

TERRITORIAL CONFLICTS AND THE PROTECTION OF INDIGENOUS LANDS: LAW NO. 14.701, DE 2023

CONFLITOS TERRITORIAIS E A PROTEÇÃO DAS TERRAS INDÍGENAS: A LEI Nº 14.701, DE 2023

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RESUMO

Considerando os intensos conflitos territoriais e as disputas jurídicas sobre a demarcação de terras indígenas no Brasil, objetiva-se analisar os impactos da Lei nº 14.701, de 2023, sobre a proteção dos direitos dos povos indígenas e a segurança jurídica dos processos de demarcação. Para tanto, procede-se a uma pesquisa qualitativa baseada em revisão bibliográfica e documental, abrangendo legislações pertinentes, publicações acadêmicas e análises de organizações indigenistas. Desse modo, observa-se que a nova lei, ao mesmo tempo em que regulamenta a demarcação, também estabelece mecanismos que podem dificultar a efetivação desses direitos, como a possibilidade de contestação contínua dos processos e a flexibilização de diretrizes de consulta prévia às comunidades afetadas. Além disso, sua tramitação ocorreu em um cenário de embates políticos e jurídicos, especialmente após a decisão do Supremo Tribunal Federal (STF) contrária ao marco temporal. O que permite concluir que, apesar de avanços na regulamentação, a Lei nº 14.701, de 2023, gera insegurança para os povos indígenas, podendo comprometer a preservação de seus territórios e aumentar os desafios para a efetivação de seus direitos constitucionais.

Palavras-Chave: Terras Indígenas. Demarcação; Lei nº 14.701, de 2023. Marco Temporal. Direitos Indígenas. Socioambientalismo.

ABSTRACT

Considering the intense territorial conflicts and legal disputes over the demarcation of indigenous lands in Brazil, this study aims to analyze the impacts of Law nº 14.701, de 2023, on the protection of indigenous rights and the legal security of demarcation processes. To this

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end, a qualitative research approach is adopted, based on a bibliographic and documentary review, covering relevant legislation, academic publications, and analyses from indigenous organizations. Thus, it is observed that the new law, while regulating the demarcation process, also establishes mechanisms that may hinder the enforcement of these rights, such as the possibility of continuous contestation of processes and the flexibilization of prior consultation guidelines for affected communities. Additionally, its approval occurred in a context of political and legal disputes, especially following the Supreme Federal Court (STF) ruling against the time frame thesis. This allows us to conclude that, despite advances in regulation, Law nº 14.701, de 2023, generates legal uncertainty for indigenous peoples, potentially compromising the preservation of their territories and increasing the challenges to the enforcement of their constitutional rights.

Keywords: Indigenous Lands. Demarcation. Law nº 14.701, de 2023. Time Frame Thesis. Indigenous Rights. Socio-Environmentalism.

INTRODUCTION

The issue of demarcating indigenous lands in Brazil has always been shrouded in legal and political disputes, and it has been the subject of various regulations throughout history. Law 14.701 of 2023, which regulates the article 231 of the Federal Constitution, was created to regulate the recognition, demarcation, use and management of these lands. However, the process generated intense debate, especially due to the rejection of the temporal mark thesis by the Federal Supreme Court (STF) before the law was passed (Rolim *et al.*, 2024). This thesis argued that indigenous peoples only had the right to the demarcation of lands they physically occupied on the date of the promulgation of the Constitution of 1988, ignoring processes of expulsion and forced displacement. The decision of the STF against the time frame, however, did not prevent the National Congress from approving the law, generating new disputes over the constitutionality of its provisions.

The history of indigenous territorial protection in Brazil shows a trajectory of progress and setbacks. During colonization, indigenous peoples were subjected to processes of expropriation of their lands and forced assimilation into colonial society (Silva *et al.*, 2024). It was only with the Federal Constitution of 1988 that indigenous peoples gained formal recognition of their original rights over the territories they traditionally occupied, establishing the responsibility of the Union for demarcating and protecting these areas (Brazil, 1988). Despite this, the realization of these rights has always faced resistance, especially from sectors linked to agribusiness and the exploitation of natural resources, which are pushing for changes

in legislation to facilitate access to indigenous lands for economic purposes (Portela; Menezes Júnior; Silva, 2024).

Law 14.701 of 2023 emerged in this context of clashes between the protection of the indigenous rights and the interests of agribusiness. Although it provides guidelines for demarcation, the law also establishes criteria that can make it difficult or impossible to recognize certain areas as indigenous lands, especially by allowing the continuous contestation of administrative processes (Rolim *et al.*, 2024). In addition, the rejection of provisions that guaranteed prior consultation with indigenous communities for projects in their territories compromises the application of the Convention 169 of the ILO, to which Brazil is a signatory (Silva *et al.*, 2024). These changes raise questions about the impacts of the new legislation on the protection of indigenous peoples and the legal certainty of demarcation processes.

Given this scenario, the general objective of this research is to analyze the provisions of the Law 14.701 of 2023 on the protection and demarcation of indigenous lands in Brazil. The specific objectives are: To examine the evolution of legislation dealing with the possession and usufruct of indigenous lands, comparing the Law No. 6,001 of 1973 (Indian Statute), the Federal Constitution of 1988 and the Law No. 14,701 of 2023, and to identify the main points of controversy in the approval of the Bill No. 2,903 of 2023, especially with regard to the temporal mark thesis and prior consultation with indigenous communities.

Thus, the research problem is how does the Law 14.701 of 2023 influence the protection and demarcation of indigenous lands in Brazil, and what are its impacts on the territorial rights of indigenous peoples?

On the methodological issue, the research will adopt a qualitative approach and it will be based on a bibliographical and documentary review. The legislation will be analyzed: Law No. 6,001 of 1973 (Indian Statute), the Federal Constitution of 1988 (Article 231), Law No. 14,701 of 2023 and the Bill No. 2,903 of 2023. Academic publications, reports from government agencies, technical notes from the Ministry of Indigenous Peoples and analyses from indigenous organizations such as the Indigenous Missionary Council (CIMI) will also be considered. The research will make use of comparative analysis to examine the convergences and divergences between the different regulations, as well as critical analysis of legislative and political discourse to understand the motivations behind the changes in legislation.

LEGAL RECOGNITION OF INDIGENOUS LANDS IN BRAZIL

The protection of indigenous lands in Brazil is a central theme in legislation dealing with the rights of the indigenous peoples. Law No. 6,001 of December 19th, 1973, known as the Indian Statute, establishes fundamental rules to guarantee the exclusive possession and usufruct of these lands by indigenous peoples (De Souza Netto; Reis; De Cássia Santos, 2024).

Article 17 of this law defines indigenous lands as those traditionally occupied by indigenous peoples, including reserved areas and lands owned by indigenous communities. This definition reinforces the importance of ensuring that these populations remain in their ancestral territories, avoiding any form of dispossession or undue exploitation.

Art. 17. Reputam-se terras indígenas:

I - as terras ocupadas ou habitadas pelos silvícolas, a que se referem os artigos 4º, IV, e 198, da Constituição; (Regulamento) (Vide Decreto nº 22, de 1991) (Vide Decreto nº 1.775, de 1996)
II - as áreas reservadas de que trata o Capítulo III deste Título;
III - as terras de domínio das comunidades indígenas ou de silvícolas (Brasil, 1973).

In addition, article 18 states that indigenous lands are inalienable and cannot be the object of leasing or any act that restricts the full exercise of direct possession by indigenous peoples. This means that these areas cannot be sold, ceded or transferred, guaranteeing their preservation for future generations.

Art. 18. As terras indígenas não poderão ser objeto de arrendamento ou de qualquer ato ou negócio jurídico que restrinja o pleno exercício da posse direta pela comunidade indígena ou pelos silvícolas.

§ 1º Nessas áreas, é vedada a qualquer pessoa estranha aos grupos tribais ou comunidades indígenas a prática da caça, pesca ou coleta de frutos, assim como de atividade agropecuária ou extrativa (Brasil, 1973).

Articles 22 to 25 establish that the lands occupied by indigenous people are inalienable and protected by the Union, guaranteeing their preservation and preventing any misappropriation. In addition, the right to possession is independent of formal demarcation and is recognized on the basis of historical occupation. The law also guarantees the use of natural resources, including hunting, fishing and sustainable economic exploitation, while respecting the customs and traditions of indigenous peoples. To guarantee this protection, the State can intervene through the Armed Forces and the Federal Police, reinforcing the importance of legal and territorial security for these peoples. In this way, the Indian Statute reaffirms the commitment to cultural preservation and the autonomy of the indigenous communities in Brazil.

Art. 22. Cabe aos índios ou silvícolas a posse permanente das terras que habitam e o direito ao usufruto exclusivo das riquezas naturais e de todas as utilidades naquelas terras existentes.

Parágrafo único. As terras ocupadas pelos índios, nos termos deste artigo, serão bens inalienáveis da União (artigo 4º, IV, e 198, da Constituição Federal).

Art. 23. Considera-se posse do índio ou silvícola a ocupação efetiva da terra que, de acordo com os usos, costumes e tradições tribais, detém e onde habita ou exerce atividade indispensável à sua subsistência ou economicamente útil.

Art. 24. O usufruto assegurado aos índios ou silvícolas compreende o direito à posse, uso e percepção das riquezas naturais e de todas as utilidades existentes nas terras ocupadas, bem assim ao produto da exploração econômica de tais riquezas naturais e utilidades.

§ 1º Incluem-se, no usufruto, que se estende aos acessórios e seus acréscimos, o uso dos mananciais e das águas dos trechos das vias fluviais compreendidos nas terras ocupadas.

§ 2º É garantido ao índio o exclusivo exercício da caça e pesca nas áreas por ele ocupadas, devendo ser executadas por forma suauária as medidas de polícia que em relação a ele eventualmente tiverem de ser aplicadas.

Art. 25. O reconhecimento do direito dos índios e grupos tribais à posse permanente das terras por eles habitadas, nos termos do artigo 198, da Constituição Federal, independe de sua demarcação, e será assegurado pelo órgão federal de assistência aos silvícolas, atendendo à situação atual e ao consenso histórico sobre a antigüidade da ocupação, sem prejuízo das medidas cabíveis que, na omissão ou erro do referido órgão, tomar qualquer dos Poderes da República (Brasil, 1973).

Another important point is the article 34, which authorizes the federal Indian assistance agency to request the support of the Armed Forces and the Federal Police to guarantee the protection of these lands. This legal provision reinforces the state's commitment to curbing invasions and other crimes that could compromise the territorial integrity of the indigenous communities.

Law No. 6,001 of 1973 and the Federal Constitution of 1988 have a complementary relationship when it comes to protect the rights of indigenous peoples in Brazil. While the Indian Statute establishes specific guidelines on the possession, usufruct and protection of indigenous lands, the Constitution reinforces and expands these rights by recognizing them more explicitly and guaranteeing their inviolability (De Souza Netto; Reis; De Cássia Santos, 2024).

Article 231 of the Constitution of 1988 recognizes the social organization, customs, languages and traditions of the indigenous peoples, as well as their original rights to the lands they traditionally occupy. This constitutional provision strengthens what had already been provided for in the Law No. 6,001 of 1973, by ensuring that indigenous lands are the property of the Union, inalienable, unavailable and imprescriptible, protecting them against invasion and undue exploitation (Silveira, 2018).

In addition, the Constitution determines that the demarcation of these lands must be carried out by the State, guaranteeing their legal and territorial protection, a point already

dealt with in the Indian Statute, but which now has even more solid constitutional backing. In this way, the relationship between the two laws is one of continuity and evolution in the protection of indigenous rights, with the Constitution of 1988 consolidating principles and ensuring more robust legal mechanisms for their application.

Art. 231. São reconhecidos aos índios sua organização social, costumes, línguas, crenças e tradições, e os direitos originários sobre as terras que tradicionalmente ocupam, competindo à União demarcá-las, proteger e fazer respeitar todos os seus bens.

§ 1º São terras tradicionalmente ocupadas pelos índios as por eles habitadas em caráter permanente, as utilizadas para suas atividades produtivas, as imprescindíveis à preservação dos recursos ambientais necessários a seu bem-estar e as necessárias a sua

reprodução física e cultural, segundo seus usos, costumes e tradições.

§ 2º As terras tradicionalmente ocupadas pelos índios destinam-se a sua posse permanente, cabendo-lhes o usufruto exclusivo das riquezas do solo, dos rios e dos lagos nelas existentes.

§ 3º O aproveitamento dos recursos hídricos, incluídos os potenciais energéticos, a pesquisa e a lavra das riquezas minerais em terras indígenas só podem ser efetivados com autorização do Congresso Nacional, ouvidas as comunidades afetadas, ficando-lhes assegurada participação nos resultados da lavra, na forma da lei.

§ 4º As terras de que trata este artigo são inalienáveis e indisponíveis, e os direitos sobre elas, imprescritíveis.

§ 5º É vedada a remoção dos grupos indígenas de suas terras, salvo, ad referendum do Congresso Nacional, em caso de catástrofe ou epidemia que ponha em risco sua população, ou no interesse da soberania do País, após deliberação do Congresso Nacional, garantido, em qualquer hipótese, o retorno imediato logo que cesse o risco. (Brasil, 1988)

A number of bills are in processing, bringing both advances and challenges for indigenous peoples. In addition, Congress is defining the 2024 budget priorities and it has opened the deadline for receiving Parliamentary Amendments to the 2024 Annual Budget Bill (PLOA).

Among the proposals in progress is the Bill No. 2,156 of 2023, known as “Dial Relative”, which aims to create a telephone complaints service for indigenous communities, to be managed by FUNAI. Bill 2.935, of 2022, seeks to regulate professional categories such as teachers, interpreters and translators of indigenous languages, promoting the appreciation of linguistic diversity in Brazil. Another relevant bill is the Bill 2.326, of 2022, which proposes granting firearms to employees of FUNAI who work in the field, with the aim of strengthening security in inspection activities and the demarcation of indigenous lands (Brazil, 2023a).

Also in progress, the Bill 4.347 of 2021 aims to regulate the participation of indigenous people in the environmental and territorial management of their lands. Bill 4.426, of 2023, proposes the transformation of vacant positions at FUNAI into higher-level commissioned positions, with the aim of strengthening the Public Administration. Bill No.

5.384, of 2020, which updates the Law of Quotas (Law No. 12.711, of 2012), was sanctioned in November of 2023, guaranteeing the inclusion of indigenous, quilombola and other groups in federal educational institutions. In addition, the Bill 2.935 of 2022 proposes the valorization of the indigenous language, creating categories of teacher, interpreter and translator to guarantee the transmission of traditional cultures (Brazil, 2023a).

On the other hand, some proposals threaten the rights of the indigenous peoples, such as the Bill 2.903 of 2023 (formerly PL 490), which deals with the demarcation of indigenous lands and facilitates the economic exploitation of these territories, disrespecting the self-determination of the original peoples. Although the Temporal Mark has been declared unconstitutional by the Supreme Court, the bill still contains provisions that could negatively affect indigenous peoples. There is also the PEC No. 48, of 2023, which attempts to establish a temporal mark for land demarcation, and the PEC No. 59, of 2023, which proposes transferring the competence for demarcations to the National Congress, removing this attribution from the Executive Branch (Brazil, 2023a).

In addition to the legislative agendas, the 2024 Annual Budget Bill (CN Bill No. 029 of 2023) is still under discussion, with the deadline for submitting amendments closing on November 23rd, 2023. For the Commission on the Amazon and Traditional Peoples, the deadline was November 20th (Brazil, 2023a). Given the aim of this work, which is to focus on the issue of indigenous territory, the following topics will deal in more depth with the Bill 2.903 of 2023.

BILL N° 2.903, OF 2023

The context that led to the approval of the Bill 2.903 of 2023 by the Federal Senate reflects a political and legal clash between the legislature and the Federal Supreme Court (STF), with direct implications for the rights of the indigenous peoples in Brazil.

On September 27th, 2023, the Senate approved, in an accelerated manner and without modifications, the Bill 2.903 of 2023, which consolidates the thesis of the temporal mark as a criterion for the demarcation of indigenous lands. The vote took place both in the Commission on Constitution and Justice (CCJ), where it was approved by 16 votes to 10, and in plenary, where it received 43 votes in favor and 21 against. The approval took place on the same day that the STF finalized the general repercussion judgment on the same issue, rejecting the temporal mark thesis by a large majority, 9 votes to 2 (Indigenous Missionary Council, 2023).

The confrontation between the branches of government was evident, since the approval of the bill in the Senate came just a few days after the decision of the Supreme Court to consider the temporal mark unconstitutional. The fast passage of the bill through the Congress demonstrates an attempt to impose legislation that goes against the ruling of the Supreme Court, highlighting the influence of the rural group and the agricultural sector in the formulation of the indigenous policy of the country (Indigenous Missionary Council, 2023).

The approval of the Bill 2.903 of 2023 did not happen in isolation. In recent years, the National Congress has systematically sought to make the demarcation of indigenous lands unfeasible through various legislative proposals. Bill 490 of 2007, which passed through the Chamber of Deputies and served as the basis for the Bill 2.903, is an example of this movement.

Bill 490 of 2007, drawn up by the ruralist group, proposes significant changes to the process of demarcating indigenous lands, amending the Indian Statute and regulating the article 231 of the Federal Constitution. Among its main measures, the bill establishes that the demarcation of indigenous lands should be carried out by means of laws, removing the competence of the Executive Branch and making it difficult to recognize new territories. In addition, it imposes the temporal mark of October 5th, 1988 as a criterion for defining traditionally occupied lands, disregarding the violent expulsion of indigenous communities from their territories before that date. To be considered traditionally occupied, lands would also need to meet criteria such as permanent habitation, productive use and the need for environmental preservation, restricting the recognition of territories that are essential for the survival and culture of indigenous peoples. The bill, widely criticized by indigenous movements and experts, represents a threat to native rights, cultural diversity and socio-environmental protection. After its approval in the Chamber of Deputies, it went to the Senate, where it was processed under the number PL nº 2.903, of 2023, generating intense debates and protests (Indigenous Missionary Council, 2023).

The temporal mark thesis states that indigenous peoples would only have the right to the lands that were under their possession on October 5th, 1988, the date of the promulgation of the Federal Constitution, or if they could prove that they were disputing the land through legal actions or conflicts at the time. This approach disregards the countless cases of expulsion and violence that have marked the history of indigenous peoples in Brazil, ignoring crimes documented in reports such as the Figueiredo Report and the National Truth Commission (De Souza Netto; Reis; De Cássia Santos, 2024). In short, the Bill 2.903 of 2023 aims to:

- alterar os parâmetros para demarcação das terras indígenas, criando normativas que não estão previstas na Constituição Federal;
- desferir para as terras indígenas o mesmo estatuto jurídico da propriedade privada, sem levar em conta a distinção entre posse civil e posse indígena, consolidada na Carta Magna da República Federativa do Brasil;
- restringir o direito ao usufruto exclusivo dos povos indígenas aos seus territórios, direito já consolidado pela Lei Maior da Nação;
- desobrigar o Estado Brasileiro de observar o direito dos povos indígenas a consulta livre, prévia e informada, como prenuncia a Convenção n.º 169 da Organização Internacional do Trabalho-OIT, tratado internacional do qual o Brasil é signatário;
- flexibilizar a política de não contato, já estabelecida pelo Estado Brasileiro, em relação aos povos indígenas que vivem em isolamento voluntário;
- legitimar a prática de apropriação das terras indígenas, prevendo o pagamento de indenizações aos invasores, até mesmo em situações nas quais o usurpador não possua título de propriedade;
- estabelecer a possibilidade de retomada de terras indígenas pela União caso sobrevenha “*alteração dos traços culturais da comunidade*”, a revelar a clara intenção de promover ideário *assimilacionista*, já rechaçado pela Carta Magna;
- alterar o artigo 1º da Lei n.º 11.460/2007³, autorizando o cultivo de transgênicos em terras indígenas, o que poderá ocasionar a contaminação das espécies e sementes nativas, infringindo os usos, costumes e tradições dos povos indígenas (Brasil, 2023b, p.1)

The context that led to the approval of the Bill 2.903 of 2023 by the Federal Senate reflects a political and legal clash between the legislature and the Supreme Court, with direct implications for the rights of the indigenous peoples in Brazil.

Board 1 – Time Line of the Bill nº 2.903, of 2023

Date	Event
06/02/2023	Bill No. 2.903 of 2023, which originated in the Chamber of Deputies, has been filed and it is being published.
06/03/2023	The bill will be sent to the Commission on Agriculture and Agrarian Reform (CRA) and then to the Commission on Constitution, Justice and Citizenship (CCJ) .
08/24/2023	In an extraordinary meeting, the CRA approves the report by Senator Soraya Thronicke by 13 votes to 3, in favor of the bill and against the amendments tabled.
09/28/2023	The bill is discussed and voted on in deliberative sessions of the Senate. The CCJ approves the favorable opinion of rapporteur Senator Marcos Rogério by 16 votes to 10. In plenary, it is approved by 43 votes to 21 , with all the amendments rejected. The matter is sent for presidential sanction .

³A Lei nº 11.460, de 2007, dispõe sobre a supressão de vegetação em áreas protegidas, alterando normas ambientais para reforçar a proteção do meio ambiente, especialmente em áreas indígenas, unidades de conservação e florestas nativas. A principal mudança introduzida por essa lei foi a proibição do corte e da exploração econômica de espécies nativas da flora em terras indígenas e em unidades de conservação de proteção integral. Além disso, a norma estabelece restrições ao desmatamento em áreas de preservação permanente e reforça o dever de o Poder Público garantir a preservação desses espaços. Dessa forma, a Lei fortalece a proteção ambiental e os direitos territoriais dos povos indígenas, alinhando-se ao princípio constitucional da sustentabilidade e da defesa do meio ambiente.

Date	Event
10/26/2023	Bill 2903, of 2023, is sanctioned by the President of the Republic , becoming Law 14.701, of 2023 , published in the Federal Official Gazette (DOU) in an extra edition.
03/01/2024	The partial veto of the bill was rejected by the National Congress , leading to the enactment of the Law No. 14.701, of October 20th, 2023 , in accordance with the provisions of the article 66, paragraph 7, of the Federal Constitution .

Source: authors

The clash between the branches of government was evident, since the approval of the bill in the Senate came just a few days after the Supreme Court ruled that the temporal mark thesis was unconstitutional. The fast passage of the bill through the Congress demonstrates an attempt to impose legislation that goes against the ruling of the Supreme Court, highlighting the influence of the rural group and the agricultural sector in formulating the indigenous policy of the country (De Souza Netto; Reis; De Cássia Santos, 2024).

This proposal, criticized by experts and indigenous movements, ignores the history of violence, forced evictions and territorial dispossession suffered by various communities before that date. It also compromises ongoing demarcation processes and threatens lands that have already been demarcated (De Souza Netto; Reis; De Cássia Santos, 2024).

Bill 2.903 of 2023 also introduces provisions that limit the exclusive use by the indigenous peoples of their lands, allowing these areas to be used for economic projects without prior consultation with the affected communities. This practice goes against the Convention 169 of the International Labor Organization (ILO), to which Brazil is a signatory, which guarantees the right of the indigenous peoples to free, prior and informed consultation on any measure that may affect them (Brazil, 2023b).

A consulta é prévia exatamente porque é de boa-fé e tendente a chegar a um acordo. Isso significa que, antes de iniciado o processo decisório, as partes se colocam em um diálogo que permita, por meio de revisão de suas posições iniciais, se chegar à melhor decisão. Desse modo, a consulta traz em si, ontologicamente, a possibilidade de revisão do projeto inicial ou mesmo de sua não realização. Aquilo que se apresenta como já decidido não enseja, logicamente, consulta, pela sua impossibilidade de gerar qualquer reflexo na decisão. A Resolução CONAMA nº 1, de 23 de janeiro de 1986, que “dispõe sobre critérios básicos e diretrizes gerais para a avaliação de impacto ambiental”, diz, em seu art. 5º, I, que o estudo de impacto ambiental deve “contemplar todas as alternativas tecnológicas e de localização do projeto, confrontando-as com a hipótese de não execução do projeto”. Esse é um norte bastante adequado também para a consulta, inclusive naqueles casos em que se exige prévia autorização do Congresso Nacional. A Convenção 169 não deixa dúvidas quanto a esse ponto: a consulta antecede quaisquer medidas administrativas e legislativas com potencialidade de afetar diretamente povos indígenas e tribais (BRASIL, 2023b, p.1).

Another critical point of the Bill is the attempt to equate indigenous lands with the legal regime of private property, which would make it possible for them to be exploited by third parties and for invaders to be compensated in the event of disinfringement. This is in direct contradiction to article 231 of the Federal Constitution, which states that indigenous lands are Federal property and that acts that have as their object their occupation, domination or possession by non-indigenous people are null and void (BRAZIL, 1988). In addition, the proposal provides for the expropriation of indigenous lands if there is “alteration of the cultural traits” of the communities, which ignores the cultural dynamics and adaptation processes of indigenous peoples over time (Brazil, 2023b).

The consequences of these measures go beyond the direct threat to the indigenous rights and have severe environmental impacts. According to a study by the Amazon Institute on Environmental Research (IPAM), if the Bill 2.903 of 2023 is approved, there is a risk of a significant increase in deforestation on indigenous lands, which would contribute to environmental degradation and the intensification of climate change (IPAM, 2023). Indigenous lands play a fundamental role in preserving biodiversity and maintaining climate balance, as they represent some of the most protected areas against deforestation in the Amazon.

Recently, however, the Law No. 14.701 of 2023 was signed into law by President Luiz Inácio Lula da Silva, bringing significant changes to the recognition and demarcation of indigenous lands (Chamber Agency, 2023), which will be discussed in the following section.

LAW NO. 14.701, OF OCTOBER 20th, 2023

Law No. 14.701 of October 20th, 2023, signed by President Luiz Inácio Lula da Silva, deals with the recognition, demarcation, use and management of indigenous lands in Brazil. This legislation comes in a context of intense debate about the rights of indigenous peoples, environmental protection and the legal security of traditionally occupied territories. With partial vetoes, the new law rejects the temporal mark thesis and reinforces the original right of indigenous peoples to their lands, as established in the Federal Constitution of 1988 (Rolin *et al.*, 2024; Manaf; De Faria, 2024; Starck; De Cademartori, 2024).

The temporal mark thesis, rejected by the Federal Supreme Court and the Executive Branch, established that indigenous people would only have the right to lands that were under their possession on the date of the promulgation of the Constitution, on October 5th, 1988, except in cases where there was proof of repeated dispossession. The veto of this provision

was justified by its conflict with the constitutional rights of the indigenous peoples, which recognize traditional occupation as a fundamental criterion for land demarcation (Rolim *et al.*, 2024; Manaf; De Faria, 2024; Starck; De Cademartori, 2024).

Another highlight of the law was the attempt to allow the demarcation of indigenous lands to be contested at any time and by any interested party. This provision was also vetoed, on the grounds that it would create legal uncertainty and could make the demarcation process take even longer. The government argued that the proposal would endanger the effectiveness of indigenous territorial protection, as well as increasing land conflicts (Rolim *et al.*, 2024; Manaf; De Faria, 2024; Starck; De Cademartori, 2024).

In addition, provisions that prevented the expansion of indigenous lands that had already been demarcated and others that required administrative demarcation processes to be adapted to the new legislation were vetoed. The argument for the veto was the need to guarantee the legal certainty of administrative acts and respect acquired rights (Rolim *et al.*, 2024; Manaf; De Faria, 2024; Starck; De Cademartori, 2024).

The law also provided for the possibility of economic exploitation of indigenous lands, allowing indigenous communities themselves to develop productive activities and establish partnerships with third parties. However, provisions that allowed the installation of military bases, energy exploration and the expansion of the road network without prior consultation with indigenous communities were vetoed, as they violated the Convention 169 of the International Labor Organization and the United Nations Declaration on the Rights of Indigenous Peoples (Rolim *et al.*, 2024; Manaf; De Faria, 2024; Starck; De Cademartori, 2024).

From the above, it can be seen that Brazilian legislation on indigenous territorial rights has undergone several transformations over time, in an attempt to guarantee the possession and protection of these areas from external interests. Three important pieces of legislation stand out in this context: Law 14.701, of 2023; Law 6.001, of 1973; and the Federal Constitution of 1988. While the Indian statute established fundamental bases for indigenous ownership, the Constitution of 1988 consolidated the guarantee of these rights by recognizing indigenous territories as inalienable and imprescriptible assets. More recently, the Law 14.701 of 2023 came about as an attempt to regulate the Article 231 of the Constitution, bringing new guidelines for the demarcation, use and management of these lands. However, some of its provisions have generated controversy, especially with regard to the time frame and consultation with indigenous communities on strategic decisions. Board 2 provides a comparative analysis of these three laws, highlighting their convergences and divergences.

Board 2 – Comparative: Law nº 14.701, of 2023; Lei nº 6.001, of 1973; and Federal Constitution of 1988

Aspect	Law nº 14.701, of 2023	Law nº 6.001, of 1973 (Indian statute)	Federal Constitution of 1988
Recognition of Indigenous Lands	Regulates the art. 231 of the Federal Constitution to provide for indigenous lands.	It guarantees indigenous people permanent possession of the lands they inhabit.	It recognizes original rights of the indigenous people over their lands.
Demarcation of Indigenous Lands	It provides for the participation of federal entities and a public process.	It stipulates that demarcation must be carried out by the state.	The Union is responsible for demarcating and protecting indigenous lands.
Rights over Indigenous Lands	Indigenous rights are inalienable and unavailable.	Lands are inalienable and usufruct is exclusive to indigenous people.	Rights are imprescriptible, inalienable and unavailable.
Land Use and Management	Indigenous communities can decide on land use.	Recognizes the right of indigenous people to use natural resources.	Indigenous peoples have exclusive use of natural resources.
Economic Exploitation	Allows economic activities managed by indigenous people, in partnership with third parties.	Prohibits leasing and restriction of direct possession by indigenous people.	Resources can only be exploited with the approval of the Congress and the participation of indigenous peoples.
Legal Security	Provides for wide dissemination of demarcation administrative acts.	Reaffirms original rights and legal protection of lands.	Demarcation is a constitutionally protected right.
Temporal Mark	Originally provided for a time frame, but was vetoed.	There is no question of a time frame.	It rejects a time frame and guarantees the right to historically occupied land.
State Intervention	Guarantees territorial protection, but allows military intervention	Demarcation must be ensured by the state, without	Intervention can only occur in exceptional cases, with a guaranteed return.

Aspect	Law nº 14.701, of 2023	Law nº 6.001, of 1973 (Indian statute)	Federal Constitution of 1988
Consultation with Indigenous Communities	and infrastructure expansion (vetoed). Consultation with communities vetoed in strategic cases.	external intervention. It provides for protection of the territory and recognition of historical occupation.	Consultation is mandatory for the exploitation of water and mineral resources.

Source: authors

With regard to the recognition of indigenous lands, all the legislation analyzed reaffirms the need to guarantee the indigenous peoples ownership of these territories. The Federal Constitution of 1988 reinforces original rights of the indigenous peoples over their lands, while the Indian Statute (1973) already provided for the permanent possession of occupied territories. Law 14.701, of 2023, in turn, came about as a development of Article 231 of the Constitution, seeking to regulate the demarcation and use of these areas in more detail.

As for the demarcation of indigenous lands, the Constitution assigns this responsibility to the Union, while the Indian Statute establishes that the State must ensure ownership of these lands. Law 14.701, of 2023, makes a difference by providing for the participation of federal entities and making the process more transparent, although it has vetoed the obligation to consult indigenous communities in certain cases.

With regard to indigenous land rights, all the rules analyzed converge to guarantee the inalienability, imprescriptibility and unavailability of these territories. However, while the Constitution and the Indian Statute reinforce the exclusive usufruct of indigenous people over natural wealth, the Law 14.701 of 2023 allows economic activities managed by the communities, with the possibility of partnerships with third parties, which could have implications for indigenous autonomy.

With regard to land use and management, the Constitution and the Indian Statute guarantee right of the indigenous peoples to exclusive use of natural resources, while the Law 14.701 of 2023 innovates by allowing communities to decide on the use of their territories, opening up space for new forms of economic exploitation. However, this flexibility can lead to legal disputes and conflicts of interest between indigenous people and external sectors.

In terms of legal certainty, the Law 14.701 of 2023 seeks to increase transparency in demarcation processes, providing for the public disclosure of all administrative acts. The Indian Statute and the Constitution reinforce the legal protection of indigenous lands, guaranteeing their inalienability and ensuring that demarcation must be carried out by the state as a fundamental right.

One of the most controversial points is the temporal mark, according to which indigenous people would only have the right to the lands they were occupying on October 5th, 1988. The Constitution of 1988 rejects this idea and guarantees the right to land regardless of that date. The Indian Statute does not deal with this issue, while the Law 14.701, of 2023, originally provided for the temporal mark, but this part of the text was vetoed by the Executive, in line with the understanding of the Federal Supreme Court.

With regard to the State intervention, there are significant differences among the regulations. The Indian Statute reinforces that demarcation must be done without external interference, while the Constitution only allows intervention in exceptional cases, such as disasters or threats to national sovereignty. Law 14.701, of 2023, sets precedents for the State intervention, allowing the installation of infrastructure and military presence without the need to consult indigenous communities, but this point was vetoed.

Consultation with indigenous communities is a central element in the protection of territorial rights. The Federal Constitution stipulates that indigenous people must be heard in cases of exploitation of natural resources on their lands. The Indian Statute reinforces the importance of territorial protection, but does not detail consultation procedures. Law 14.701, of 2023, despite guaranteeing the transparency of the demarcation process, had the article requiring consultation in cases of the installation of military bases or major infrastructure works vetoed, which generated criticism from indigenous organizations.

FINAL CONSIDERATIONS

A comparison among the Law 14.701 of 2023, the Indian Statute and the Federal Constitution shows that, despite the progress made in protecting indigenous territories over the years, there are still challenges in implementing these regulations. While the Constitution of 1988 consolidated indigenous rights and guaranteed legal mechanisms for their application, the Law 14.701 of 2023 sought to regulate these rights, but generated controversy by making certain points more flexible, such as economic exploitation and consultation with indigenous communities. The Indian Statute, meanwhile, remains an important reference, but needs

updating to bring it into line with constitutional guidelines. The debate on these laws shows that the struggle of the indigenous peoples for the recognition and protection of their territories still faces political and legal challenges, and it is essential to follow the decisions of the National Congress on the presidential vetoes of the Law 14.701 of 2023 and the implications of these changes for the future of the indigenous peoples in Brazil.

The protection of indigenous territorial rights is a central issue for social and environmental justice in Brazil. The attempt to weaken these rights through proposals such as the Bill 2.903 of 2023 represents a step backwards not only for indigenous peoples, but also for society as a whole, as it compromises environmental conservation and the climate security of the country. It is therefore essential that public policies and legislative decisions are guided by respect for the Constitution, international treaties and the dignity of the indigenous peoples, guaranteeing their self-determination and the integrity of their territories.

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