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SOCIAL AND ENVIRONMENTAL CONFLICTS IN CONSERVATION UNITS: FUNDAMENTAL RIGHTS OF TRADITIONAL POPULATIONS VERSUS THE ENVIRONMENT

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ABSTRACT: From the second half of the 20th century onwards, constitutional protection has been ensured to traditional Brazilian populations, especially indigenous peoples and quilombolas. To fulfill the duty to preserve the environment, imposed on the Public Power by the Brazilian constitution, specially protected territorial spaces, Conservation Units (CU) have been created, in which, in some cases, human permanence has not been allowed, there being, therefore, a "collision" between the rights guaranteed to these peoples and to the environment, since the State itself recognizes them as essential factors for this balance. In view of this scenario, this article proposes a reflection on the apparent conflict, which, due to its pending resolution, has been taking the form of lawsuits. The adopted methodology presents a qualitative approach divided into two parts: bibliographical research and jurisprudential research. The first deals with the analysis of the main currents on the subject and the laws that ensure conflicting rights; and the second examines, together with digital jurisprudential databases, the role of the judiciary in this apparent collision. The research allowed us to verify that the problem depends on a practical solution, however it found possible proposals in progress – data are brought regarding the protection of the rights of traditional populations and the environment, in a perspective of socio-environmental sustainability; and, when the conflict is judicialized, a suggestion for a solution by weighing (harmonizing) the rights of these populations to the objectives of the CU.

PALAVRAS-CHAVE: Colisão de Direitos, Populações Tradicionais, Unidades de Conservação Ambiental.

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CONFLITOS SOCIOAMBIENTAIS EM UNIDADES DE CONSERVAÇÃO: DIREITOS FUNDAMENTAIS DAS POPULAÇÕES TRADICIONAIS VERSUS MEIO AMBIENTE

RESUMO: A partir da segunda metade do século XX vem sendo assegurada a proteção constitucional às populações tradicionais brasileiras, notadamente aos indígenas e quilombolas. No intuito de cumprir o dever de preservação ao meio ambiente, imposto ao Poder Público pela constituição brasileira, tem sido instituídos espaços territoriais especialmente protegidos, Unidades de Conservação (UC), nos quais, em alguns casos, não se tem permitido a permanência humana, havendo, portanto, "colisão" entre os direitos assegurados a esses povos e ao meio ambiente, já que o próprio Estado os reconhece como fatores imprescindíveis a esse equilíbrio. Diante deste cenário, o presente artigo vem propor reflexão ao aparente conflito, que por pender de solução vem tomando forma de ações judiciais. A metodologia adotada apresenta abordagem qualitativa fragmentada em duas partes: pesquisa bibliográfica e pesquisa jurisprudencial. A primeira trata da análise das principais correntes sobre o tema e das leis que asseguram os direitos colidentes; e a segunda examina, junto às bases de dados jurisprudenciais digitais, a atuação do poder judiciário nessa aparente colisão. A pesquisa permitiu verificar que o problema pende de solução prática, todavia constatou possíveis propostas em andamento – trazem-se dados referentes à proteção dos direitos das populações tradicionais e do meio ambiente, numa perspectiva de sustentabilidade socioambiental; e, quando judicializado o conflito, sugestão de solução por meio da ponderação (harmonização) dos direitos dessas populações aos objetivos das UC.

PALAVRAS-CHAVE: Colisão de Direitos, Populações Tradicionais, Unidades de Conservação Ambiental.

CONFLICTOS SOCIALES Y AMBIENTALES EN LAS UNIDADES DE CONSERVACIÓN: DERECHOS FUNDAMENTALES DE LAS POBLACIONES TRADICIONALES VERSUS EL MEDIO AMBIENTE

RESUMEN: A partir de la segunda mitad del siglo XX, se aseguró la protección constitucional a las poblaciones tradicionales brasileñas, especialmente a los pueblos indígenas y quilombolas. Para cumplir con el deber de preservación del medio ambiente, impuesto al Poder Público por la constitución brasileña, se han creado espacios territoriales especialmente protegidos, Unidades de Conservación (UC), en las que, en algunos casos, no se ha permitido la permanencia humana, siendo, por tanto, una "colisión" entre los derechos garantizados a estos pueblos y al medio

ambiente, ya que el propio Estado los reconoce como factores esenciales para ese equilibrio. En ese contexto, este artículo propone una reflexión sobre el aparente conflicto, que por su pendiente de resolución se ha ido materializando en juicios. La metodología adoptada presenta un enfoque cualitativo dividido en dos partes: investigación bibliográfica e investigación jurisprudencial. El primero trata del análisis de las principales corrientes sobre el tema y las leyes que aseguran derechos en conflicto; y el segundo examina, junto con bases de datos jurisprudenciales digitales, el papel del poder judicial en esta aparente colisión. La investigación permitió constatar que el problema depende de una solución práctica, sin embargo, encontró posibles propuestas en proceso - se traen datos sobre la protección de los derechos de las poblaciones tradicionales y el medio ambiente, en una perspectiva de sostenibilidad socioambiental; y, cuando se judicialice el conflicto, una sugerencia de solución a través de la consideración (armonización) de los derechos de estas poblaciones a los objetivos de las UC.

PALABRAS CLAVES: Colisión de Derechos, Poblaciones Tradicionales, Unidades de Conservación Ambiental.

INTRODUCTION

The Legal System is constantly updated by removing old laws that have lost their effectiveness, changes provisions and creating new laws, seeking to adapt to the social, political, economic, and cultural dynamics of each society. From the second half of the 20th century onwards, constitutional protection has been guaranteed to traditional Brazilian populations, especially quilombolas and indigenous peoples.

In Brazil, the Federal Constitution established shared responsibility between public authorities and the community for maintaining an ecologically balanced environment (art. 225). In order to comply with the commands of such provision, The National Environmental Policy, established by Law 6.938/1981, regulated by Decree Law 99274/1990, uses several command-and-control devices provided for in article 9 of the aforementioned Law and of item II of the first article of its regulation, among which the implementation of conservation and ecological

preservation units, as a kind of Specially Protected Territorial Space.

The criteria for implementing and managing these Units began on July 18, 2000, with Law 9,985, which established the National System of Conservation Units. Its contribution is extremely important because, in addition to deliberating guidelines and objectives, the National System of Conservation Units organizes, systematizes, and constitutes the bases that guide the process of creation, planning and management of Protected Areas (Conservation Units)[1].

According to the National System of Conservation Units, the Conservation Units are established in two groups: Integral Protection Units, which cannot be inhabited by humans, admitting only the indirect use of their natural resources, such as in scientific research, for example, and Sustainable Use Units, where human presence is admitted, as long as it is compatible with the preservation of nature, allowing the sustainable use of its resources (MAIA, et al., 2016).

There are numerous natural areas essential for the conservation of biodiversity in ecosystems in Brazil, whose economic and social importance is evident. These are areas of environmental protection that encompass the Conservation Units. Soon after the seventh Conference of the Parties - COP 7, held in Malaysia, in February 2004, Brazil started to make the conservation and maintenance of these protected areas viable, instituting the then National Strategic Plan for Protected Areas - PNAP (Law 5,758 /2006).

In the Amazon region, the institution of protected areas dates back to the decade of 1970, based on the Forest Code of 1965, art. 5, which provided for the creation of "Biological Reserves and National Forests" by the

[1] Worldwide, the term "Conservation Units" used exclusively in Brazil means the same as "Protected Areas". By the Convention on Biological Diversity - CBD, the concept of Protected Areas is described as follows: Protected Area means a geographically defined area that is destined, or regulated, and managed to achieve specific conservation National System of Conservation Units objectives (BRASIL, 2002).

Government. However, the implementation of Conservation Units occurred through the National Environmental Policy, established by Law 6,938 of 1981. And, according to the Ministry of Environment, in order to expand and strengthen the National System of Conservation Units in the region, the Amazon Protected Areas Program was also implemented in 2015 through Decree 8,505 (MAIA, et al., 2016).

In this context of protecting these areas, Figueiredo (2013) states that "transforming Indians, quilombolas and other traditional populations into threats to the environment is a schizophrenia of the Brazilian State, which, on the other hand, recognizes these peoples as essential factors for preservation of the environment". (FIGUEIREDO, 2013, p. 1). The author also maintains that there should be no conflict between cultural protection and environmental protection, since all these legal assets at stake belong to the broad concept of the environment.

However, this is not what has been happening, as the creation of these territorial spaces specially protected due to their environmental relevance, where the permanence of communities that reside there is not allowed, among them the so-called "traditional populations", which are characterized as " because they have been located there for several generations and maintain cultural and economic practices directly related to the elements of nature" MEDA (2016, p. 328); they generate social and environmental impacts and put into "collision" the rights guaranteed to these peoples and the collective right to the environment. "The issue arises from a phenomenon that should be considered absolutely natural, that is, the overlap between indigenous or quilombola lands and Conservation Units, mainly of full protection, or the presence of other traditional communities within these protected areas" (FIGUEIREDO, 2013, p. 3).

With these communities constitutionally guaranteed their protection, the implementation of a Conservation Unit that does not allow them to remain in the traditionally

occupied places represents a conflict of interests, which, pending a solution, has been taking the form of legal actions, and, therefore, reaches the Judiciary Power as a major challenge for the systematic interpretation of these rights, since both enjoy constitutional protection. Given this scenario, this article proposes a reflection on the apparent conflict, aiming to examine paths and proposals that have been presented by socio-environmentalists and jurists who focus on the aforementioned issue.

MATERIAL AND METHODS

This study presents a qualitative approach divided into two stages. The first was based on bibliographical research, of which 42% belong to the Scielo database, the other digital research belong to government collections, such as the Palace of the Brazilian Planalto, the Chico Mendes Institute of Biodiversity – CMIBio and the Ministry of the Environment – MMA, in addition based on the legislation that regulates the subject, notably the Brazilian Federal Constitution and Law No. 9,985 of 2000. The second deals with jurisprudential research in the digital collection of superior Brazilian courts; seeking to investigate conflicts that have already taken the form of lawsuits whose object of the dispute to be settled by the State Judge deals with the object of study.

RESULTS AND DISCUSSION

FROM CONSTITUTIONAL PROTECTION TO TRADITIONAL POPULATIONS

Before talking about constitutional protection for traditional Brazilian populations, especially indigenous peoples and quilombolas, arising from the strengthening of the search for their rights from the second half of the 20th century onwards, it is necessary to understand the concept and identification of peoples and peoples.

Antonio Carlos Diegues and Rinaldo Arruda define them as follows:

> Human groups differentiated from the cultural point of view, which historically reproduce their way of life, in a more or less isolated way, based on social

> cooperation and their own relationships with nature. This notion refers both to indigenous peoples and to segments of the national population, which have developed particular modes of existence, adapted to specific ecological niches (DIEGUES, ARRUDA, 2001, p. 27)

Law 11,428 of 2006 which provides for the use and protection of native vegetation in the Atlantic Forest Biome, in its item II of article 3, defines traditional populations as "a population living in close relationship with the natural environment, depending on its natural resources for its sociocultural reproduction, through activities with low environmental impact".

In turn, Federal Decree No. 6,040/2007, which instituted the National Policy for the Sustainable Development of Traditional Peoples and Communities, defines traditional populations as:

> culturally differentiated groups that recognize themselves as such, that have their own 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. (DOU, Section 1 - 8/2/2007, page 316).

Leuzinger and Cureau (2008, p. 131) emphasize the following characteristics, to recognize a certain community as traditional:

> (i) identification of culturally differentiated human groups.
> (ii) sustainable practices for the exploitation of natural resources with low environmental impact.
> (iii) dependence on the elements of nature for their physical and cultural reproduction.
> (iv) importance of subsistence activities and reduced capital accumulation.
> (v) territoriality, understood as the notion of a certain space, where beliefs, myths, practices, ancestral or not, are reproduced, which update and revive collective memory.
> (vi) communal ownership and shared management of natural resources.
> (vii) transmission of knowledge through the intergenerational community tradition, usually oral tradition
> (LEUZINGER, CUREAU, 2008, p. 131)

According to Meda (2016), starting from the scope of the term "traditional populations", ethnic groups are identified in the legal category, namely: indigenous groups, *babaçueiros*, riverside dwellers, *caiçaras*, *pantaneiros*, raftsmen, artisanal fishermen, *praieiros*, *sertanejos*, *quilombolas*, rubber tappers, among

others. Also, according to the author, it appears that this legal category includes indigenous and non-indigenous people, however, both share common characteristics in relation to biodiversity, although they are distinguished by the fact that indigenous people have a sociocultural history that is different from society in general and proper languages (MEDA, 2016).

It is observed then that the concept of traditional populations as culturally differentiated groups, especially due to their connection with nature and that have historically had sustainable practices of exploitation of natural resources with low environmental impact, is what identifies the group as such, however it does, if necessary, the legal recognition of that identity.

To this end, Santille (2005) points out that:

> One of the fundamental socio-environmental paradigms, which permeates Law 9,985/2000, is the articulation between biodiversity and sociodiversity. Among the objectives and guidelines of the National System of Conservation Units are listed not only the maintenance of biological diversity and genetic resources and the protection of endangered species, natural landscapes and water and edaphic resources (soil) as well as "protection to the natural resources necessary for the subsistence of traditional populations, respecting and valuing their knowledge and culture and promoting them socially and economically" (SANTILLE, 2005, pg. 81).

In the meantime, of recognition of ethnic and cultural rights, the Federal Constitution legally recognized the indigenous peoples (art. 231) and the quilombola population (art. 68 of the Transitory Constitutional Provisions Act), as well as the right to their original territories, and also established a series of civil, social and political rights for all citizens (MEDA, 2016).

However, if on the one hand the Magna Carta normatively accepted the identity of indigenous peoples and quilombolas, which meant a great advance with regard to the rights of traditional peoples to occupy their territories, on the other hand, other distinct traditional groups remained without legal access to their land, which has been sought through demands for the recognition of these identities (HAGINO, 2015).

It is also important to highlight that, internationally, the recognition of traditional populations as well as the recognition of the right to the territory traditionally occupied was given by Convention 169 of the International Labor Organization - ILO, which recognized, in addition to indigenous peoples, other groups that are similar in terms of conditions. social, economic and cultural and that differ from the national collectivity.

Another aspect that cannot be overlooked is the importance of territory for traditional populations as a characterizing element of these groups, which Leuzinger and Cureau (2008) describe as being "an essential space for their physical and cultural reproduction, considering the different forms of use and appropriation of this space" (LEUZINGER; CUREAU, 2008, p. 131).

Therefore, and in line with Meda (2016), it appears that the territory for traditional populations represents the fundamental element of the constitutional rights and prerogatives provided, and that without access to their lands, these peoples become vulnerable to serious risk of cultural disintegration, the loss of ethnic identity and the dissolution of historical and anthropological bonds.

An example of this interaction between such populations and nature, according to Marinho (2007), can be obtained from the most recent research carried out in the Amazon:

> In recent years, the most relevant change in the field of ecology concerns the growing emphasis on the correlation between environmental diversity in the Amazon and human activity. Studies have proven that several forest zones were the object of prehistoric occupation, as the sites found attest, and that they represent, in the Brazilian Amazon, at least 12% of all *terra firme*. These soils are favored by current populations, are characterized by high fertility and are extremely important for the indigenous economy. Thus, research led to the conclusion that a good portion of the Amazon's vegetation cover is the result of millennia of human manipulation (MARINHO, 2007, p. 5).

Some constitutional provisions, in the advent of the Brazilian Federal Constitution of 1988, came to ensure this interaction and, therefore, the rights to cultural heritage of traditional populations, their natural environment

(territory), as well as its preservation, not being able to be dissociated from this heritage.

These are articles 215 and 216 of the BFC/1988, which impose on the State the duty to guarantee everyone the full exercise of their cultural rights, with the appreciation and dissemination of popular, indigenous, afro-brazilians and other groups' manifestations. participants in the national civilizing process, in favor of ethnic and regional diversity (Brazilian Federal Constitution, art. 215).

The Brazilian cultural heritage is defined as a set of goods of a material and immaterial nature, taken individually or together, bearing references to identity, action and memory of the different groups that make up Brazilian society. Among these assets are the forms of expression, the ways of creating, making and living, the works, objects, documents, buildings and other spaces destined for artistic and cultural manifestations, all documents and sites holding historical reminiscences of the ancients being listed. quilombos (Brazilian Federal Constitution, art. 216).

FROM CONSTITUTIONAL PROTECTION TO THE ECOLOGICALLY BALANCED ENVIRONMENT

In Brazil, given the importance of the right to an ecologically balanced environment, provided for in the Federal Constitution, as a result of the Stockholm Declaration of 1972, according to Alves Junior (2012), there is an understanding by national jurists that such prerogative is a true right fundamental, even if it is not included in the Individual Rights Chapter (article 5), nor in Social Rights (article 6), and such thinking is done, given the fact that with a healthy environment, consequently, there will be a better quality of life, a basic and indispensable requirement for the dignified existence of human beings, a right guaranteed by the aforementioned article 5, caput, of the Magna Carta of 1988.

Therefore, by ensuring the right to an ecologically balanced environment, the individual right to life and human dignity is also being protected (NUNES,

2018). Agreeing with the author, it can still be concluded from this understanding that, by guaranteeing such a right, it will soon ensure the promotion of other civil and economic and social rights.

In turn, Antunes (2005) argues that the right to an ecologically balanced environment is also considered a fundamental human right: "This is why the environment is considered a common good for the people and essential to a healthy quality of life. This makes the environment and environmental goods part of the legal category of the res *comune omnium*" (ANTUNES, 2005. p. 53).

Article 225 of the Brazilian Federal Constitution provides that:

> Art. 225. Everyone has the right to an ecologically balanced environment, a good for common use by the people and essential to a healthy quality of life, imposing on the Public Power and the community the duty to defend and preserve it for those present and future generations.
> § 1 - To ensure the effectiveness of this right, it is incumbent upon the Public Authority: [...]
> III - define, in all units of the Federation, territorial spaces and their components to be specially protected, the alteration and suppression being allowed only by law, prohibited any use that compromises the integrity of the attributes that justify its protection.

By Law No. 9,985, of July 18, 2000, the constitutional provision above was regulated and the National System of Nature Conservation Units was created, consisting of two types of conservation units: Full Protection Units and Sustainable Use Units. The first does not allow the direct use of natural resources, that is, the collection and use, whether commercial or not, of natural resources is not allowed (art. 7 § 1º). The second aims to make nature conservation compatible with the sustainable use of a portion of its natural resources. (art. 7 § 2).

The conflict between the fundamental rights of traditional populations and the environment, object of this study, occurs precisely when conservation units overlap the territories of these peoples and are classified as Full Protection Units, therefore not admitting their presence, as well as the use of their natural resources, as previously mentioned, access to land (territoriality) is an identifying element of these peoples,

and without it they will lose their cultural identity; remembering that the right to the original territory of indigenous peoples and quilombolas has already been constitutionally recognized.

THE COLLISION BETWEEN THE FUNDAMENTAL RIGHTS OF TRADITIONAL POPULATIONS AND THE ENVIRONMENT

As previously mentioned, the territory is a fundamental element to guarantee the survival of traditional populations that depend on preserving nature's resources as a means of dignified subsistence, based on their cultural identity.

In compliance with human rights, a State, in order to fulfill its obligations, is necessary to meet minimally basic needs, in this regard, article 1 of the International Covenant on Economic, Social and Cultural Rights, and article 1 of the International Covenant on Rights Civilians and Politicians, both internalized by Brazil: "under no circumstances can a people be deprived of their own means of subsistence".

It is noteworthy here that cultural rights (social right, called 2nd generation) and the right to an ecologically balanced environment (transgenerational right, called 3rd generation) were positive in the process of expansion and extension of rights initially postulated as individual, in the that these new rights were recognized and later added to the list of fundamental rights, thus substantially expanding the legal content of human dignity (MEDA, 2016).

Furthermore, although access to land does not have the status of an autonomous human right, the issue of territory is intrinsically linked to the dependence of its relationship with nature for the survival of populations, representing one of the fundamental aspects of guaranteeing human dignity, since such need is directly associated with the capacity of these peoples to reproduce physically and culturally.

Figueiredo (2013) emphasizes that the compartmentalized view of environmental agencies and public entities sees the incompatibility between the environment and traditional populations, in a clear schizophrenia since the State recognizes that these native Brazilians play a vital role in the conservation of biodiversity and forests in the country and have been actively participating, and with the support of National Indian Foundation, in discussions related to the environmental and territorial management of their lands. Listing some principles and devices in this regard, namely:

The Rio Declaration on Environment and Development, known as RIO-92, states that:

> Principle 22. Indigenous peoples and their communities, as well as other local communities, play a fundamental role in environmental ordering and development because of their traditional knowledge and practices. States should recognize and provide support due to their identity, culture and interests and look to those who will effectively participate in achieving sustainable development (RIO 92).

The Convention on Biological Diversity, promulgated by Decree 2.519/1998, provides for the preservation of the traditional knowledge of indigenous and local communities as relevant to the conservation and sustainable use of biological diversity (art. 8, paragraph "j").

Law 9,985/00 - National System of Conservation Units Law itself treats traditional communities as factors for the preservation of the environment:

> Art. 20. The Sustainable Development Reserve is a natural area that houses traditional populations, whose existence is based on sustainable systems of exploitation of natural resources, developed over generations and adapted to local ecological conditions and that play a fundamental role in protecting nature and maintaining biological diversity. (BRASIL, Law, 9985/00).

Decree 4.339/2002, which institutes the National Biodiversity Policy, provides that "the maintenance of national cultural diversity is important for the plurality of values in society in relation to biodiversity, with indigenous peoples, quilombolas and other local communities playing an important role in the conservation and sustainable use

of Brazilian biodiversity" (article 2, item XII).

Decree 5.758/2006, which instituted the National Plan for Protected Areas – PNAP, establishes in its annex, in subitem 1.2., inc. IX, the guideline to "ensure the territorial rights of quilombola communities and indigenous peoples as an instrument for biodiversity conservation" (HENRIQUE, 2014).

However, article 42 of Law 9,985/00 (which deals with the creation of the System of Nature Conservation Units) establishes that:

> Art. 42. **Traditional populations residing in conservation units where their permanence is not allowed will be indemnified or compensated for the existing improvements and duly relocated by the Public Authority, in a place and under conditions agreed between the parties**.
> § 1o The Public Power, through the competent body, will prioritize the resettlement of traditional populations to be relocated.
> § 2 Until it is possible to carry out the resettlement referred to in this article, specific rules and actions will be established to make the presence of traditional resident populations compatible with the unit's objectives, without prejudice to the ways of life, sources of subsistence and locations of housing of these populations, ensuring their participation in the elaboration of the referred norms and actions.
> § 3 In the case provided for in § 2, the rules governing the period of permanence and its conditions will be established in a regulation.

It is also observed that such regulation is completely disproportionate as it contradicts the objectives and guidelines of the System of Nature Conservation Units Law:

> Art. 4 has the following objectives: [...]
> XIII - **protect the natural resources necessary for the subsistence of traditional populations**, respecting and valuing their knowledge and culture and promoting them socially and economically.
> Art. 5 will be governed by guidelines that: [...]
> III - ensure the effective participation of local populations in the creation, implementation and management of conservation units. [...]
> V - encourage local populations and private organizations to establish and manage conservation units within the national system. [...]
> VIII - ensure that the process of creation and management of **conservation units is carried out in an integrated manner with the policies for administering the surrounding land and waters, considering the local social and economic conditions and needs**.
> IX - **consider the conditions and needs of local populations in the development and adaptation of methods and techniques for the sustainable use of natural resources**.

> X – **guarantee traditional populations whose livelihoods depend on the use of existing natural resources within conservation units, alternative livelihoods or fair compensation for lost resources** (BRASIL, Law, 9985/00). *(highlighted)*

And it puts in "collision" two fundamental rights: the territory of traditional populations versus an ecologically balanced environment, through the creation of an integrally protected conservation unit.

Furthermore, the solution found by the device in its art. 42, the resettlement of these communities contradicts the principle of harmonization to be applied by the interpreter of the norm, when there is a conflict between two or more fundamental rights or guarantees which, according to Alexandre de Morais (2006), consists of coordinating and combining the legal assets in conflict, avoiding the total sacrifice of some in relation to the other, carrying out a proportional reduction in the scope of each one (contradiction of principles), always in search of the true meaning of the norm and the harmony of the constitutional text with its main purpose.

In turn, Figueiredo (2013), considers that if the overlapping of indigenous or quilombola lands over areas of environmental preservation is seen as a collision, there will be no other solution than to consider:

> If the eventual overlapping of indigenous or quilombola lands on permanent preservation areas or conservation units is seen as a shock, it must be clear that such a shock represents a collision between fundamental constitutional rights; and, in these cases, there will be no other solution than the so-called balancing of interests. Balancing consists of balancing and weighing the elements in conflict, in a specific case, the legal protection of one interest in favor of another is mitigated or neglected, ending up being confused with the activity of legal interpretation (FIGUEIREDO, 2013, p. 22).

The author also defends that the collision between traditional communities does not occur in its material aspect, as such people, when present in a given ecosystem, function as a preservation factor, due to their relationship with the environment that is totally different from that of the economic model of society involving,

this being, yes, a true harmful agent. Admitting the hypothesis of harmful activities to the environment on the part of traditional communities, invariably, when such community assimilated the practice of the surrounding society (colonizer), and such practice certainly does not find support in constitutional protection.

From which it appears that the best path to be followed, in these cases, should be the harmonization of the fundamental rights of traditional populations to the objectives of the conservation units, since the Federal Constitution itself prohibits the removal of indigenous peoples from their lands., except for rare hypotheses:

> Art. 231
> § 5 The removal of indigenous groups from their lands, targeted ad referendum by the National Congress, is prohibited in the event of a catastrophe or epidemic that puts its population at risk, or in the interest of the sovereignty of the Country, after deliberation of the National Congress, guaranteed, in in any case, the immediate return as soon as the risk ceases (Brazilian Federal Constitution, art. 231 §5).

Thus, the Federal Supreme Court has also positioned itself for the constitutional prohibition of removing the indigenous population from the lands traditionally occupied by it, as well as its relationship between the right to permanent possession and specific usufruct, in accordance with the rule that these lands "are inalienable and unavailable, and the rights over them, imprescriptible" (Pet 3388/RR, Min. Carlos Britto, 03/19/2009 – *Raposa Serra do Sol* Indigenous Land Case).

And, in a recent judgment, considering that the above case should have taken binding effect, Justice Edson Fachin stated in a summary of general repercussion that: "The constitutional issue regarding the definition of the legal-constitutional status of relations of possession of areas of traditional indigenous occupation in light of the rules set out in article 231 of the constitutional text", clarifying that:

> What the Federal Constitution determined was that, in a true indigenous park, with all its primitive cultural characteristics, the Indians could remain, living in that territory, because that is equivalent to saying that they would continue to own it. [...]
> Thus, issues such as the acceptance by the constitutional text of the theory of the indigenous fact, the necessary elements for the characterization of the possession of indigenous

> lands, the combination of social, community and environmental interests, the configuration of the indigenous powers' possession and its relationship with administrative procedure of demarcation, despite the Herculean effort of the Court in Pet nº 3.388, they are not pacified, neither in society, nor even in the scope of the Judiciary. In this sense, given the non-binding nature of the decision rendered in Pet No. 3388, settled by the Plenary, as well as the permanence of issues to be settled by this Court, in addition to the evident intensification of land tenure that was not minimized despite the very important judgment of the demand mentioned above, I believe that it is imperative that this Court address the matter, in a process that contains sufficient binding burden to find ways and solutions to a topic as sensitive as the indigenous issue in Brazil (RE 1017365, Min Edson Fachin, 12/19 /2018).

It is observed, therefore, in analyzing the position of the Supreme Court reported above, that both in the case of the *Raposa Serra do Sol* Indigenous Land and in the case of the indigenous lands of Santa Catarina, the path suggested here has already been adopted, namely, that of harmonization, both in the case of conservation area (sustainable use) and environmental preservation (full protection).

CONCLUSIONS

The present study leads to the conclusion that socio-environmental conflicts in Conservation Units, resulting from the overlapping of territories previously inhabited by traditional populations, should not even exist, since the rights guaranteed to these peoples and the right to an ecologically balanced environment, constitutionally protected, complement each other among themselves, insofar as the State itself recognizes this population as part of that balance.

However, once the conflict hypothesis is admitted, it is a collision of fundamental constitutional rights of equal aptitude, in this perspective, in accordance with Meda (2016), the systematic and harmonious interpretation of the legal system is suggested, with the application of weighting of rights to norms of equal scope, in order to enable the harmonious coexistence of fundamental rights; therefore, keeping the traditional peoples who live there and use natural resources present in full protection conservation units, while

ensuring the protection of the characteristics that gave rise to the environmental conservation initiative in these territories, thus increasing social justice.

Therefore, the hypothesis of resettlement of traditional populations from territories belonging to them is not admitted; emphasizing that these peoples cannot be sacrificed, depriving them of their rightful territory to establish conservation units in the form of full protection, since the existence of resources in these places is due, especially, to the preservation practices of the traditional populations themselves; and that without them there might not even be anything to preserve.

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