



BUILDING POPULAR LEGAL ASSISTANCE:

Theory and Practice in the Work of Terra de Direitos

Camila Cecilina Martins

Popular Lawyer. Legal Advisor at Terra de Direitos Master's Student in Law at the University of Brasília

Camila Gomes de Lima

Popular Lawyer. Master of Law from the University of Brasília Collaborator at Terra de Direitos

Daisy Ribeiro

Popular Lawyer Legal Advisor at Terra de Direitos Master of German Law from the University of Konstanz, Germany

Darci Frigo

Popular Lawyer and Coordinator at Terra de Direitos

Élida Lauris

Popular Lawyer Coordinator at Terra de Direitos Ph.D. in Post-Colonialisms and Global Citizenship from the Center for Social Studies and the Faculty of Economics at the University of Coimbra

Jaqueline Pereira de Andrade

Popular Lawyer Legal Advisor at Terra de Direitos Master's Student in Human Rights and Democracy at UFPR

Luciana Cristina Furquim Pivato

Popular Lawyer and Coordinator at Terra de Direitos

Maira Souza Moreira

Popular Lawyer Legal Advisor at Terra de Direitos Doctoral Student in Theory of the State and Constitutional Law at PUC/RJ

Naiara Andreoli Bittencourt

Popular Lawyer Legal Advisor at Terra de Direitos Master and Doctoral Student in Human Rights and Democracy at UFPR

Pedro Sérgio Vieira Martins

Popular Lawyer Legal Advisor at Terra de Direitos. Master in Family Farming and Sustainable Development from UFPA

Vercilene Francisco Dias

Quilombola Popular Lawyer Legal Advisor at Terra de Direitos Master in Agrarian Law from UFG

1. HOW DO WE UNDERSTAND POPULAR LEGAL ASSISTANCE AT TERRA DE DIREITOS?

1.1 What is Popular Legal Assistance and How Do We Develop It?

Popular Legal Assistance involves the legal-political actions of popular lawyers, legal professionals, students, and human rights activists who, in a strategic, organized, and reflective manner, aim to promote, guarantee, enforce, and develop human and fundamental rights alongside communities, while also considering the rights of nature. To achieve this, such action necessarily encompasses legal-political contestation and the affirmation of rights, as well as uncovering omissions and denials of institutional mechanisms and inequalities in access to justice.

Therefore, beyond legal aid, popular legal assistance is part of “a broader process of action with the people, which includes cultural, educational, and pedagogical activities” (ALFONSIN, 1998, p. 2). For this reason, it is also understood as “insurgent legal practices” incorporating elements of legal pluralism (RIBAS, 2009, p. 13), as well as strong interdisciplinarity and identification with the oppressed (ALFONSIN, 1998), who are individuals in situations of structural and ongoing violations of their rights.

Since the 1960s, popular legal assistance has emerged and reinvented itself, forming “generations of jurists (lawyers, professors, prosecutors, judges) who become relevant for the discussion of access to rights within the scope of social movements” (GORS DORF, 2010, p. 8).

The perception and practice of popular legal assistance involve the joint construction of the content and form of human rights, rather than merely instrumentalizing them or serving as a simple conduit between the people and the formal legal and justice system. It is the dialectic between legal assistance and popular organization, particularly within social movements, that deepens the understanding of human rights through an ongoing process of struggle (GORS DORF, 2010, p. 8). Popular legal assistance thus commits to legal action in popular demands (MARTINS, C., 2019).

Terra de Direitos emerged from this dialectic as an organization composed of jurists (professors, lawyers, students) and social movements. In the mid-2000s, in the state of Paraná, they recognized the need to establish an entity to engage in popular legal assistance for the defense of human rights, particularly in conflicts related to land rights, territory, biodiversity, the protection of human rights defenders, and the transformation of the justice system.

Over the 18 years of Terra de Direitos’ existence, strategies have been refined and adjusted, always with the understanding that popular legal assistance is a broad concept. It goes beyond just providing attorney-client services and is not limited to litigation in judicial channels. This is because it is associated with the political contexts in which social movements fight for their rights.

Thus, Terra de Direitos’ popular legal assistance strategies encompasses actions through various instruments of political demand and human rights justiciability. Notable among these are political incidence, conflict mediation, on-site missions, advocacy, human rights education and information, campaigns, administrative processes monitoring, and litigation at both national and international levels (PIVATO, 2010, p. 227).

1.2 Critical Perspective on the Law

Over the years, Terra de Direitos' practices in popular legal assistance, developed in tandem with social movements and in collective network articulation, have highlighted the necessity of a critical perspective on the law and the justice system. This critical analysis of the law prevents Terra de Direitos' popular legal assistance from being absorbed into the ostensibly pure institutional framework of the formal legal system, and it also avoids leading to a utopian reflection that hinders critical action.

Instead, it represents a critical perception of the law with a strategic intent of action. It is known that the law should articulate the principles of a "legitimate social organization of freedom" (SOUSA JR, 2004) and should be conceived from the needs and perspectives of workers, peasants, indigenous peoples, quilombolas, and traditional communities, thereby vehemently challenging the legal ideology that the State imposes as Law (PRESSBURGER, 1987-1988).

Therefore, popular legal assistance is also a constant and arduous task of "translating" the ideological traps of the legal system and, alongside with the people, constructing a new law. This new law resists domination through popular organizational forms, addressing the very impossibility or insufficiency of the "legal" forms within the prevailing legal order (PRESSBURGER, 1987-1988, p. 3). It is the expression of law, tainted with social contradictions, that concretely confronts the unequal order (BALDÉZ, 1989, p. 17).

Therefore, the aim is to forge new ties and configurations in legal relationships, based on rights, solidarity, collectivity, and resistance to the imposition of commodity forms in all social relations. It is a vision of law that emerges from the needs for justice and the discontent of popular organizations. Popular praxis even provides methodological indicators for a new legal epistemology (PRESSBURGER, 1995).

We understand that consciousness is formed through struggle, and it is in political practice that an emerging insurgent law is discovered, creating new subjects who become the protagonists of their own histories (BALDÉZ, 1989, p. 18). In other words, for such rights to be created and legitimized, it is not enough to reflect theoretically; the practice of popular action is essential.

1.3 Method of Action in Popular Legal Assistance

Terra de Direitos employs popular legal assistance as a strategic approach. The practice of popular legal assistance, precisely because it is situated at the most vulnerable end of social relations—where rights are repeatedly violated—requires firmness in decisions made during legal action, coupled with political security and a precise focus on the goals to be achieved. Even so, it is understood that popular legal assistance, like the content of human rights itself, is more about process and progress than about results. Therefore, enumerating tactics for denunciation, translation, impact, communication, and education are central to the method of popular legal assistance.

In this way, several tactics can be combined for the strategy of realizing or constructing social, environmental, economic, or cultural human rights. We understand that our approach unfolds into a broad tripod combining: a) strategic litigation; b) popular education; and c) political incidence. Certainly, the three tactics of popular legal assistance at Terra de Direitos involve an active presence in collective and community territories, in partnership with popular social movements. These movements are recognized as active participants in the social process, in the struggle for rights, and in joint political-legal decision-making.

Strategic litigation in human rights aims to build legal theses and jurisprudence that can benefit collective struggles for rights in the country. Each case is meticulously handled based on its potential

impact, repercussions, and contribution to the human rights narrative. It involves the development of legal theses, argumentative strategies, and a thorough analysis of the entire situation of violation.

In the realm of popular education, “translating” legal language and processes to make them accessible is crucial. This is achieved through educational spaces, mutual learning, and narrative construction. Training is structured around key themes presented through the narratives of communities regarding conflict situations and their demands. Legal assistance works to introduce these topics within a technical-legal framework. Thus, popular legal assistance is not about providing services to communities, peoples, and movements but about working alongside them. This aligns with the principle described by José de Souza Martins et al. (1992), which emphasizes the observance of the autonomy of the subjects involved in this process. Therefore, both of them work together, and decision-making should not override the dialogues established within the organizations.

Similarly, collective action is emphasized, which includes communication strategies for producing and disseminating information, as well as the ability to collaborate in networks with partners from other fields of knowledge. In this way, we advance in the interaction between popular legal assistance and popular communication, engaging in ongoing education within the territories and in efforts to increase visibility and impact for society at large, in two distinct yet interconnected phases.

For political advocacy, legal opinions, research, and reports are also developed to support analyses of public policies, legislation, and other strategies. Additionally, it entails integration into civil society articulation spaces—both at the national and international levels. Advocacy can also occur through campaigns, mobilizations, and interactions with local, state, and federal public bodies responsible for the concrete case. (PIVATO, 2010, p. 229-230).

It is noteworthy that strategic litigation and political incidence engage with the territorial and legal-political agendas of movements and peoples, aiming to advance the realization of human rights within the Brazilian context, which continues to be marked by colonialism, racism, patriarchy, and class domination. In dialogue with sectors of society that have historically been targets of these forms of oppression, popular legal assistance considers the intertwining of race, gender, ethnicity, and class issues in its critical analysis of reality. It collaborates with movements to explore potential pathways towards a more egalitarian society in its diversity, denouncing human rights violations, demanding comprehensive reparation, and presenting alternatives to the expropriative, displacing, and hegemonic socioeconomic and ideological models¹.

1.4 Where and with Whom Popular Legal Assistance Is Provided

1.4.1 In the Territories, with Communities, Popular Movements, and Civil Society

Popular legal assistance is established in the territories and within civil society spaces. The methodology of work for PLA is based on the understanding that action involves working from/within the territories and seeks to achieve social engagement and institutional response to the violations reported or the rights claimed by the subjects.

.....
¹ Refer to the report “Racism and Violence against Quilombos in Brazil” (2018), produced by Terra de Direitos in partnership with the National Coordination of Black Quilombola Rural Communities (CONAQ). Available at: [https://terradedireitos.org.br/uploads/arquivos/\(final\)-Racismo-e-Violencia-Quilombola_CONAQ_Terra-de-Direitos_FN_WEB.pdf](https://terradedireitos.org.br/uploads/arquivos/(final)-Racismo-e-Violencia-Quilombola_CONAQ_Terra-de-Direitos_FN_WEB.pdf). Accessed on: June 10, 2020.

The focus of popular legal assistants' work is on grassroots social movements, developing coordinated and joint strategies for the defense of collective human rights. Social movements bring to the socio-political arena the denunciations of contradictions generated by the socioeconomic production model and the conflicts it triggers. They propose collective solutions for building alternative social relations, in line with the guarantee and realization of economic, social, environmental, and cultural human rights.

The analysis of the context of each territory and place of action is carried out by these protagonists, who identify themselves as rights holders. In dialogue with popular legal assistance, they are challenged to identify problems and develop joint strategies to address systematic rights violations in various situations, whether involving state intervention or private sector initiatives.

The definition of strategy is therefore made with the rights holders themselves. It is in this dimension of work that the law is taught and learned, risks and opportunities are assessed, and collaborative action is built. Agreement on what, how, and with whom to act is essential for a collective journey.

This collective journey involves relationships of solidarity and mutual trust between popular legal assistants and social movements, communities, and the individuals involved. Solidarity implies "recognizing others as equals, avoiding a stance of superiority whenever differences imply inferiority, and acknowledging differences whenever equality threatens their identity" (GORS DORF, 2010, p. 12).

Access to justice is a fundamental right contested in the work of popular legal assistance, recognizing peasants, family farmers, urban workers, indigenous peoples, quilombolas, and traditional communities as rights holders, as well as their collective forms of organization, reaffirming their legitimacy and autonomy before the legal assistance and justice system entities. The construction of this autonomy involves politically strengthening these subjects and their organizations as protagonists of their struggles, despite being historically marginalized. Their forms of self-organization and decision-making must be respected. The relationship is one of partnership and commitment with PLA, rather than dependency.

Action is not confined to institutionalized pathways but also encompasses the spaces within society itself as loci for the affirmation or realization of rights. In these spaces, strategies can be enhanced with popular engagement in concrete cases and claims, and mechanisms for realizing rights can be reinvented through the construction of strategies unique to civil society.

The understanding of what constitutes civil society or even the set of insurgent social practices acknowledges that these should not be conflated with the state sphere, although it does not relinquish the ongoing struggle for state action to address denied rights (MOREIRA, 2017).

Examples of actions in civil society spaces include campaigns, collective denunciations, and methodologies for protecting human rights defenders who face threats. In addition to territorial work, Terra de Direitos also seeks to strengthen networks and political alliances with social movements, entities, and civil society organizations. Examples include Via Campesina, the National Coordination of Black Quilombola Rural Communities (CONAQ), the National Network of Popular Lawyers (RENAP), the Justice and Human Rights Articulation (JusDH), the National Articulation of Agroecology (ANA), the Commission for the Defense of the Rights of Extractivist Communities (CODECEX), the Federation of Quilombola Organizations of Santarém (FOQS), the Agroecology Journey, the Permanent Campaign Against Pesticides and for Life, the Agroecology Seeds Network in Paraná (ReSA), the Carta de Belém Group, the Dhesca Brasil Platform, among others.

1.4.2 In Institutional Spaces and International Human Rights Protection Mechanisms

The work of popular legal assistance develops through dialogue with local, state, and federal executive bodies, aiming to mediate conflicts and enforce social public policies. It seeks to transform or ensure the maintenance of formal rights through political and legal advocacy in Municipal, State, or Federal Legislatures. It initiates legal actions through strategic litigation and works towards transforming the justice system to achieve its democratization. It mobilizes international protection mechanisms as tools for pressure, visibility, and demanding the fulfillment of international commitments made by the state.

Popular legal advice plays a crucial role in fostering dialogue and bridging the gap between legitimate social claimants and formal institutional spaces, which often operate in ways that render such conflicts invisible.

Thus, PLA must “present a reality, provide an expanded conception that includes suppressed, silenced, or marginalized realities, as well as emerging or imagined realities” (GORS DORF, 2010, p. 12). In this sense, what we call Popular Legal Advice is an attempt to define, under a unifying concept, a diverse set of experiences and theoretical perspectives. Its coherence lies in the preliminary assertion that it seeks to transform a reality considered unequal and unjust for a significant portion of the population. The concepts of “people” and “popular” in popular legal assistance are constantly being redefined based on the power dynamics in our society, so much so that these terms do not have a single, fixed meaning. They are used to recognize subjects who are in situations of rights violations.

For instance, the presence and engagement of communities and the rights holders themselves in the formal procedures of institutional spaces, especially within the justice system, such as during hearings and trials, can alter the perception of “decision-makers” regarding the outcome of territorial rights, access to and use of biodiversity, and respect for cultural rights.

Therefore, beyond solidarity, popular legal advice invokes the provocation of alterity, especially within the justice system and institutional spaces. By bringing the voice, face, and manifestation of “others” with denied rights, its mere presence can challenge the stability of the “standard,” the “normality” that is white, male, and elitist (DUSSEL, 1998). In other words, there is an ethical-legal dimension represented by the “epiphany of the face of the others.” The real image, the representative face of oppression, poverty, marginalization, neglect, and invisibility, should invoke a responsibility towards the other as an ethical principle of justice. The required presence in these spaces—with body, face, and hands—“truly reveals a people, more than just an individual person” (DUSSEL, 1998, p. 50). That is, when the rights of a community are realized or when farmers, traditional peoples, and urban workers are present in an institutional space that habitually violates their rights, it not only opens doors for that social group but also for a people, an identity, and a new interpretation of history. These are forced and necessary fissures within a system that is often inaccessible.

2. HOW WE BUILD POPULAR LEGAL ADVICE AT TERRA DE DIREITOS

2.1 Popular Legal Advice as a Tool for Seeking Redress for Violated Rights

As previously mentioned, Terra de Direitos was established in a context of intense criminalization and violence against popular movements in both urban and rural areas in the state of Paraná. Since then, it has developed actions to address human rights violations, understood in a broad sense as threats and violence against the lives and freedoms of human rights defenders, and attacks on territorial rights and socio-biodiversity. Currently, the organization is active in the states of Paraná and Pará, the Federal District, and the Cerrado region of Minas Gerais, and also carries out its human rights work in nationally significant cases.

The work of redressing violated rights is a constant in the lives of everyone involved in popular legal assistance. In such situations, the presence of lawyers becomes crucial for accessing formal justice system channels. This work reveals the restrictions and violence imposed by various actors, particularly companies and public and private security agents, which restrict fundamental freedoms and hinder the deepening of the democratic process, manifested in the defense of human rights.

Here is where our legal advice steps in to address cases of murder, racism, physical violence, psychological violence, evictions, arrests, repression, deforestation, contamination from the use of pesticides and GMOs, land grabbing, impacts of large-scale projects, and other forms of violations committed by public or private agents. It is understood that violations that have already occurred can reach a second level of harm if they are rendered invisible through subsequent silence by the justice system and other social spheres.

To illustrate the work in human rights redress, we can use the legal advice provided in cases of criminalization of *human rights defenders*² and *human rights violations by companies*³. By discussing a specific case, we can highlight the relevance and, at the same time, the challenges in the field of reparations.

On October 21, 2007, private security agents from the Swiss transnational company Syngenta S.A. killed landless farmer Valmir Mota de Oliveira, known as Keno, and attempted to kill Isabel Nascimento Souza, who lost her left eye after being kneecapped and nearly executed, along with other injured farmers. Keno, a member of the Landless Rural Workers Movement (MST) and Via Campesina, was 34 years old and left behind a wife and three children. The activists were shot at by around 40 agents from NF Segurança, a private security company hired by Syngenta.

.....
2 Refer to the reports "Lives in Struggle: Criminalization and Violence Against Human Rights Defenders in Brazil" (2017 and 2018), produced by the Brazilian Committee of Human Rights Defenders, can illustrate these issues. Available at: https://terradedireitos.org.br/uploads/arquivos/CBDDHDOSSE2017_011118_web.pdf, <https://terradedireitos.org.br/acervo/publicacoes/livros/42/vidas-em-luta-criminalizacao-e-violencia-contra-defensoras-e-defensores-de-direitos-humanos-no-brasil/22548>. Accessed on: June 10th 2020.

3 Refer to the report "Transnational Corporations in the Defendant's Bench: Human Rights Violations and Opportunities for Redress" (2010), produced by Terra de Direitos. Available at: <https://terradedireitos.org.br/acervo/publicacoes/livros/42/empresas-transnacionais-no-banco-dos-reus-violacoes-de-direitos-humanos-e-possibilidades-de-reparacao/3469>. Accessed on: June 10, 2020.

In March 2006, IBAMA fined Syngenta R\$ 1 million for cultivating genetically modified soybeans near Parque Iguacu in Santa Tereza do Oeste, a protected area where such cultivation was prohibited. The area had been occupied on March 14 of that year by families associated with Via Campesina, coinciding with the Convention on Biological Diversity (COP8/MOP3) in Curitiba.

In 2010, Keno’s family filed a lawsuit for reparation and compensation for material and non-material damages against the transnational company. On October 21, 2015, the court partially granted the claims and ordered the company to pay compensation to Keno’s relatives. However, the reparative dimension extends beyond financial compensation or other non-material determinations. The primary goal here is the recognition of the violation by the justice system, considering the need to prevent a process of double violation due to the ever-present risk of legitimization by the justice system. Some excerpts from the judicial decision allow us to access this fundamental aspect of the debate surrounding reparatory actions. Therefore, we highlight important moments from the document

According to the document, “if under normal circumstances, not even the State is allowed to apply the death penalty, imagine an individual imbued only with his own convictions”. The transnational corporation Syngenta Seeds S.A. sought in its defense to establish the thesis that Keno’s death was due to his exclusive fault, characterizing the defense of rights and the legitimate right to protest as practices that could be subject to the presumption of assassination.

The court concluded that it was a “massacre disguised as a repossession,” holding the company objectively liable (under Articles 932 and 933 of the Civil Code) for the damages caused. The initial sentence was partially revised by the 9th Civil Chamber of the Court of Justice of Paraná, and the terms of this decision can be reviewed in other documents⁴. Despite the partial loss of the understandings initially articulated by the first-instance court when the appeal was judged in the higher court, and despite the complex issues surrounding the determination of financial compensation, it can be said that the condemnation of the transnational corporation encompasses a broad range of discussions about the protection that the Brazilian state provides to social activists and human rights defenders.

The interpretation of the actions of these men and women as human rights defenders represents the main controversy to be addressed in reparatory actions such as the one proposed against Syngenta. This is because the process of criminalization also operates through interpretative fissures and disqualifying narratives about the conduct of these actors.

On the other hand, while the interpretative fissures regarding the actions of these actors may lead to mass criminalization, reassembling their histories as human rights defenders—through a framework and narrative that also protect their memories and hold public and private entities accountable for their violations—contributes to a broader process of educating the justice system on human rights. This process is characterized by accumulations that are as non-linear as history itself.

2.2 Legal Assistance in Preventing Violations and Resisting Threats to Human Rights Backsliding

To discuss the role of legal support in preventing violations and resisting setbacks, we highlight Terra de Direitos’ experiences in protecting human rights defenders and the protection of socio-biodiversity.

.....
4 Refer to: “Paraná Court of Justice Condemns Syngenta for the Murder of Landless Farmer”, available at: <https://terradedireitos.org.br/noticias/noticias/tribunal-de-justica-do-parana-condena-syngenta-pelo-assassinato-de-agricultor-senterra/22976>.

The organization has historically focused on human rights defenders and relies methodologically on building protection strategies within networks and collectives, producing data, disseminating information, advocating for the implementation of protection policies, as well as engaging in denunciation and litigation.

Considering that the current economic model and the guidelines under which bourgeois law is developed in the country contribute to the marginalization of the most vulnerable segments of society, a marginalization that impoverishes, excludes, and incarcerates these groups. Popular Legal Support takes the opposite approach. The work of these actors, therefore, is dedicated to defending and providing services for those who do not have access to these rights. The role of PLS should be to interact between legal and political tools aimed at advancing human rights and combating the criminalization of social movements and the violation of the rights of the most vulnerable populations.

It is also important to mention strategies for political strengthening, social communication, and legal support of civil society articulation and advocacy spaces led by social movements, farmers, and traditional communities. To illustrate the concrete implementation of these strategies, examples include actions within the Biodiversity and Food Sovereignty axis, through collaboration with the Permanent Campaign Against Pesticides and for Life, the National Articulation of Agroecology, and the Carta de Belém Group. In these spaces, Terra de Direitos has established itself as a popular legal support organization through: a) training farmers in rights, particularly in National Agroecology Meetings, Agroecology Journeys in Paraná, and seed festivals and fairs; b) monitoring and advocacy, engaging in Bills and regulations concerning GMOs, pesticides, the financialization of nature, and access to and benefit-sharing⁵; c) making international denunciations and following up on conferences⁶; d) engaging in strategic litigation with other agroecological organizations in landmark actions challenging the contamination of heirloom seeds⁷ or benefiting Brazil's chemically dependent pesticide model; e) developing educational, guiding, and training materials for advocacy;⁸; f) promoting public policies to support agroecology and agrobiodiversity; g) participating in social control and participatory spaces, such as councils and committees⁹.

We understand, therefore, that preventing violations and the resistance of communities and individuals involves strengthening spaces for articulation, exchange, and organization among themselves and with strategic partners.

.....

5 Crucial examples of monitoring and advocacy by Terra de Direitos with these organizations include the debates on changes to the Forest Code (Law No. 12,651/2012) and the Biodiversity Law (Law 13,123/2015). Additionally, ongoing legislative projects include the "Poison Package" (PL 6299/2002 and related bills), a project on GMO labeling (PLC 34/2015), and the Convention on Biological Diversity (CBD) meetings.

6 For information on recent incidences, refer to: BITTENCOURT, Naiara Andreoli. Brazil and the 14th Convention on Biological Diversity: The Forewarned Tragedy for Biodiversity. Curitiba, Terra de Direitos and Biodiversity Working Group of the National Articulation of Agroecology, 2018; Open letter of recommendations from Brazilian civil society for the 14th Conference of the Parties to the Convention on Biological Diversity and Its Protocols; DALLAGNOL, André; RODRIGUES, Cristine. Brazil Leads Backsliding at the CBD. Curitiba: Terra de Direitos, 2016.

7 The highlighted are Public Civil Actions 2007.70.00.015712-8 and 2009.70.00.021057-7, filed in the Federal Court of Paraná by Terra de Direitos, National Association of Small Farmers – ANPA, AS-PTA – Advisory and Services for Alternative Agriculture Projects, and IDEC – Brazilian Institute for Consumer Defense, and currently pending special appeals before the Superior Court of Justice.

8 For example, the booklet: BITTENCOURT, Naiara Andreoli; BORGES, Lizely. How to Draft a Municipal or State Bill to Reduce Pesticides? Curitiba: Permanent Campaign Against Pesticides and For Life and Terra de Direitos, 2019. Available at: <https://terradedireitos.org.br/acervo/publicacoes/cartilhas/53/cartilha-como-criar-um-projeto-de-lei-estadual-ou-municipal-para-reduzir-os-agrotoxicos/23047>.

9 Terra de Direitos had seats on the thematic subcommittees on Land and Territory and Seeds of the National Agroecology and Organic Production Commission, established by Decree No. 7,794/2012, which is now inactive. In Paraná, it currently holds seats on the Sectoral Chamber of Agroecology and Organic Production of the State Council for Rural Development and Family Farming and the Organic Production Commission of the State of Paraná - CPOrg-PR.

2.3 Popular Legal Assistance as a Tool for the Affirmation and Realization of Human Rights

The work of popular legal assistance also involves striving for the recognition and realization of human rights and the protection of the ways of life of the people and communities it assists.

Regarding peasants, traditional peoples, and communities, there is still a broad struggle for the recognition of territorial, ethnic, and cultural rights within the legal framework. The effective application of these guarantees involves an ongoing constitutional debate, as well as the modification of infraconstitutional, state, or local legislation. International treaties concerning human rights have recognized the collective rights of these subjects, including the Convention on Biological Diversity (Decree No. 2.519 of March 16, 1998), ILO Convention No. 169 (Decree No. 5.051 of April 19, 2004), and the International Treaty on Plant Genetic Resources for Food and Agriculture (Decree No. 6.476 of June 5, 2008).

The PLA challenges itself to contest the interpretation and implementation of these “new rights” in a joint process with the people, affirming their ethnic and cultural existence as legitimate subjects of rights. The recognition of these rights is closely linked to protecting territories as essential spaces for community development and centers of resistance. The territory serves as the starting point for assisting peasants, traditional peoples, quilombolas, and indigenous communities, as identity is intrinsically tied to the concept of “being-territory.”

In this spirit, Terra de Direitos engages in struggles related to land and territories, access to socio- and agrobiodiversity, and food sovereignty. Popular assistance to traditional peoples, such as riverine communities and flower gatherers, as well as quilombola communities, family farmers, and peasants, directs its in loco activities, starting from concrete cases to broader actions. This work involves coordinating with field partners, such as human rights organizations and social movements.

As instruments for local political articulation, organization, and the affirmation of rights with the State, enterprises, and the justice system, Terra de Direitos has made progress in developing prior consultation protocols based on ILO Convention No. 169. This involves recognizing various segments of traditional Brazilian peoples as beneficiaries of the convention, focusing on its two central rights: self-determination and the right to free, prior, and informed consultation.

Examples of these community instruments, constructed with popular legal assistance from Terra de Direitos and other partner organizations: a) The Quilombola Consultation Protocol for the communities of Saracura, Arapemã, Surubiu-Açú, Nova Vista do Ituqui, São José do Ituqui, São Raimundo do Ituqui, Patos do Ituqui, Pérola do Maicá, Bom Jardim, Murumurutuba, Murumuru, and Tingu, organized through the Federation of Quilombola Organizations of Santarém (FOQS-PA)¹⁰; b) The Protocol for the riverine communities of Pimental and São Francisco located on the banks of the Tapajós River in the municipality of Trairão (PA)¹¹; c) The Prior Consultation Protocol of the Quilombos of Monte Alegre (PA)

.....
10 FEDERATION OF QUILOMBOLA ORGANIZATIONS OF SANTARÉM – FOQS. Quilombola Communities: Saracura, Arapemã, Surubiu-Açú, Nova Vista do Ituqui, São José do Ituqui, São Raimundo do Ituqui, Patos do Ituqui, Pérola do Maicá, Bom Jardim, Murumurutuba, Murumuru, and Tingu. Quilombola Consultation Protocol Santarém, 2017. Available at: https://terradedireitos.org.br/uploads/arquivos/PROTOCOLO_CONSULTA_WEB-min.pdf.

11 RIVERINE COMMUNITIES OF PIMENTAL AND SÃO FRANCISCO. Consultation Protocol of the riverine communities of Pimental and São Francisco. Para: Terra de Direitos, 2017. Available at: [https://terradedireitos.org.br/uploads/arquivos/Protocolo-Pimental-e-Sao-Francisco-\(Web\).pdf](https://terradedireitos.org.br/uploads/arquivos/Protocolo-Pimental-e-Sao-Francisco-(Web).pdf).

for the communities of Passagem, Peafú, and Nazaré do Airi¹²; d) The Community Prior Consultation Protocol for the Everlasting Flower Gatherers of the communities of Macacos, Pé de Serra, and Lavras, located in the southern portion of the Espinhaço Range (MG)¹³; e) The Community Prior Consultation Protocol for the Quilombola Sempre Viva Flower Gatherers of the communities of Vargem do Inhaí, Mata dos Criolos, Raiz, and Braúnas, also located in the southern portion of the Espinhaço Range (MG)¹⁴.

Traditional peoples and communities are culturally distinct groups who occupy and use land in a broad sense, viewing it as integral to their way of life. They manage biodiversity through ancestral knowledge and practices that have been passed down through generations. They are, therefore, legitimate in demanding prior consultation in cases of any interventions in their territories, such as for quilombola and indigenous peoples.

Implementing the established consultation protocols poses a challenge for legal support due to ongoing ignorance or resistance to their application. Similarly, working with biocultural protocols, as legally provided in Law No. 13.123/2015 - the Biodiversity Legal Framework, can enhance respect for traditional knowledge associated with various peoples, serving as a means of protecting material and immaterial heritage and as an instrument for the realization of human rights.

2.4 Acting in Emblematic Cases and Lessons Learned

The discussion about working with emblematic cases presupposes, in our view, an initial duty of caution for popular legal assistance. Understood as an action that is built collaboratively and horizontally with rights holders, popular movements, groups, and human rights defenders, popular legal assistance should not unilaterally designate a case as emblematic. Neither should criteria such as visibility or severity be considered sufficient to assign emblematic status to a case. In reality, it is the journey taken that can or cannot make a case emblematic.

Committed work with the subjects and consolidated in the territory also implies sensitivity to receive and address urgent or routine demands affecting the lives of the groups and communities involved. This means that popular legal assistance must constantly balance addressing the immediate demands of the peoples and communities it supports with being proactive and innovative in developing strategic human rights litigation, all while maintaining autonomy and engaging in dialogue.

Based on these premises, Terra de Direitos has developed several criteria for evaluating the emblematic nature of a case, including: the impact on collective subjects; the potential to build jurisprudence; the potential to create or modify a legal framework or interpretation of a right; the potential for positive or negative replication in other human rights cases; and the novelty of the demand or content of the action.¹⁵

.....
12 QUILOMBOS OF PASSAGEM, NAZARÉ DO AIRI, AND PEA FÚ. Free, Prior, and Informed Consultation Protocol. Monte Alegre, Pará, 2019. Available at: [https://terradedireitos.org.br/uploads/arquivos/Protocolo-de-Consulta-Monte-Alegre\(1\).pdf](https://terradedireitos.org.br/uploads/arquivos/Protocolo-de-Consulta-Monte-Alegre(1).pdf).

13 COMMUNITIES OF MACACOS, PÉ DE SERRA, AND LAVRAS COLLECTORS OF EVERLASTING FLOWERS. Community Protocol for Prior Consultation. Minas Gerais, 2019. Available at: https://terradedireitos.org.br/uploads/arquivos/WEB_TDD_PROTOCOLO-apanhadoras.pdf.

14 QUILOMBOLA COMMUNITIES COLLECTORS OF EVERLASTING FLOWERS VARGEM DO INHAÍ, MATA DOS CRIOLOS, RAIZ, AND BRAÚNAS. Community Protocol for Prior Consultation. Minas Gerais, 2019. Available at: https://terradedireitos.org.br/uploads/arquivos/WEB_TDD_PROTOCOLO-apanhadoras.pdf.

15 Terra de Direitos provides a detailed systematization of some emblematic cases throughout its history on a section of its website (<https://terradedireitos.org.br/casos-emblematicos/1>).

Prominent cases within the axis of Land Conflicts include litigation involving the Quilombola Community of Paiol de Telha, the Quedas do Iguaçu Massacre, the Maró Indigenous Land, the Tapajós Hydroelectric Complex, and the Chico Mendes encampment. Within the axis of Biodiversity and Food Sovereignty, notable cases include the Tobacco Growers in the south-central region of Paraná and the Public Civil Actions concerning the commercial release of transgenic corn seeds and the contamination of traditional seeds. Within the axis of the Right to the City, notable cases include the collective adverse possession by the Barracão Society of recyclable material collectors and the Sabará/CIC communities, related to the null contracts of COHAB. In the context of reparations for human rights violations and defenders, notable cases include Sebastião Camargo Filho, Antônio Tavares, and Valmir Mota de Oliveira (Keno).

It is emphasized that these criteria are tools for evaluating and planning the work, but they do not serve as limitations for deciding whether to include a case in the work agenda, nor do they create a hierarchy among the demands being addressed.

On the other hand, thinking about criteria for case evaluation has allowed for the extraction of lessons for the field of popular legal advice:

- Litigation actions need to be aligned with strategies for visibility and popular pressure for accountability.
- It is important to recognize that the time to achieve reparations is generally long. Cases often drag on for years, so it is crucial to have a short, medium, and long-term work plan.
- Monitoring and documenting cases are essential for effective reporting and political incidence;
- Engaging allies and partners is key. To achieve results, building alliances is important.

It is relevant to prepare and develop actions simultaneously at the local, state, national, and, if possible, international levels for human rights protection.

3. CURRENT CHALLENGES OF PLA

3.1 Challenges Amidst Social, Political, Economic, Environmental, and Health Crises

In 2020, the financial, social, environmental, political, and health crises directly impacted organizations and popular social movements in both rural and urban areas, presenting new challenges for the practice of popular legal advice. Conflict situations have been exacerbated by the social backsliding accumulated over the past two years.

Actions based on potential incidences in participation and social control spaces have become even scarcer and narrower during this period, leading to a greater reliance on the Judiciary compared to before. In other words, the weakening of clearly political spheres has intensified the process of judicialization. At the same time, mobilization around the voting of Bills in the National Congress has increased in response to numerous legislative threats, within a context of severe restrictions on social participation and advocacy due to the COVID-19 pandemic.

The pandemic situation and the restrictions on multiple advocacy actions in this context have expanded the possibilities for constituted powers to increase their interventions in social participation spheres. We have observed that, in response to requests from social movements during the pandemic to prevent

measures or decisions that could potentially violate their rights, a series of governmental measures have authorized the continuation of projects or enterprises and vetoed protective measures for these populations. These actions have been promoted not only by the Executive but also by the Legislative and Judicial Branches.

3.2 Challenges in Building an Alternative Justice Model

Over the past 12 years, Terra de Direitos has recognized that its work in popular legal assistance must include strategies aimed at transforming the justice model itself, representing an additional field of struggle. In this sense, it recognizes that strategic litigation actions must be complemented by efforts to democratize justice. The recognition of the inadequacy of the current justice model to address social demands led the organization, in collaboration with social movements and entities, to establish a network: the Justice and Human Rights Articulation (JusDh). Since 2010, JusDh has been developing collective strategies for advocacy, denunciation, dialogue, and information dissemination¹⁶.

This document does not aim to explore in-depth the dimension of popular legal assistance related to justice reform. Instead, it emphasizes that our evaluation considers the pursuit of an alternative justice model as an integral part of the broader challenges faced by popular legal assistance. It is crucial for this agenda to become increasingly integrated into popular struggles. Popular legal assistance occupies a central role in this agenda, as it directly engages with the often contentious relationship between the justice system and human rights. This experience contributes to a deeper understanding of the structural issues within the justice system, including corporate capture, undue influence, racism, gender and class inequalities, privileges, corporatism, and the lack of transparency, control mechanisms, and social participation¹⁷.

Transforming the justice model is a struggle for everyone, not just for those who handle the law or are present in forums, public prosecutors' offices, police stations, and courts. From this perspective, one of the missions of legal advisors is to contribute, through popular education, to broadening the public debate on the relationship between the justice system and democracy and human rights. This involves uncovering its structure and operations, demystifying its language, and inviting people to engage in a critical analysis of the current model and to envision the justice model we aspire to build.

3.3 Challenges of Popular Legal Assistance for the Recognition of Ethnic Rights

In nearly 20 years of working in popular legal assistance, Terra de Direitos has been deeply involved in the struggle for the recognition of ethnic rights in Brazil. This issue warrants special attention, as a historical perspective shows that the defense of rights through popular strategies, particularly regarding ethnic rights beyond those of indigenous peoples, has significantly advanced since the 2000s.

.....
16 Refer to: ESCRIVÃO FILHO, Antonio Sérgio; PIVATO, Luciana Cristina Furquim; XIMENES, Salomão Barros Ximenes (org.). Justice and Human Rights: Critical Perspectives on the Judiciary in 2015. Curitiba: Terra de Direitos, 2015. Available at: <http://www.jusdh.org.br/files/2016/06/Anu%C3%A1rio-Jusdh-internet.pdf>.

17 Refer to ESCRIVÃO FILHO, Antonio Sérgio; ESCRIVÃO FILHO, Antonio Sérgio et al. Justice and Human Rights: Perspectives for the Democratization of Justice. Curitiba: Terra de Direitos, 2015. Available at: <https://terradedireitos.org.br/acervo/publicacoes/livros/42/justica-e-direitos-humanos-perspectivas-para-a-democratizacao-da-justica/18200>.

Ethnic rights, due to their distinct nature, have been recognized in various forms arising from conflict scenarios, such as free babaçu (a type of palm), special settlements, acknowledgment of traditional knowledge, and collective land titling, for instance.

Given the particular efforts required in conflictual contexts, the recognition of ethnic rights has significantly benefited from the work of popular legal assistance in collaboration with social movements, supported by academic efforts to deepen the understanding of this legal field. With the incorporation of ILO Convention No. 169 into the legal system, legal assistance began working towards its application in the Judiciary system while also making it one of the main topics in popular human rights education. This has strengthened the development of community protocols for free, prior, and informed consultation (SANTOS & MARTINS, 2018)¹⁸.

3.4 Strengthening Popular Legal Assistance

Over the years, Terra de Direitos has learned the value of collective work. This involves both the presence and construction of various networks of organizations, and certainly extends to building and strengthening the field of Popular Legal Assistance as a whole. In other words, it is necessary to create mechanisms to solidify the work of popular lawyers across Brazil, as well as the organizations of Popular Legal Assistance and networks for contacts and exchanges.

The National Network of Popular Lawyers (RENAP) is a qualified space for building strategies, sharing experiences, and exchanging ideas, ensuring critical reflection and action among various professionals and social movements. We view participation in this network, as well as in national, state, and local meetings and training courses, as fundamental. RENAP is the gathering space for critical praxis in the justice system by popular lawyers.

For Terra de Direitos, another central challenge is to strengthen the organic legal assistance of social movements, peoples, and traditional communities. The intensification of the political crisis and the weakening of democracy have exacerbated conflicts, violence, criminalization, attacks on territories, racism, violence against women, and assaults on human rights defenders. The demand for the presence of PLA in the territories is growing and becoming more complex. It is urgent to expand opportunities for young lawyers from social movements¹⁹ through actions focused on technical training and legal practice, as well as programs that support the political and financial sustainability of those who develop popular legal assistance.

.....
18 An example of strategic litigation in the realm of ethnic rights is Civil Action No. 50554362620184047000 (Federal Court of Paraná). Through this action, the Quilombola Community of Invernada Paiol de Telha Fundação was granted partial land title. Despite the Bolsonaro administration's commitment not to allocate resources to quilombola policies, this judicial determination in 2018 resulted in the community becoming the first quilombola group to receive land title in the state of Paraná.

19 Special law programs at Brazilian public universities, such as the National Education Program in Agrarian Reform (PRONERA), are crucial policies and should be expanded and diversified. Above all, it is essential to ensure financial sustainability, technical training, and opportunities for the exchange of experiences.

REFERENCES

- ALFONSIN, Jacques Távora. Assessoria Jurídica Popular. Breves apontamentos sobre sua necessidade, limites e perspectivas. Revista do SAJU - Para uma visão crítica e interdisciplinar do direito, Porto Alegre, v. 1, 1998.
- BALDEZ, Miguel Lanzellotti. Sobre o papel do Direito na sociedade capitalista. Ocupações coletivas: Direito Insurgente. Petrópolis: Centro de Defesa dos Direitos Humanos, 1989.
- COORDENAÇÃO NACIONAL DE ARTICULAÇÃO DAS COMUNIDADES NEGRAS RURAIS QUILOMBOLAS (CONAQ). Terra de Direitos. Racismo e violência contra quilombos no Brasil, 2018, 196 p.
- DUSSEL, Enrique D. Filosofia da Libertação na América Latina. São Paulo: Co-edição de Edições Loyola e Editora Unimep, 1998.
- GORSODORF, Leandro Franklin. Conceito e sentido da assessoria jurídica popular em Direitos Humanos. In: FRIGO, Darci; PRIOSTE, Fernando; ESCRIVÃO FILHO, Antônio Sérgio. Justiça e Direitos Humanos: Experiências de Assessoria Jurídica Popular. Curitiba: Terra de Direitos, 2010.
- MARTINS, Camila Cecilina. Assessoria popular em direitos humanos: o coletivo Antônia Flor e as comunidades quilombolas de Contente e Barro Vermelho no desenvolvimentismo piauiense no período de 2014 a 2016. Belo Horizonte. Casa do Direito, 2019.
- MARTINS, José Souza et al. Discutindo a assessoria popular – II. Rio de Janeiro: AJUP ; FASE, 1992, p. 44-52. (Coleção “seminários”; 17).
- MONEDERO, Juan Carlos. El gobierno de las palabras. Política para tiempos de confusión Madrid: FCE, 2009.
- MOREIRA, Maira de Souza. Do Direito à Política Pública: a produção social da política quilombola no Instituto Nacional de Colonização e Reforma Agrária do Rio de Janeiro. 2017. 241 f. Dissertação (Mestrado em Sociologia e Direito) – Programa de Pós-Graduação em Sociologia e Direito, Universidade Federal Fluminense, Niterói, 2017.
- PIVATO, Luciana C. F. O Acampamento Elias de Meura e uma experiência de assessoria jurídica popular na defesa dos direitos humanos dos trabalhadores rurais sem terra. In: FRIGO, Darci; PRIOSTE, Fernando; ESCRIVÃO FILHO, Antônio Sérgio. Justiça e Direitos Humanos: Experiências de Assessoria Jurídica Popular. Curitiba: Terra de Direitos, 2010.
- PRESSBURGER, T. Miguel. (coord.). Direito Insurgente. Anais de Fundação. Rio de Janeiro: Instituto Apoio Jurídico Popular, 1987-1988.
- PRESSBURGER, T. Miguel. Direito a alternativa. In: OAB/RJ. Perspectivas Sociológicas do Direito: 10 anos de pesquisa. Rio de Janeiro: OAB/RJ ; Universidade Estácio de Sá, 1995.
- SANTOS, Layza Queiroz; MARTINS, Pedro Sergio Vieira. Pluralismo jurídico e a construção do Protocolo de Consulta: a experiência da Federação Quilombola de Santarém. Terceira Margem Amazônia, São Paulo, v.3, n. 11, 2018.
- SOUSA JR., José Geraldo de. O Direito Achado na Rua: concepção e prática. Rio de Janeiro: Lumen Juris, 2015.

Developed by



Terra de
Direitos

terradedireitos.org.br