



INSTRUMENTS FOR IMPLEMENTING SOCIO-ENVIRONMENTAL RIGHTS IN THE MANAGEMENT OF BRAZILIAN COASTAL PARKS¹

Nathalia Lima Barreto²

ABSTRACT

The National System of Conservation Units (Law No. 9,985 / 00) was introduced as part of the normative framework that regulates the creation of Specially Protected Territorial Spaces. Here we analyze notably the conservation units, specifically those that do not allow the direct use of natural resources and predict that the traditional populations residing in their limits must be relocated. However, until it is possible to carry out this resettlement, the public power can carry out actions in order to make the permanence of these populations compatible with the purposes of the unit. Our objective was to identify and analyze some solutions adopted by the management bodies of the state and federal integral protection conservation units, which we consider innovative, as they sought to reconcile the protection of intangible cultural heritage with the conservation of natural resources. First, we made a cut in the research object to analyze the “Park” category and we opted the empirical research methodology, with application of the documentary research method of official public documents, namely, the management plans of federal and state parks approved and made available on the website of the Chico Mendes Institute for Biodiversity Conservation (ICMBio) and the State Environment Secretariats (SMA). After this research, we analyzed three coastal marine parks that presented innovative solutions from a socio-environmental and bio cultural point of view, with regard to the protection of natural and cultural heritage (material and immaterial) and the recognition of traditional lands and territories in the management of protected areas.

Keywords: Protected Areas; Cultural heritage; Immaterial Goods; Traditional Lands and Territories.

RESUMO

O Sistema Nacional de Unidades de Conservação (Lei nº 9.985/00) foi introduzido como parte do arcabouço normativo que regulamenta a criação dos Espaços Territoriais Especialmente Protegidos. Aqui analisamos notadamente as unidades de conservação, especificamente aquelas que não admitem a utilização direta dos recursos naturais e preveem que as populações tradicionais residentes em seus limites devem ser realocadas. Contudo, até que seja possível realizar esse reassentamento, o poder público pode efetuar ações no sentido de compatibilizar a permanência dessas populações com as finalidades da unidade. Nosso objetivo foi identificar e analisar algumas soluções adotadas pelos órgãos gestores das unidades de conservação de proteção integral estaduais e federais, que consideramos inovadoras, pois buscaram conciliar a proteção do patrimônio cultural imaterial com a conservação dos recursos naturais. Primeiro, realizamos um recorte no objeto de pesquisa para analisarmos a categoria Parque e optamos pela

¹Pesquisa financiada pela CAPES

²Profesora de derecho Administrativo de la Universidad de Salamanca.

metodologia de pesquisa empírica, com aplicação do método de pesquisa documental no campo de documentos públicos oficiais, quais sejam, os planos de manejo dos parques federais e estaduais aprovados e disponibilizados no site do Instituto Chico Mendes de Conservação da Biodiversidade (ICMBio) e das Secretarias estaduais do Meio Ambiente (SMA). Realizada essa pesquisa, analisamos três parques marinhos costeiros que apresentaram soluções inovadoras do ponto de vista socioambiental e biocultural, no que diz respeito à proteção do patrimônio natural e cultural (material e imaterial) e do reconhecimento das terras e território tradicionais na gestão de áreas protegidas.

Palavras-chave: Áreas Protegidas; Patrimônio Cultural; Bens Imateriais; Terras e Territórios Tradicionais.

INTRODUCTION

Cultural diversity was guaranteed by the Brazilian Constitution of 1988, with recognition of the protection of the manifestations of the different groups participating in the national civilizing process. On the other hand, the importance of an ecologically balanced environment was also recognized by the Constitution and guaranteed by the creation of Specially Protected Territorial Spaces (ETEP), whose Protected Areas category makes up one of its species.

The National System of Conservation Units (SNUC - Law No 9,985 / 00) instituted one of the species of ETEPs by regulating the way in which the government must create specially protected territorial spaces (ETEP). This law established two categories of management: integral protection conservation units (UCPI) and sustainable use conservation units (UCUS). According to the SNUC, the UCPI must be free of alterations caused by human interference, admitting only the indirect use of its natural attributes.

Although the UCPI do not allow the direct use of natural resources, several units of this category were created in overlapping lands and territories³ occupied by indigenous peoples⁴, quilombolas⁵ and traditional communities⁶, such as national and state parks. (DIEGUES, 2000; LEUZINGER, 2009).

The overlapping of UCPI with traditional lands and territories was predicted by Law No. 9,985 / 00, which established in Article 42, § 2, that traditional populations residing in conservation units in which their stay is not allowed will be compensated and reallocated by the government. However, until such resettlement is possible,

³ The terms traditional lands and territories are considered in this work as spaces necessary for the cultural, social and economic reproduction of traditional peoples and communities, whether they are used permanently or temporarily, observed, with respect to indigenous and quilombola peoples, respectively, the provisions of articles 231 of the Brazilian Constitution and 68 of the Transitional Constitutional Provisions Act (Decree No. 6.040 / 07, article 3-II).

⁴ Article 1 of Convention 169 of the International Labor Organization (incorporated in Brazil by Decree No. 5.150 / 04) distinguished indigenous peoples from other communities called tribal because they are descended from populations that inhabited the country at the time of the conquest or colonization.

⁵ Quilombola communities were defined by the Brasil Quilombola Program of the National Secretariat for Policies for the Promotion of Racial Equality of the Ministry of Human Rights as “groups with their own historical trajectory, whose origin refers to different situations, such as land donations made from the disaggregation of monocultures; purchase of land by the subjects themselves, with the end of the slave system; land obtained in exchange for providing services; or areas occupied in the process of resistance to the slave system”.

⁶ Article 1 of C169 OIT defines the tribal peoples as those whose social, cultural and economic conditions distinguish them from other sectors of the national community, and which are governed, wholly or in part, by their own customs or traditions or by special legislation. Decree No. 6.040 / 07 defined traditional communities as culturally differentiated groups that recognize themselves as such.

specific rules and actions will be established to make the presence of traditional resident populations compatible with the objectives of the unit, without prejudice to the ways of life, sources of subsistence and places of residence of these populations. One of the actions aimed at this compatibility is the signing of the Terms of Commitment (TC), instituted by Decree nº 4,340 / 02 (which regulated the SNUC) as a temporary alternative until the resettlement is carried out.

In view of this conflict between nature and culture (LEUZINGER, 2009), generated by the incompatibility between the norm and the actual reality, the main objective of this article is to identify the solution - or solutions - adopted by the management body of the overlapping protected areas to lands and territories occupied by indigenous peoples, quilombolas and / or traditional communities. With this, we intend to clarify the following question: have the legal alternatives proposed in these cases respected the protection of the natural and cultural heritage that inaugurated, in the new constitutional order, the recognition of social environmental rights⁷?

Based on the diagnosis of this legal problem, the present work also intends to analyze whether the solutions adopted ensure the compatibility of the protection of cultural and natural heritage in the system of protected areas, in line with the guarantee of the right to lands and territories occupied by indigenous peoples, quilombolas and traditional communities. The focus of this research will therefore be on territorial rights, as these are fundamental for social and cultural reproduction, in addition to being a premise for the recognition and valorization of the traditional knowledge associated with them.

In order to collect data on the actions implemented by the management bodies of the federal and state integral protection conservation units to make the permanence of traditional resident populations compatible with the objectives of creating a unit, delimiting the object of the research to analyze the federal parks and state as a comprehensive protection management category. With this cut in the research, we applied the methodology of empirical research⁸ with the method of documentary research⁹, in the

⁷ From the socio-environmental recognition in the constitutional scope, it can be considered that they are components of socio-environmental rights: the ecologically balanced environment; the dignity of the human person and citizenship; the construction of a more just and solidary society; combating all forms of racism; the self-determination of peoples; the supremacy of human rights; the social function of urban and rural property; valuing and disseminating popular, indigenous and Afro-Brazilian cultural events; the protection of goods of a material and immaterial nature bearing a reference to identity, the forms of expression, the ways of creating, making and living of the different groups that form Brazilian society; urban complexes and sites of historical, scenic, archaeological value; the specially protected territorial spaces, the Atlantic Forest, the Amazon Forest, the Cerrados, the Caatinga, the Pantanal and the Coastal Zone (LIMA, 2002) .al.

⁸ Cunha and Silva (2011, p.12-13) define empirical research in Law as: “empirical research is essentially collective and interdisciplinary [...] Instead of interpreting the norm, empirical research investigates the intricacies of its production and the effects of its application. Instead of discussing the limits of competence that the laws assign to each body with public decision-making powers, it investigates how these bodies and especially how their members think and act in concrete terms. Instead of looking for the norm in its pure state, it becomes aware of the relevance of the social context in which it operates”.

⁹ “Documentary research involves the use of texts and records that are presented from a material source. [...] There are different possible classifications for thinking about documents. Typically, classifications revolve around the following basic categories: public documents and private documents. Public documents are typically those that have been published, publicly presented, or those that are organized and classified in public archives and which, under specific rules, are generally subject to the duty of publicity. This category includes official documents,

field of official public documents, that is, the management plans approved and made available on the website of ICMBio and the state secretariats of the Environment (SMAs).

Coincidentally, the management plans analyzed in this article, which presented innovative solutions, were those of three parks located in the coastal zone. It is interesting to highlight that the conflicts generated between the exploitation of natural resources and cultural issues originated during the colonization process and started precisely in the coastal zone. In addition, in Brazil, protected areas are predominantly located in the coastal zone and in the northern region of the country.

1. PROTECTED AREAS: NATURE AND / OR CULTURE

In view of the context of the existence of management categories that do not admit the presence of traditional resident populations, such as parks, overlapping traditional lands and territories, we seek to understand which alternative has been adopted by the management bodies of the conservation units.

First, we conducted a search on the websites of the Secretariats of the Environment and ICMBio, identifying which parks have management plans approved and made available. Based on the location of these public documents, we look for information about indigenous peoples, quilombolas, populations and traditional or local communities within the units. Among the 124 management plans found, 25 cases of overlap were identified. (LIMA and SILVA, 2019)

Once the cases of overlap were identified, the second step was then to verify whether the park management plans (state and federal) overlapping indigenous lands, quilombolas or traditional territories adopted solutions in order to make the permanence of peoples and communities compatible with the objectives of creation of the units and what were the instruments most used by the plans. (LIMA and SILVA, 2019)

When we analyze each category separately: indigenous, quilombolas and traditional communities, we realize that, regardless of the category of peoples and communities, most management plans for both federal and state parks have taken some action to resolve the normative conflict generated by the overlap. (LIMA and SILVA, 2019)

Analyzing in detail the type of solution presented by the management plans in cases of overlapping federal and state parks with indigenous lands, it was evident that the most used instruments were resettlement and zoning. Evaluating the federal plans separately from the state ones, we realized that, at the federal level, the data do not change significantly, but in the plans of the state parks, the only instrument used was zoning. (LIMA and SILVA, 2019).

The data cited above can be found in the article entitled “Conciliating the overlap of protected areas and traditional territories: legal innovations for biological diversity conservation in Brazilian parks” published in the *Brazilian Journal of International Law*, volume 16, nº 2 of 2019.

including all those produced by different instances of public administration and state agencies [...]”(REGINATO, 2017, p.194-95)

2. BRAZILIAN COASTAL MARINE PARKS AND ZONING AS AN INSTRUMENT FOR THE RECOGNITION OF TRADITIONAL LANDS AND TERRITORIES: THE ANTHROPOLOGICAL HISTORICAL-CULTURAL ZONE OF SERRA DO MAR STATE PARK (PEM)

The fact that contributed to the choice of this state park as the object of analysis of the research was the recognition of the Anthropological Historical-Cultural Zone (ZHCA), specifically in the Picinguaba¹⁰ nucleus, as an action implemented in order to reconcile the permanence of traditional populations with the objectives of the unit. In addition to being created with the objective of protecting the Atlantic Forest, qualified as a Brazilian national heritage by the 1988 Constitution, the park is located within the limits of the Atlantic Forest Biosphere Reserve¹¹ (the first biosphere reserve created in Brazil by the UNESCO Program). It also corresponds to the Green Belt Biosphere Reserve of the State of São Paulo (most recent reserve established in 2017), which demonstrates the national and international importance of this region. However, the main reason that led to the choice of this unit was the fact that it was superimposed on the territory occupied by indigenous peoples, caíçaras and quilombolas communities, that is, covering different categories of peoples and communities (analyzed in this research) and their specific legal regimes of traditional lands and territories guarantee.

In view of this overlap, and considering the park management category that does not allow the direct use of natural resources, the alternative proposed by the National System of Conservation Units (SNUC) would be the resettlement of communities or the signing of the terms of commitment while resettlement was not carried out. But the PEM Management Plan presented a third alternative by establishing the Anthropological Historical-Cultural Zone (ZHCA) in the Picinguaba Nucleus and recognizing the lands and territories traditionally occupied by the caíçaras and quilombolas communities, thus not including this area in the land regularization program of the park. This alternative was built by managing the park in conjunction with traditional resident communities. The result of this work was the elaboration of the Traditional Use Plan (PUT) by the communities and its incorporation in the Park Management Plan (SIMOES, 2015).¹²

The Management Plan of the Serra do Mar State Park recognized the traditional territory of the caíçaras and quilombolas communities through the establishment of the Anthropological Historical-Cultural Zone. Its objective was to support the strengthening of communities, avoiding the loss of possession of their territory, as well as the

¹⁰ Due to its enormous extension, PEM is managed through ten administrative centers: Bertioga, Caraguatatuba, Cunha, Curucutu, Itariru, Itutinga Pilões, Padre Dória, Picinguaba, Santa Virgínia and São Sebastião. Serra do Mar State Park. Available in: <<http://www.parqueestadualserradomar.sp.gov.br/pesm/sobre/>> Acesso on: Dec., 6th, 2017.

¹¹ The concept of Biosphere Reserves was developed in 1974 by a UNESCO working group called “Man and the Biosphere Program” (MaB). Biosphere Reserves (BR) are zones of terrestrial or coastal and marine ecosystems, or a combination of both, internationally recognized within the framework of the United Nations Education, Science and Culture Organization Man and the Biosphere (MaB) (UNESCO). Reserves are proposed by national governments and must meet criteria and conditions so that they can be recognized as Biosphere Reserves by the program and incorporated into the World Biosphere Reserves Network. The BR must fulfill three complementary functions: conservation of ecosystems; sustainable development and research and education (UNESCO, 1996).

¹² PEM was created in 1977, but the Management Plan (MP) was only prepared in 2006. In view of the absence of the MP, the Traditional Use Plan (PUT) was developed by the park management together with traditional communities as a way to regularize the traditional territory before the park administration (SMA / SP, 2006).

mischaracterization of the spatial, social and cultural organization typical of these traditional cultures, in addition to, consequently, hampering real estate speculation. Among the ten nuclei that make up the park, only the Picinguaba nucleus was recognized as ZHCA - this region includes Cambury, Ubatumirim beach and the village of Picinguaba.

The PESM Management Plan used the zoning instrument to recognize and protect both the park's material and immaterial cultural heritage. The historical-cultural zoning was divided into, respectively, the Archaeological Historical-Cultural Zone and the Anthropological Historical-Cultural Zone.

The first was instituted with the objective of conserving the cultural assets, archaeological and paleontological sites existing in the park, in order to provide the research and the valorization of these assets. This zone was created from the identification of the existence of cultural heritage associated with historical scenarios of the 20th century and comprises sites that contain archaeological and ethno-historical evidence, which constitute the material cultural heritage of the park (PM / PESM, 2008).

Thus, the structure of protection of the material cultural heritage of the PESM is in the implementation of the guidelines imposed by the Management Plan for the maintenance, conservation and restoration of the Archaeological Historical-Cultural Zone, as well as those of the legal institute of tipping, according to the state laws (CONDEPHAAT)¹³ and federal laws (IPHAN)¹⁴.

In order to protect the intangible cultural heritage, the Park Management Plan established the Anthropological Historical-Cultural Zone in the Picinguaba Nucleus as a way to recognize the territory traditionally occupied by the *caiçaras* and *quilombolas* communities.

When establishing the ZCHA, the zoning of the PESM Management Plan established specific guidelines in order to make the conservation objectives of the integral protection unit compatible with the way of being and living of the *caiçaras* and *quilombolas* communities. Among these objectives are: protecting and conserving the Atlantic Forest and its biodiversity; conserving the natural and cultural landscape, occupied by *caiçaras* and *quilombolas* communities; supporting the strengthening of the *caiçaras* and *quilombolas* communities in order to avoid the loss of possession of their territory, with consequent de-characterization of their spatial, social and cultural organization; articulating, encouraging and supporting the improvement of basic infrastructure conditions for these communities (PM / PESM, 2008, p.271).

In view of these management guidelines, the Management Plan proposed to conduct a study with the objective of verifying the conditions to promote the change in the management category of this zone, or part of it, from full protection to sustainable use. Given this study, it would be possible to identify which areas could compose the new management category. The plan also predicted that, in relation to land occupied

¹³ The Council for the Defense of Historical, Archaeological, Artistic and Tourist Heritage is the body subordinated to the Secretary of Culture of the State of São Paulo created by State Law No. 10,247, of October 22nd, 1968.

¹⁴ The National Historical and Artistic Heritage Institute is a federal autarchy of the Brazilian government created in 1937 and linked to the Ministry of Culture, responsible for the preservation and dissemination of the country's material and immaterial heritage.

by landowners who do not present evidence of traditionality, the guidelines established for the Temporary Occupation Zone (ZOT) should be applied, that is, resettlement. (PM / PESM, 2008).

The Park Management Plan divided the ZHCA into the following sub-areas, establishing the permitted and prohibited uses for each of them: Support zone for Fishing and Leisure; Public and Community Use Area; Caiçara and Quilombola Residential Use Area; Subsistence Zone and Sustainable Use of Forest Resources; and Permanent Preservation Zone. The methodological guide¹⁵ for preparing the management plan for national parks, developed by IBAMA, brings the possibility of creating both primitive¹⁶ and intensive¹⁷ use zones, among others. Therefore, even if the conservation unit is fully protected, it is possible to establish areas that allow the use of natural resources, provided that it is sustainable and without jeopardizing the unit's creation objectives.

Thus, the existence of a territory occupied by indigenous peoples, quilombolas or other traditional communities does not indicate an incompatibility with the management category of the unit, so that this overlap can be reconciled by the distribution of zones in the unit. This zoning can even function as an instrument for guaranteeing these territories, especially for communities without a defined legal regime, as well as an instrument for the protection of intangible cultural heritage.

3. PESM INDIGENOUS SUPERPOSITION ZONE

In the normative scope, there is a difference between the concepts of indigenous peoples, traditional and quilombola communities, in terms of what is established in the Federal Constitution of 1988, the National Policy of Traditional Peoples and Communities (Decree No. 6.040 / 07) and Convention 169 of the International Labor Organization (Decree No. 5.051 / 04). This difference was also identified in the establishment of the legal regime for guaranteeing the traditional lands and territories of these peoples and communities.

According to the 1988 Constitution, indigenous peoples have original rights over the lands they traditionally occupy, which are necessary for their physical and cultural reproduction, and the removal of indigenous groups from their lands is prohibited, unless authorized by the National Congress, in case of risk to the indigenous population, guaranteed, in any event, immediate return as soon as it ceases (CF / 88, article 231, § 5).

In view of this constitutional command, even though Law No. 9,985 / 00 establishes the resettlement of traditional populations of full protection conservation units, and the regulation of this law (Decree No. 4,340 / 07) brings the possibility of signing a term of commitment, regarding to indigenous peoples, until resettlement is possible, the first legal provision is unconstitutional and the second may be unconstitutional

¹⁵ MINISTRY OF THE ENVIRONMENT, *Methodological planning guide: national park, biological reserve and ecological station*, 2002.

¹⁶ "Primitive Zone: It is one where there has been little or minimal human intervention, containing species of flora and fauna or natural phenomena of great scientific value." (MMA, 2002, p.91).

¹⁷ "Intensive Use Zone: It consists of areas that are natural or altered by man. The environment is kept as close as possible to the natural (...)" (MMA, 2002, p.91).

depending on the conditions imposed by the term. This is because, in this case, the term must consider the constitutional right of permanence of peoples definitively in their lands and territories.

IBAMA, when preparing the Methodological Guide¹⁸ for the elaboration of the Management Plans for the protected areas of integral protection, foresaw the possibility of creating an Indigenous Overlapping Zone¹⁹. According to this guide, each case must be negotiated with the ethnic group, in addition to that, it is a provisional zone - once the overlap has been resolved, it must be integrated into one of the permanent zones. Therefore, depending on how the overlap is resolved, considering the constitutionally guaranteed rights of indigenous peoples, the solution adopted may be unconstitutional if it does not consider the original right of these peoples to the lands they traditionally occupy.

In view of the constitutional protection afforded to indigenous peoples and the methodological guidelines established by IBAMA, the Management Plan for the Serra do Mar State Park adopted a measure different from that applied to the caçaras and quilombolas communities. Due to the existence of indigenous lands demarcated by the National Indigenous Foundation (FUNAI)²⁰ within the Park, the Indigenous Superposition Zone was established by the Unit's Management Plan.

The main objective of this zone is to respect the Constitution and the legislation that guarantee the right to indigenous lands, in order to protect the natural and cultural values of these peoples. In addition, the sustainable development of indigenous peoples residing in the Park must be supported, in the search for compatibility between the activities of these peoples and the unit's management programs. Regarding the management guidelines for that zone, the Management Plan defined them as all those that were established for the ZHCA, except for the change in the management category (PM / PESM, 2008).

4. ILHA BELA STATE PARK - HISTORICAL AND CULTURAL AREA

Ilhabela State Park (PEIb) is an archipelago park located in the coastal area of the State of São Paulo²¹. According to the analysis of the biotic environment presented by the PEIb Management Plan, the characteristics inherent to island environments give this park a high degree of importance for conservation, as it houses a natural heritage

¹⁸ MINISTRY OF THE ENVIRONMENT, *Methodological planning guide: national park, biological reserve and ecological station*, 2002.

¹⁹ "Indigenous Superposition Zone: it is one that contains areas occupied by one or more indigenous ethnic groups, overlapping parts of the Conservation Unit. These are areas subject to a special regulatory regime, subject to negotiation on a case-by-case basis between ethnicity, FUNAI and IBAMA." (IBAMA, 2002, p.91).

²⁰ Aldeia Boa Vista, Promirim neighborhood, Ubatuba, 906 ha, approved by a Decree of October 26th, 2000; Ribeirão Silveira village, Boracéia / Barra do Una, Bertioga / São Sebastião, 8,500 ha (revision of limits), approved by Decree nº 94.568, of July 8th, 1987, revision of limits - FUNAI opinion 204 / PRES, of 26th December 2002; Aldeia do Rio Branco, B. Rio Branco, Itanhaém, 2,856 ha, ratified by Decree No. 94,224, of April 14th, 1987; Aldeia Aguapeú, B. Iguapeu, Mongaguá, 4,372 ha, approved by Decree no. of September 8th, 1998; Peruíbe Indigenous Land, approved by a Decree of May 16th, 1994, with an area of 480 ha (PM / PESM, 2008, p.42).

²¹ MINISTRY OF THE ENVIRONMENT, *São Paulo - Coastal Municipalities*.

with emphasis on biodiversity and the large amount of water resources, and for conserving relevant archaeological, historical and cultural heritage (PM / PEIB, 2015). Although the Ilhabela State Park is a land conservation unit, all its aspects, environmental and historical-cultural, have a strong interface with the marine environment. This interface was considered by the zoning of the Park Management Plan, as we will see below.

The Ilhabela State Park is also inserted within the limits of the Atlantic Forest Biosphere Reserves (UNESCO), having been created in overlap with the territory traditionally occupied by caiçaras and fishermen. As we explained at the beginning of chapter 2, caiçaras and fishermen can be considered traditional communities, provided that they recognize themselves as culturally differentiated groups, that have their own forms of social organization, that occupy and use territories and natural resources as a condition for their cultural reproduction, using knowledge generated and transmitted by tradition (Decree No. 6.040 / 07, article 3-I).

Although the constitution did not expressly recognize the right to the territory traditionally occupied by communities of caiçaras and fishermen, it guarantees the valorization and diffusion of cultural manifestations and imposes on the State the duty to protect popular, indigenous, Afro-Brazilian cultures and other groups in participation in the national civilizing process, in addition to recognizing as assets of a material and immaterial nature as a Brazilian cultural heritage, bearers of reference to the identity, action and memory of the different groups forming Brazilian society (CF / 88, articles 215, § 1, and 216).

Caiçaras and fishermen communities can be included among the different groups that form Brazilian society in the national civilizing process, since traditional cultures, which are not indigenous or quilombolas, are the result of the miscegenation between the white Portuguese colonizer, the native indigenous population and the black slave (DIEGUES, 2000, p.14)

Convention 169 of the International Labor Organization recognized traditional territory (C160OIT, Article 13) not only to indigenous peoples, but also to tribal peoples, to which it attributed characteristics very similar to those defined by the National Policy for the Sustainable Development of Traditional Peoples and Communities (Decree No. 6.040 / 07, article 3-I), such as the provision of cultural conditions that distinguish them from other sectors of the national community and that are governed, totally or partially, by their own customs (C169OIT, article 1). In addition, one of the objectives of this national policy is to guarantee the territorial rights of indigenous peoples and traditional communities.

In view of this legal context, in 2015, the Union Patrimony Secretariat (SPU) signed the Term of Authorization for Sustainable Use (TAUS)²² with the Caiçara community of Castelhanos Bay in the municipality of Ilhabela, on the north coast of São Paulo, located within the Park (PEIB). Nine TAUS were delivered by SPU, which included 306 fishermen and caiçaras.

²² MINISTRY OF PLANNING, DEVELOPMENT AND MANAGEMENT, *SPU delivers historic TAUS in São Paulo*, 2015.

The Ministry of Planning, Development and Management declared that this instrument allows the sustainable use of the territory, and the Union will continue to hold the domain of the area and will exercise the role of supervising its use. Beneficiaries with the title will have the right to use the area collectively for fishing and agriculture, and its alienation is prohibited. Furthermore, granting the terms is also a way to effectively prevent the place from being the target of land grabbing and real estate speculation.

In addition to guaranteeing possession of the traditional territory, the caíçaras communities that reside inside the park are participating in the first experiment for the elaboration of a caíçara community protocol, through the realization of the Tribuzana Project²³, developed by the Ministry of Peoples and Traditional Communities Nucleus of the Federal Public Ministry of Caraguatatuba, in partnership with the Municipality of Ilhabela.

Although the Ilhabela State Park is an integral protection conservation units, which theoretically would not allow the direct use of its natural resources, in practice, the Park Management Plan, through zoning, recognized the territory traditionally occupied by caíçaras communities and by fishermen in the Historical-Cultural Zone (ZHC) in order to guarantee their sources of subsistence and the protection of the intangible cultural heritage developed by these groups.

The Park Management Plan defined the ZHC as an area in which samples of material and immaterial historical-cultural heritage are found and where there is the presence of communities with evidence of traditionality. In addition to the protection of material cultural assets found in historical and archaeological sites, this area aims to make the permanence of traditional communities compatible with the objectives of the conservation unit. Therefore, the ZHC was divided into sub-areas, some with the purpose of protecting material cultural heritage, and others, intangible. These were called Sub-Areas of Current Traditional Occupation. In these sub-areas, residents of traditional communities have a guaranteed way of life and subsistence, with the consent of the Park (PM / PEIB, 2015).

5. CABO ORANGE NATIONAL PARK - INDIGENOUS OVERLAPPING ZONE

Cabo Orange National Park (PARNACO) is located in the coastal zone²⁴, in the extreme north of the State of Amapá, on the border with French Guiana and at the mouth of the Oiapoque River. According to the guidelines established by the Park Management Plan, the main objective of creating this integral protection conservation unit is to preserve marine areas, coastal wetlands, mangroves and also the forests and patches of the Amazonian savanna and associated fauna, through the protection of their ecosystems, the integration with the surrounding communities, the development of ecological and historical, orderly and conscious tourism, the encouragement of environmental education and the search for cultural and scientific knowledge (ICMBio, 2010).

²³ ILHABELA CITY HALL, *Ilhabela City Hall launches a project to create the Municipal Council of Traditional Communities*.

²⁴ MINISTRY OF THE ENVIRONMENT, *Coastal Zone of the State of Amapá*.

Although the main factors that led to the creation of this park are those that consider the protection of the ecosystem, such as the conservation of natural heritage, natural assets and environmental resources, the unit was also created with the encouragement of the search for cultural knowledge.

The Cabo Orange National Park was created overlapping the territory occupied by quilombola communities and indigenous peoples. In view of these overlaps between the park and traditional lands and territories, its management plan used the zoning instrument as a way to make the objectives of creating the unit compatible with the permanence of peoples and communities, without jeopardizing their sources of subsistence and places of residence. .

With regard to the quilombola community, the solution presented by the plan was the allocation of that community in the Temporary Occupation Zone of “Cova da Onça”. This area comprises human occupations on the left bank of the Cunani River and part of the area requested as Quilombo do Cunani Remnant (ICMBio, 2010).

The Park's Management Plan established some rules for the management of this area, among them, the signing of the term of commitment with the quilombola community. However, until the term is signed, the activities developed by the community must be pre-agreed with the management of the conservation unit (ICMBio, 2010).

With regard to indigenous peoples, the solution adopted by the Management Plan was different. The lands traditionally occupied by the peoples and demarcated by the National Indian Foundation (FUNAI)²⁵ were recognized by the zoning as an Indigenous Superposition Zone. This zone contains areas occupied by one or more indigenous ethnic groups. Two indigenous overlapping zones were established: the so-called Lago Maruani Zone, and the Flamã Zone. These zones correspond to the overlapping areas with the Uaçá Indigenous Land (Demarcated by FUNAI). As in the case of the Indigenous Superposition Zone established by the Management Plan for the Serra do Mar State Park, the indigenous lands that were included in the Cape Orange zoning had already been demarcated by FUNAI. Therefore, it is important to align these two instruments, namely, demarcation and zoning.

Among the guidelines established by the PARNACO Management Plan, it was foreseen: 1) the establishment of a shared management instrument, and the activities developed should be pre-agreed between the Conservation Unit, the leaders of the Uaçá Indigenous Land and FUNAI (ICMBio, 2010).

Regarding the recognition of the territory occupied by both indigenous peoples and the quilombola community, different zoning categories were established by the Unit's Management Plan. While the demarcated indigenous lands were inserted in the Indigenous Superposition Zone with the hypothesis of the elaboration of a shared management instrument, quilombola lands were allocated in the Temporary Occupation Zone with the provision of celebration of the term of commitment until the land regularization.

Indigenous peoples differ from quilombola communities and other categories of traditional populations in that they occupied national territory before the colonization

²⁵ FUNAI, *Demarcated indigenous lands*.

process, under the terms of article 1b of ILO Convention 169. The others, on the other hand, resulted from this process and the miscegenation of cultures, whose social, cultural and economic conditions distinguish them from other sectors of the national community, being governed, totally or partially, by their own customs or traditions or by special legislation, under the terms of article 1-A of the same legal diploma.

In view of this distinction from the constitutional legal regime that guarantees the right to land and the conceptual differentiation defined by C169OIT, Decree No. 6.040 / 07 - which instituted the National Policy for the Sustainable Development of Traditional Peoples and Communities - established two terms: peoples and communities traditional. However, it attributed to both the same characteristics, which are very similar to those described by Convention 169. However, with regard to the right to the lands occupied by them, this decree emphasizes that the indigenous peoples and quilombola communities must be observed what the Constitution establishes. In view of the definition attributed to indigenous peoples, mainly because they occupied the national territory before the colonization process, the 1988 Constitution guaranteed the original right over the lands that they traditionally occupy.

We cannot affirm that the legal regime that guarantees the right to indigenous lands is stronger or more efficient than the regime that guarantees this right to the remaining quilombos, not least because this is not the main objective of this research. However, we can observe that the solution adopted by the Management Plan of the Cabo Orange National Park defined more permanently the recognition of demarcated indigenous lands, as it created an Indigenous Superposition Zone and foresaw and elaboration of a shared management instrument. In the case of quilombolas, the solution adopted by the plan was to insert the lands occupied by the community in the Temporary Occupation Zone, with the intention of concluding the term of commitment until the land regularization process is completed.

In this context, it is also necessary to consider that the Uaçá indigenous land had its demarcation process finalized and regularized, while quilombola communities were still in the process of requesting recognition of the Quilombo do Cunani Remnant. Therefore, perhaps the issue is more related to the prior recognition of that territory, through the demarcation or titling process, than to the legal nature of the right to it.

FINAL CONSIDERATIONS

Land and natural resources are the main components of the relationship between nature and culture. In view of this relationship, when these components are considered as one, they are called territories. The right to the territory of indigenous peoples, quilombolas and other traditional communities is fundamental for the social, economic and cultural reproduction of these groups. Among socio-environmental rights, the right to traditional territory is essential when we think of strategies for the conservation of biodiversity and cultural diversity, as it is the guarantee of land and natural resources that will enable the development of traditional knowledge associated with the sustainable use of these resources.

However, there are situations in which the conservation of biodiversity goes against the protection of cultural diversity and becomes a threat to traditional

territories. In Brazil, the National System of Conservation Units (SNUC), foresaw the possibility of creating two categories of management of these areas, one of integral protection and another of sustainable use, the first of which does not allow the direct use of natural resources and predicts that traditional resident populations and their boundaries should be relocated. However, until resettlement is possible, actions can be taken to make the presence of the populations compatible with the unit's objectives.

In view of the analysis we have made, one of the instruments most used by state park management plans in cases of overlapping with the lands and territories of indigenous peoples, quilombolas and traditional communities is zoning; in the case of federal parks, the instruments were the term of commitment and resettlement. Zoning was used in isolation and also in conjunction with other instruments, in the formation of combined solutions, such as zoning and recategorization, zoning and terms of commitment, zoning and shared management instrument, zoning and traditional use plan, among others. (LIMA and TELES, 2019)

Regarding the difference between the legal regimes that guarantee the right to indigenous and quilombola lands, and the absence of a defined regime for other traditional communities, the quantitative analysis did not make evident the existence of any influence, as in all categories of peoples and communities solutions were presented by management plans - including, with respect to traditional communities, these were the cases for which most were presented solutions. But when we performed a qualitative analysis, we realized that, in some cases, different solutions were adopted for the same park overlapping two traditional territories, one indigenous and another quilombola.

Regarding the existence of an alignment between the solutions promoted at the federal level and those that were developed at the state level, we noticed that some instruments appear more frequently in the management plans prepared by the state departments of the Environment, such as zoning, while the resettlement and the terms of commitment are most used by the management plans of the Chico Mendes Institute for Biodiversity Conservation. This fact occurs, mainly, in the case of the overlapping of the parks with the territories occupied by traditional communities, which are precisely those that still lack a defined legal regime to guarantee the right to their traditional territories.

Although, theoretically, the methodology guide for the elaboration of park management plans published by IBAMA has defined the possibility of creating the Indigenous Superposition Zone only for indigenous peoples, the Historical-Cultural Zone has been used as an instrument of recognition and guarantee the traditional quilombola territory and other traditional communities, in addition to protecting their material and immaterial cultural heritage.

The distribution of zoning and management guidelines demonstrate the capacity of the management plan as a viable tool to create actions that make it possible to reconcile the permanence of traditional peoples and communities with the objectives of the conservation unit, in order to guarantee the conservation of the natural heritage and environmental assets with the protection of cultural heritage and the maintenance of material and immaterial assets associated with the sustainable use of natural resources.

BIBLIOGRAPHIC REFERENCES

AMEND, S. **Espacios sin habitantes? Parques nacionales en América del Sur**. Barcelona, IUCN: Ed. Nueva Sociedad, 1992.

BAILEY, R. et al. "Development in the Central African Rainforest: Concern for Forest People". In: Cleaver, K. et al. **Conservation of West and Central African Rainforest**. Washington: Banco Mundial/IUCN, 1992.

BAVIKATTE, K; ROBINSON, D. F. Towards a People's History of the Law: Biocultural Jurisprudence and the Nagoya Protocol on Access and Benefit Sharing. **LEAD Journal** (Law, Environment & Development Journal) jun. 2011, vol.7, n.1, p.35-51. ISSN: 17465893.

BORRINI-FEYERABEND, G. et al. **Governance of Protected Areas: From understanding to action**. Best Practice Protected Area Guidelines Series No. 20. Gland, Switzerland: IUCN, 2013.

CHEN, C.; GILMORE, M. (2015). Biocultural Rights: A New Paradigm for Protecting Natural and Cultural Resources of Indigenous Communities. **International Indigenous Policy Journal**, jun. 2015, vol. 6, n. 3. Available in: <https://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1205&context=iipj>>

CLEAVER, K. et al. **Conservation of West and Central African Rainforest**. Washington: Banco Mundial/IUCN, 1992.

COMMUNITY PROTOCOLS. **Pacific**. Available in: <<http://www.community-protocols.org/community-protocols/pacific>>. Access on: Nov, 27th, 2017.

CUNHA, Manuela Carneiro da; ALMEIDA, Mauro W. Barbosa. Populações Tradicionais e Conservação Ambiental. In: **Biodiversidade na Amazônia**. São Paulo: Estação Liberdade: ISA, 2001.

DIEGUES, Antonio Carlos. **O mito moderno da natureza intocada**. São Paulo: HUCITEC, 1996.

DUDLEY, N. (Ed.) **Guidelines for Applying Protected Area Management Categories**. Gland, Switzerland: IUCN, 2008.

Peoples. Available in: <<https://www.csmonitor.com/Environment/2017/1124/Is-culture-missing-from-conservation-Scientists-take-cues-from-indigenous-peoples>>. Access on: Nov, 26th, 2017.

GAVIN, Michael C. et al. "Defining biocultural approaches to conservation". **Trends in Ecology and Evolution**, mar. 2015, v.30, n.3, p.140-145.

IUCN. **From Strategy to Action: the IUCN response to the Report of the World Commission on Environment and Development**. Gland: IUCN, 1989. Available in: < <https://portals.iucn.org/library/node/6060>>

LEUZINGER, Márcia Dieguez; LINGARD, K. "The Land Rights of Indigenous and Traditional Peoples in Brazil and Australia". **Revista de Direito Internacional**, 2016, v.13, p.60-80.

LEUZINGER, Márcia Dieguez. **Natureza e Cultura: Unidades de Conservação de Proteção Integral e Populações Tradicionais Residentes**. Curitiba: Letra da Lei, 2009.

LIMA, Nathalia Fernandes; SILVA, Solange Teles da. Conciliating the overlap of protected areas and traditional territories: legal innovations for biological diversity conservation in brazilian parks. **Brazilian Journal Of International Law**, Brasília, v. 16, n. 2, p.126-141, oct. 2019.

LITTLE, Paul E. **Territórios Sociais e Povos Tradicionais no Brasil**: por uma antropologia da territorialidade. Série Antropologia. Brasília: Universidade de Brasília, 2002.

LOH, J.; HARMON, D. "A Global Index of Biocultural Diversity". **Ecological Indicators**, 2005, vol.5, n.3, p.231-41.

MARÉS, Carlos Frederico. **Bens culturais e proteção jurídica**. Porto Alegre: Unidade Editorial da Prefeitura, 2011.

MARTIN, Paul; [LEUZINGER, Márcia Dieguez](#); SILVA, Solange Teles. "Improving the Effectiveness of Legal Arrangements to Protect Biodiversity: Australia and Brazil". **Revista de Direito Internacional**, 2016, v.13, p.25-36.

NATURAL JUSTICE. **Governance of Lands and Natural Resources**. Available in: <<http://naturaljustice.org/programme/governance-of-lands-and-natural-resources/>>. Access on: May,30th, 2018.

PEREIRA, Deborah Macedo Duprat de Britto. "O Estado Pluriétnico". In: LIMA, Antônio Carlos de Souza; BARROSO-HOFFMAN, Maria (Orgs.). **Além da Tutela**: bases para uma política indigenista III. São Paulo: Editora Contra Capa, 2002. Available in: <<http://laced.etc.br/site/arquivos/04-Alem-da-tutela.pdf>>. Access on: Dec, 15th, 2014.

REGINATO, Andréa Depieri de. "Uma introdução à pesquisa documental". In: MACHADO, Máira Rocha (Org.). **Pesquisar empiricamente o Direito**. São Paulo: Rede de Estudos Empíricos em Direito, 2017.

ROZZI, R. "Biocultural Ethics: From Biocultural Homogenization toward Biocultural Conservation". In: Rozzi, R. et al. (Eds.). **Linking Ecology and Ethics for a Changing World**. Ecology and Ethics Vol.1. Dordrecht: Springer, 2013.

SALTER, Mikey; VON BRAUN, Johanna. **Biocultural Community Protocols: Bridging the Gap between Customary, National and International Law**: Effective Justice Solutions. 2011. Available in: <http://www.effectius.com/yahoo_site_admin/assets/docs/BioculturalCommunityProtocols_JohannaVonBraun_Effectius_Newsletter14.21255827.pdf>. Access on: Nov, 28th, 2017.

SANTILLI, Juliana. **Socioambientalismo e novos direitos**. Realização: Instituto Internacional de Educação do Brasil (IEB) e Instituto Socioambiental (ISA). São Paulo: Peirópolis, 2005.

SILVA, Solange Teles da. **O direito ambiental internacional**. Belo Horizonte: Ed. Del Rey, 2010.