which instituted the National Policy for Quilombola Territorial and Environmental Management - PNGTAQ, as well as Convention No. 169 of the International Labor Organization - ILO, specifically on the right to self-determination, in the rules on Prior, Free and Informed Consultation - CPLI, and in the Consultation and Consent Protocols. Finally, some examples of protocols recently produced in Maranhão while four guiding questions were presented for those present to answer in groups organized for this purpose.

For what interests us more directly from this experience, however, it is important to highlight, in the first place, the principles underlying action, which are inscribed in the framework of ILO Convention No. 169, notably with regard to the right to self-determination of peoples and communities.

In other words, the priority starting point is the fact that indigenous peoples and traditional communities are the only ones capable of self-identifying as such, and of deciding on their own interests, on how they want to live. To make effective the right to self-determination, the right to decide, the treaty establishes mechanisms. And one of these is prior, free and informed consultation. Article 6 of Convention No. 169 states that governments shall consult peoples and communities, through appropriate procedures, whenever legislative or administrative measures are envisaged that may affect them. It also establishes that consultations should be carried out in a manner appropriate to the circumstances, with the aim of reaching an agreement and obtaining consent on the proposed measures. Thus, when there is a legislative or administrative measure capable of affecting indigenous peoples, quilombolas or other traditional communities, these groups must be consulted so that they can manifest themselves, giving their consent, or not, and reaching an agreement on the proposed measures. Article 7 of Convention No. 169 reinforces, in turn, that peoples and communities have the right to choose their own priorities, with regard to the development process, insofar as it affects their lives, beliefs, institutions, spiritual well-being and the lands they occupy or use in any way. The article adds that peoples and communities should participate in the formulation, implementation and evaluation of national and regional development plans and programs that are likely to affect them.

With this in mind, it can be understood that consultation must be conceived and carried out through a dialogued process, a negotiation that is not limited to an isolated meeting. In this process, peoples and communities must present their opinions, must be heard and respected, deciding on their present and future. Through consultation, peoples and communities, in communication with the government, can thus defend their priorities, their ways of life, their interests and territories. Each Prior, Free, Informed and Good Faith

Consultation follows its own procedures that adjust to the particularities and needs of each people and community. The consultation, in addition, must be documented and the records must be available to all participants.

In addition to the specificities of demands and problems, which can also be conceived by the variety of threats suffered by the contemplated communities, it is also necessary to understand the effects of the capacity of this collective on the workshop itself. Lagoa Amarela is a community with little history of mobilization, without large networks of external supporters and leaders, and which began to outline the first initiatives of collective organization very recently. The construction of the consultation protocol participates, then, in a kind of archeology of the identity and forms of territorialization of the community, led to reflect on its own history, on its productive activities, on its links and joint experiences.

The general and summarized exploration of the legal guidelines aroused attention and dialogue among those present, breaking down resistance and fears regarding participation. From the beginning, some of the residents highlighted, for example, this dissonance between the existence of rights and the fact that they never get off the ground. In others, they took the opportunity to clarify doubts about various aspects, such as: the consequences of the recognition of the quilombola identity on the forms of property management; the absence of action by the public authorities to meet the demands of the community; the lack of public education and health services, further aggravated by the withdrawal of a school that served mainly the children of the community. In summary, perhaps even more than specific knowledge about the legal system, what the workshop produced in this first moment was a broadening of the understanding of rights and the realization that the individual demands of each resident converged to problems that were collective, after all.

To a large extent, the dynamics established in the first moment prepared the consultation activity planned for the workshop. Gathered in 02 (two) groups, the residents were invited to answer some questions (*Why did we get together to build this protocol? What do we expect from the protocol? What are the public policies that the community needs? Who can participate in the free, prior and informed consultation?*), understood as fundamental for the construction of the final document, the Consultation Protocol. Once the answers were filled in by each group on cardboard, the team members were invited to present them, asking the broader collective if they agreed or had something to add. The answers gathered were as follows:

Question 1: Why did we come together to build this protocol?

Answer: To protect our right. Protect our community from the threat of agribusiness. Our source of income, lake, fish, my environment, babassu coconut. Our Farming, which are our right to survival

Question 2: What do we expect from the protocol?

Answer: Improvements, protection of our rights, rights, quality of life, to unite, to protect from threat, to protect our forest, our lake

Question 3: What are the public policies that the community needs?

Answer: Road, Saudi post, school, artiziano well, street lighting, soccer field, agricultural field, culture house, square, playground

Question 4: Who can participate in the free, prior and informed consultation?

Answer: Support from the city hall, university, UFMA, Union, Government of Maranhão, Health Department, City Council, Community Support.

4 FINAL CONSIDERATIONS

The final moment of the workshop was fundamental for a cordial and very informative conversation about the challenges of the community. Seen as a whole, the Workshop on Rights and Public Policies ended up highlighting some of the main needs and specificities of the Community of Lagoa Amarela, constituting a watershed in the process of drafting the Consultation Protocol. Starting with the fact that it is not so much the process of land regularization that is on the agenda here, since the priority demand capable of fostering the unity of the community focuses mainly on conservation factors, sustainable use of biodiversity, as well as the implementation of integrated public policies aimed at improving the quality of life and citizen inclusion.

The answers produced to the guiding questions are fundamentally focused on these dimensions associated with the very conditions necessary for the physical and socio-environmental reproduction of the Lagoa Amarela Community. It is in the access, sustainable use, protection and, perhaps, recovery and conservation of natural resources that the central dimension that organizes and mobilizes all those present indistinctly is concentrated. Associated with this is the very way in which the discussion about quilombola self-identification gains strength, understood as one of the most effective means to ensure the expansion of access to public policies and government programs. Finally, and certainly not least, is the fact that this workshop and the participatory production of the protocol represent one of the few efforts towards the recognition and strengthening of a weakened collectivity and without previous experiences of collective mobilization capable of establishing some barrier of protection for unsustainable uses of the territory's natural resources.

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