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PARTICIPATION OF SOCIETY IN PROTECTED AREAS: AN OUTLOOK FROM BRAZILIAN ENVIRONMENTAL LEGISLATION

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ABSTRACT

The discussion on participation in protected areas includes issues which are beneficial to nature protection policy itself and also to the public, since participatory practices can be of great value to the State – because it then ceases to be the sole responsible for social policies – and for civil society – since the expansion of political participation is important to ensure autonomy, empowerment, reduce injustices, and produce social and economic benefits. Therefore, this paper analyzes the Brazilian law related to protected areas in order to understand how the principle of participation is inserted in these documents, based on the documentary analysis technique. During the research, we noticed that the participation theme has been included in the legislation on protected areas since enactment Law 4,771/65, but without participation forms having become extreme, and being limited to the aid society could provide to the State. After the enactment of the 1988 Constitution, we can see in the laws a deeper

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understanding of the concept of participation, which refers to possibilities for decision-making and management between the State and civil society.

Keywords: environmental laws; protected areas; social inclusion.

PARTICIPAÇÃO DA SOCIEDADE EM ÁREAS PROTEGIDAS: PERSPECTIVAS DA LEGISLAÇÃO AMBIENTAL BRASILEIRA

RESUMO

O debate relacionado à participação em áreas protegidas abarca questões benéficas tanto para a própria política de proteção da natureza quanto para a população, pois as práticas participativas podem ser de grande valia para o Estado – visto que este deixa de ser o único responsável pelas políticas sociais – e para a sociedade civil – pois a ampliação da participação em instâncias políticas e decisórias é de relevância para garantir autonomia, empoderamento e diminuição das injustiças, além de gerar benefícios sociais e econômicos. Portanto, o presente trabalho analisa a legislação brasileira relacionada às áreas protegidas, no intuito de compreender como o princípio da participação é inserido nesses documentos, a partir da execução da técnica de análise documental. Ao realizar a pesquisa observou-se que a temática da participação está presente na legislação sobre áreas protegidas desde a aprovação da Lei n. 4.771/65, porém sem que houvesse uma radicalidade nas formas de participação, sendo esta limitada ao auxílio que a sociedade poderia prover ao Estado. Após a promulgação da Constituição de 1988, observa-se nas leis que a sucedem um maior aprofundamento no entendimento do conceito de participação, remetendo a possibilidades de compartilhamento de decisões e gestão entre Estado e sociedade civil.

Palavras-chave: *inclusão social; legislação ambiental; Unidades de Conservação.*

FOREWORD

The scientific study on the subject of participation is not recent; it goes back to the eighteenth century, from the ideas of Jean-Jacques Rousseau (PATEMAN, 1992). The emphasis on participation in Rousseau is mainly found in his book "The Social Contract", and happens through the conception of an alternative model of society, determined by the existence of two assumptions: the first one marked by the defense of material equality through equitable distribution of private property, and the second by the establishment of a 'general will', identified by the collective subjects expressing a common interest (which contrasts with their idea of "general will", defined as the sum of the private wills of individuals) (COUTINHO, 2011). In this sense, Rousseau's ideal society is structured based on "a common interest capable of overlapping with the various conflicting individual interests" (COUTINHO, 2011, p. 36).

Pateman (1992) believes that the centrality of the notion of participation in Rousseau lies in the educational function attributed by the author to this notion and what freedom means in it. With regard to educational attribution, participation and education feed back to each other, since individuals only develop the skills necessary for a participatory process, by participating. Moreover, it is within a participatory process that the individual learns to detach themselves from their private interests for the sake of collective interests.

However, the practical application of participation as a public policy strategy is older than Rousseau's own ideals on this subject. In Greek and Roman societies, participation in political life was an inalienable right of citizens, although the conception of citizenship in these societies was extremely restricted to some groups – women, slaves and foreigners were excluded (COMPARATO, 1989).

Unlike today, suffrage has become universal, but differences in both economic and political order influence the direct participation of society in public policy; therefore, the less affluent part of the population is constantly excluded from political decisions. In addition, other forms of inequalities, such as gender, race and sexuality inequalities (MIGUEL, 2016), also weigh in the current exclusion from public policies.

Due to this political situation, the concept of participation has been widely developed and debated by several researchers, international agencies and social segments, and is therefore evoked both by players who

seek to deepen democracy and the sharing of decision and power through the practice of participation, as well as by groups that intend to guide and dominate other social segments. The latter take advantage of the legitimacy and prestige of this concept to exercise control over other social segments (DEMO, 1988; LOUREIRO, 2012).

Therefore, the discussion about participation is complex and brings together many ways of understanding this practice, from well-intentioned manifestations of legitimizing and establishing political, social and economic equity, to the emergence of "top-down", participatory projects geared at only minimizing conflicts and maintaining the privileged position of certain groups.

Many authors define the concept of participation in several different ways. For the purposes of this paper, a compendium of the definitions formulated by Bordenave (1985), Demo (1988) and Loureiro (2004; 2012) was made. Along those lines, participation is seen as a collective process, in which institutions of different types and individuals representing different segments must negotiate in such a way that everyone has a voice, right to an opinion and decision. The participatory process should encourage co-responsibility between the government and civil society and strengthen democracy. Participation strives for equal access at decision-making levels, empowerment of local populations, access to socially-produced goods, and overcoming injustices.

1 PARTICIPATION IN BRAZIL

In Brazil, the idea of participation arose in a more organized way in the 1960s. At that time, participation was not understood as a principle to allow democracy to take roots. What is conventionally called popular participation focused on improving the living conditions of the popular strata; there was no interest in involving the population in state decisions (LAVALLE, 2011).

Then, during the 1970s, there was not much progress on the subject of participation and it remained linked to the idea of help extended to the more destitute classes. Participation was not, until then, treated as a way of democratizing the state and decisions were made by the Government, without involvement of the population. The way to understand the theme of participation in this period is clearly linked to the dictatorial government of the time, which compromised the political rights of citizens (DAGNINO; OLVERA; PANFICHI, 2006; GOHN, 2011; LAVALLE, 2011).

According to Gohn (2011), in the 1970s, participation was something practiced only in a mechanicist way. Participatory structures were established to ensure the presence of individuals; however, in these institutions the population did not have the opportunity to participate effectively, participation was only at the listening level. According to the author, "to participate was to have people there" (GOHN, 2011, p. 54).

A deeper understanding of the concept of participation came up only twenty years later, in the 1980s. From 1980 onwards, the concept refers to the participation of civil society in public policy decisions and formulations (LAVALLE, 2011). The decisive milestone in the broadening of the understanding of participation as a deepening of the democratic process and the involvement of the population in decision-making processes comes with the enactment of the 1988 Constitution (DAGNINO, 2002).

The Brazilian Constitution states, in its first article, the principle of popular sovereignty: "all power emanates from the people, who exercise it through elected representatives or directly" (BRASIL, 1988, Art. 1). In addition to the principle of popular sovereignty, the exercise of participation is guaranteed through some mechanisms such as popular initiative in legislative processes, elections and plebiscites (BRASIL, 1988, Art. 14, items I, II, III; Art. 27, § Art. 29, item XIII, Art, 49, item XV, Art. 61, § 2). Municipal planning must also include cooperation strategies from associations representing civil society (BRASIL, 1988, Art. 29, item XII).

In the 1990s, the mechanisms for the exercise of participation in the Federal Constitution prompted the creation of a series of participatory institutions (such as councils, participatory budgeting, forums and conferences) in areas such as health, education, social care and the environment (AVRITZER , 2016).

However, the late 1980s and early 1990s were marked by the emergence of neoliberal policies that envisioned the creation of participatory institutions to transfer to society the duties that would be the responsibility of the State itself. According to Dagnino (2004), this is reflected in a perverse confluence, due to the existence of two projects with different purposes, but using the same argument to achieve them, namely, the promotion of an active and participatory society. The participatory democratic project is marked by a desire for the democratic expansion and involvement of society, while the neoliberal one aims at the reduction of the social responsibilities of the State. This matching of arguments from different discourses gives a contradictory aspect to the genuinely

participatory experiences of the participatory democratic project, and it is precisely at this point that the perversity denounced by Dagnino (2004) lies.

In this sense, in Brazil, since the discussion about participation expanded in the 1960s, the theme has been gaining adherents and different forms of participation have been growing in the country. According to Avritzer (2011), participatory policies are increasingly defined as strategic in public administration, and this increase in social involvement in the management of what the author calls "public affairs" is noticeable in the proliferation of the establishment of management councils in the public sector in the 21st century.

However, against this trend of democratic deepening through participatory institutions, Decree 9,759 was enacted in April 11, 2019, which extinguishes and lays down guidelines, rules and limitations for federal public administration collegiate bodies. Dubbed a "revocation", this document extinguishes and establishes limitations for all federal collegiate bodies created by decrees, normative acts below the decrees, acts of other collegiate bodies and even those whose law does not deal with the power or composition of collegiate bodies (BRASIL , 2019, Art. 1). The definition of collegiate bodies include councils, committees, groups, boards, teams, panels, forums, rooms and "any other name given to a collegiate body" (BRASIL, 2019, Art. 2). Thus, Decree 9,759/19 includes a multitude of institutions that may be terminated or limited; in addition, it repeals Decree 8,243 from May 23, 2014, which lays down the National Social Participation Policy – PNPS and the National Social Participation System – SNPS (BRASIL, 2019, Art. 10)[4].

The debate about the participation of society in protected areas is supported by Environmental Law, which consists of a series of principles that guide the creation, application and interpretation of legal rules. One of the fundamental principles of Environmental Law is precisely the principle of participation. According to Milaré (1998, p. 4), the principle of participation "expresses the idea that, in order to solve environmental problems, special emphasis should be placed on cooperation between the state and society through the participation of different social groups in formulating and implementing environmental policies".

In Brazil, participation in the environmental sphere can be seen in the

4 On June 12, 2019 the Federal Supreme Court (STF) revised a Direct Unconstitutionality Action (ADI) filed by the Workers› Party, requesting the suspension of provisions of Decree no. 9,759/19. However, the trial was suspended and, as of the date of submission of this article, had not been resumed.

heading of Art. 225 of the Federal Constitution: "Everyone are entitled to an ecologically balanced environment, a common good for the use of the people and vital to a healthy quality of life; so, the Government and the collectivity have the duty of defending and preserving it for both the present and future generations" (BRASIL, 1988).

That said, in matters that concern the environment, participation is a right-duty, whose assumption is the active participation of society in the discussion on environmental issues, as well as in the drafting, decisions, execution, and monitoring of environmental policies (MALTEZ, 2016).

For the proper exercise of participation, some mechanisms provided by law may be used. Among these are the popular initiative in legislative processes, aiming at the creation of environmental norms (BRASIL, 1988, Art. 18, § 2), judicial instruments – characterized by public civil action (BRASIL, 1985) –, court injunctions, injunctive orders, and citizen suits (BRASIL, 1988, Art. 5, item LXXIII).

There is also the possibility of participation through plebiscites (BRASIL, 1988, Art. 14, item I), conferences and forums created by the Government or popular initiative, through the representation of organized civil society in collegiate bodies responsible for the formulation of guidelines, and monitoring public policies (such as River Basin Councils and Committees) and in public hearings where the interests and concerns of the population are heard (BRASIL, 1986, Art. 11, § 2; BRASIL, 1999, Art. 32) .

According to Maltez (2016), participation is classified into four distinct areas: administrative (public hearing, public inquiry, collegiate bodies, right of appeal, and right to information), legislative (plebiscite, referendum, and bill popular initiative), judicial (court injunction, citizen suit and public interest civil action) and other levels (such as associations, blogs, the Internet, NGOs and other environmental civil entities).

At the administrative level, it is important to emphasize the right to information. It is imperative that, so effective participation can obtain without manipulation from one group by another, access to information must be universal and of quality (MILARÉ, 1998; MACHADO, 2013). In this context, Law 10,650/2002 stands out. It provides for public access to data and information existing in the bodies and entities of the National Environmental System (SISNAMA).

Therefore, the principle of participation within the scope of Environmental Law ensures active participation of society in environmental

policies. The debate about society's participation in protected areas must be recognized in Brazilian legislation dealing with nature protection. The main laws that establish and regulate protected areas within the Brazilian State – Law 9,985 from July 18, 2000 establishing the National System of Conservation Units (SNUC), Decree 5,758 from April 13, 2006, which lays down the National Strategic Plan for Protected Areas (PNAP), and, to a lesser extent, the Forestry Code – address the issue of participation to varying degrees.

According to Irving, Giuliani & Loureiro (2008), the participation of society in protected areas is of vital importance to implementing the nature protection policy, as it allows for making protected area protection measures more efficient.

The discussion on participation is of great relevance due to the complexity of environmental issues, which require flexible, innovative, interdisciplinary and transparent decisions. Thus, these decisions need to include a diversity of knowledge and values (REED, 2008).

However, participation in protected areas is not only relevant to assist in the conservation strategies of these areas. According to authors who studied the theme of participation, such as Bordenave (1985), Demo (1988) and Loureiro (2004; 2012), a greater influence of society on participatory institutions can empower the local populations, provide autonomy for residents, assist in overcoming injustices, encourage the strengthening of local culture, and produce social and economic benefits.

After this brief introduction, one can see the importance of introducing participatory practices into the conservation of protected areas and for the population living in and around these areas. For this reason, this paper aimed to investigate how the principle of participation is included in the Brazilian legislation regarding protected areas, in order to analyze how each law addresses the theme of participation, to see which participatory practices are protected by each law and relate them to the historical/political context in which those laws were sanctioned.

2 METHODOLOGY

As the purpose of this paper is to seek to understand how the principle of participation is stated in the legislation on protected areas, we have decided to carry out a document analysis process.

Document analysis is defined by Godoy (1995) as research on materials that have not been previously addressed, or even when they have already

been addressed, it is interesting to take a new look at the data.

In this regard, the major Brazilian laws related to protected areas were looked into, namely, Law 4,771 from December 15, 1965; Law 7,803 from July 18, 1989; Law 12,651 from May 25, 2012; Law 9,985 from July 18, 2000 and Decree 5,758 from April 13, 2006. In addition, we have surveyed the 1988 Constitution of the Federative Republic of Brazil, particularly Chapter VI, entitled "Of the Environment".

The effort of performing a documentary analysis, however, does not rule out the need for previous literature research, because, according to Minayo (2002), this is indispensable for the progress of the research effort, since for that author (*op. cit.*), it is necessary to articulate the theoretical foundation with the object to be researched, in order to create a theoretical basis to look at the data.

Therefore, the first stage of this research involved conducting a bibliographic survey of books, articles, journals, theses and dissertations. This was done with the intention of looking deeper into the researched subject, and thus articulate the theoretical concepts with the observations from the documentary analysis.

3 RESULTS AND DISCUSSION

The subject of participation in protected areas follows the trend of discussions about participation in the Brazilian State. It is possible to notice the gradual expansion of talks relating to the involvement of society in the management of protected areas in legal instruments enacted in Brazil, especially since the 1960s.

When analyzing the Forestry Code of 1965 (Law 4,771/65, repealed by Law 12,651/12), it is possible to see the theme of participation in some articles, as in Art. 16, which deals with the establishment of privately owned forests, since the landowner is given the responsibility to protect forestry resources on their property. However, the State does not exempt itself from the charge of conserving these areas, as can be noted in Art. 18: "On privately-owned land, where afforestation and reforestation is required, the Government may do so without expropriating them, if the owner fails to do it". Thus, the 1965 Forestry Code entrusts the population with a commitment to protect natural resources and biodiversity together with the State, anticipating the right-to-participate in the environmental arena established in the 1988 Constitution.

Moreover, when analyzing the 1965 Forestry Code, it is possible to see that there is some concern with the particularities of the resident populations where forests are established. In Article 27, which discusses the prohibition on the use of fire in forests and other vegetation, its sole paragraph expressly states that: "If local or regional peculiarities justify the use of fire in farming or forestry activities, the permission will be given by a Government act". Articles 42 and 43 show the concern with public awareness, as they discuss the inclusion of texts on forest education in school textbooks, the mandatory addition of programs and devices relevant for forestry matters in radio and television stations, and on the obligation to institute a forest week in schools and public establishments.

> Art. 42. Two years after the enactment of this Law, no authority may allow the adoption of school textbooks that do not contain forest education texts previously approved by the Federal Council of Education, after consulting with the forestry body with jurisdiction.
> § 1. Radio and television stations shall include in their schedule forestry-relevant texts and devices approved by the body with jurisdiction lasting a minimum of five (5) minutes per week, spread through different days or not.
> § 2. Public Parks and Forests shall have to be marked in official maps and charts.
> § 3. The Federal Government and the States shall promote the creation and development of schools for forestry education at their different levels.
> Art. 43. The Forest Week is hereby established by Federal Decree, on dates set for the various regions of the country. That date must be celebrated in schools and public or subsidized establishments through objective programs that emphasize the value of forests due to their products and usefulness, as well as on the correct way to manage and perpetuate them (BRASIL, 1965, Art 42; Art 43).

In this sense, we can see an approach on the principle of information, which in spite of not including any further study in terms of the participation of society as a decision-making agent, it is important, as it allows for greater dissemination of issues related to the topics dealt with in Law 4,771/65, and thus, for greater appropriation of this knowledge by the population. This fact may make the articulation and mobilization of some players possible. In addition, access to information ensures understanding of technical languages, which is often unknown to the general population.

Therefore, the analysis of the 1965 Forestry Code shows there is a shared care to responsibilities for protecting nature. However, it is important to emphasize that this protection, although shared, is of an authoritarian nature, as is compulsorily performed. The individual divides on the obligation of conservation, but society is not given the right to

decide. Participation is established at the level of State aid and the level of public awareness. Thus, it fits in with the understanding of participation disseminated in the 1960s and 1970s, whereby discussions with society are not included, which also does not share in the decision-making.

This authoritarian way of dealing with the issue of participation is part of the historical context of the time. After a coup d'état, a military dictatorship was established in 1964 and lasted for twenty years. In that period, the policy was marked by state interventions in the participatory instances. Carvalho (2009) reports that there were interventions in the unions, the rights to union, intellectual and political leadership were revoked, several representative bodies of workers and students were closed, the existence of political parties was limited by the Government, Congress was disbanded and direct elections to president were eliminated. In this situation, the idea of participation does not involve a deepening of democracy, on the contrary, it is put forward in order to control and silence the population.

What Dagnino, Olvera and Panfichi (2006) call the authoritarian project, marked in Brazil and other Latin American countries by the rise of military dictatorships, is characterized by a verticalization of relations between State and society – so that society is restrained from influencing public policy – and a pork barrel policy. Moreover, practices related to the repression of individuals who subvert the established regulation are constantly adopted in that project.

Although the authoritarian project curtailed the political rights of citizens and limited the participation of society in the form of listening and help to the less affluent classes in Brazil, it was the struggle and resistance against the Military Regime that spurred the production of new social players who wanted the return of democracy, so that the participation of society in public management becomes central to the political project that opposed the authoritarian project (JACOBI, 1999; DAGNINO, 2002).

The peak of popular mobilization came in the direct election campaign in 1984. There was a general feeling of popular euphoria at the time for having participated in the construction of that (CARVALHO, 2009). In that climate, the newly elected Constituent Assembly drafted and approved what became known as the Citizen Constitution, as it is the most democratic in Brazil, in which political rights have reached the greatest breadth they have ever achieved in Brazilian history. This Constitution is marked by the reestablishment of democratic practices and by addressing the issue of

participation, as it gives citizens the right to participate in politics beyond the exercise of voting, and also concerns the establishment of participatory institutions (DAGNINO, 2002; LAVALLE, 2011; AVRITZER, 2011).

After that, Law 7,803/89 was enacted, which amends the wording of Law 4,771/65. Among other determinations, Law 7,803/89 introduces the category of Statutory Reserve. Statutory Reserve is defined as an "area located within a rural property or holding, other than one for permanent preservation, necessary for the sustainable use of natural resources, the conservation and rehabilitation of ecological processes, the conservation of biodiversity and the shelter and protection of native fauna and flora" (BRASIL, 1965, Art. 1, § 2, item III). Under that, it is the owners who carry out the maintenance of the Legal Reserve, which characterizes, with the responsibility for protection being shared by the Government and society.

Thus, it is possible to see that the inclusion of society is already considered in this document since its creation in 1965, including the subsequent changes made in 1989, but the notion of social inclusion is still realized only in a subtle way. It is not possible to notice in Law 7,803/89 a concern in establishing equity of political decision. Society is not considered as actively participating in the process of management and formulation of public policies.

The principle of participation, in the sense of inserting society in a collective process of negotiation and decision-making, in addition to co-responsibility between society and the Government, is more clearly evidenced in 2000, following the enactment of the National System of Conservation Units (SNUC – Law 9,985/00). The emphasis given to the participation of society in management strategies and the need to consider local social, cultural and economic demands can be noticed in some of the guidelines that govern SNUC, laid down in Art. 5, like in guidelines II, III, V, VIII and IX:

> II – To ensure the mechanisms and procedures necessary for engaging society in the establishment and review of the national policy of protected areas;
> III – To ensure the effective participation of local populations in the creation, implementation and management of protected areas;
> V – To encourage local populations and private organizations to establish and manage conservation units within the national system;
> VIII – To ensure that the process of establishing and managing conservation units is carried out together with the policies for managing surrounding lands and waters, taking local social and economic needs into account;
> IX – To consider conditions and requirements of local populations in the development

> and adaptation of methods and techniques for the sustainable use of natural resources (BRASIL, 2000, Art. 5º).

Besides the directives that instruct the National System of Conservation Units (SNUC), other articles in this same Law deal with the issue of participation. Art. 29 of that document provides for the obligatory establishment of boards made up by the organization of civil society in Conservation Units (UCs).

However, we notice that only two UC categories are managed by decisionmaking councils, namely, the Extractive Reserve and the Sustainable Development Reserve. The remaining Conservation Units ruled by SNUC must, according to that document, establish advisory boards. A fact that, for Loureiro, Azaziel and Franca (2003, p. 28) "reflects rather a technocratic vision and low participatory tradition of environmental agencies than justifiable care". For those authors (*op. cit.*), even in the case of Full Protection Units, the board can make decisions within the limits laid down for each category, not necessarily assigning a risk to the protected area.

Thus, participation in the vast majority of Conservation Unit Boards is not radicalized at the level of decision-making and power sharing. And so, an analysis of the institutional design of these boards shows right upfront a point against the decisionmaking activity.

Six years after the creation of SNUC, Decree 5,758/06, establishing the National Strategic Plan for Protected Areas (PNAP); this document reaffirms and emphasizes the commitment of protected areas to social inclusion and participation. A deepening of the discussion on various topics directly related to the issue of social inclusion can be seen in Decree 5,758/06. This is the first document analyzed where there is reference to the conservation of cultural diversity, so it is implied that conservation is not restricted to biological diversity.

> Planning for the establishment of new protected areas, as well as for their specific and collaborative management with other protected areas, should take into account the interfaces of biological diversity with socio-cultural diversity and economic aspects [...] (BRASIL, 2006, VIII guideline).

When compared to others, the subject of participation is discussed more extensively in this document. In principle XX of its Annex, Decree 5,758/06 deals with the "promotion of participation, social inclusion and the exercise of citizenship in the management of protected areas, seeking

social development on an ongoing basis, especially for the populations in and around protected areas". It also states having as its guideline the strengthening of "existing instruments of social participation and control". According to Irving (2010), the principles outlined in this document:

> Bring to light and illustrate in this official public policy text a new way of thinking about the protection of nature, in which ethical, cultural and commitment elements of social inclusion gain relevance and are expressed as a guide for future efforts (IRVING, 2010, p. 139).

So, the establishment of participatory institutions is compulsory in the last two analyzed documents, since both Law 9,985/00 and Decree 5,758/06 include principles and guidelines in their objectives, together with a discussion on fostering participation in the management of protected areas.

The insertion of broader and more active forms of participation in Law 9,985/00 and in Decree 5,758/06 is the result of a historical process of broadening the understanding of the concept of participation that began in the 1980s, and gradually expanded in the following years. Regarding the causes that motivated the insertion of the rhetoric of participation in a broader way, Irving (2010, p. 127) clarifies that: "In this field of discussion and reflection, the very notion of nature conservation is now also understood as a human construct, in which new rationales are established in an effort to rescue and reintegrate society and nature".

However, against this tendency to reinforce the concept of participation as sharing responsibilities, decision-making and information exchange, Law 12,651/12, which provides for the protection of native vegetation in place of the old Forestry Code established by Law 4,771/65, makes no progress regarding the notion of participation found in the 1965 Forestry Code or in the amendments enacted in 1989.

The ideas associated with the concept of participation in Law 12,651/12 are still strongly linked exclusively to the notion of sharing in the responsibility for protecting nature. The statement in item IV of Art. 1 envisions the participation of society in the drafting of public policies for nature protection: "A joint responsibility of the Union, States, Federal District and Municipalities in cooperation with civil society in the creation of policies for the preservation and restoration of native vegetation and its ecological and social functions in urban and rural areas" (BRASIL, 2012, Art. 1, item IV). Nevertheless, one can find no mention throughout the text

of practices analogous to those described in this item.

The sharing of the responsibility to protect nature together with the State is found in the definition of Legal Reserve, a concept that persists in Law 12,651/12, with some changes to the previous wording in Law 7,803/89. In the new 2012 Forestry Code, Legal Reserve is now defined as:

> An area located within a rural property or holding, with boundaries set pursuant Art. 12, having the purpose of ensuring the sustainable economic use of said rural property natural resources, assist in the conservation and rehabilitation of ecological processes, and foster the conservation of biodiversity, as well as shelter and protect wildlife and native flora (BRASIL, 2012, Art. 3, item III).

Despite the changes in the definition, the issue of participation is considered in the same terms found in Law 7,803/89, where society helps the government to preserve the nature enclosed within its properties. It is important to emphasize that this article understands the importance of Legal Reserves for protecting nature. The questions raised here are not regarding the relevance of these areas. What is questioned is that there are few points we can see the inclusion of society in Law 12,651/12, and this insertion is only on a duty-based assumption. The constitutional claim to the right to active participation in decisions and discussions on environmental issues is extremely limited in the 2012 Forestry Code.

As noted in Law 4,771/65, there is some concern with local characteristics and the specificities of rural populations, as can be seen in Art. 38, which regulates on the use of fire in farming or forestry practices, and allows it to be used in certain situations, when approved by the environmental agency with jurisdiction.

Unlike Law 9.985/00, the document does not provide for the establishment of participatory institutions. Even when considering public and social interest, participation in decision-making processes, discussions, and execution of actions is not considered.

Finally, a possible setback was found when compared with the principle of information in Law 4,771/65, which deals with the inclusion of texts on forestry education in school textbooks and access to information on forests in the media, as well as the obligation to maintain schools geared at forestry education. All these values associated to the principle of information are definitively excluded from Law 12,651/12, without any changes to introduce this discussion in a more up-to-date manner in this latter document.

Despite the broadening of the discussion on participation in Brazilian legislation, the 2012 Forestry Code does not follow this trend. In order to

try to explain the reason for the inadequacy of this Law in this regard, the circumstances of the creation of Law 12,651/12 are worth mentioning. It comes up immersed in conflicts between ruralists and environmentalists/ researchers (ALMEIDA; CASTELO; RIVERO, 2013).

Law 12,651/12 emerged full of intentionalities and interests from a specific political group – the Parliamentary Front for Agriculture (FPA), also known as the ruralist party – focused on obtaining benefits and minimizing problems related to agribusiness (LAMIM-GUEDES, 2013). Representatives of this party claimed that the Forestry Code restricted the growth of agribusiness and food production. One congressman went so far as to say that the establishment of the Legal Reserve would be absurd, as it amounted to seizing properties, since it subtracted 20% of all rural property (SAUER; FRANCE, 2016).

That said, it can be noticed that Law 12,651/12 was enacted primarily to remedy the interests of a political class, which made consideration of other matters for the drafting of this Law secondary, as it occurred with issues about participation. That despite many environmentalists, researchers and social movements having denounced the environmental setbacks that changes made in the Forestry Code could cause in numerous instances and publications.

In this regard, four Direct Unconstitutionality Actions (ADIs) were filed, three by the Office of the Prosecutor General (ADIs 4901, 4902, and 4903) and one (ADI 4937) filed by the Socialism and Freedom Party (PSOL), in addition to one Declaratory Action on Constitutionality (ADC) by the Progressive Party (PP). The unconstitutionality actions were based on the principle of prohibition of environmental setback. However, in a trial held in February 2018, the Superior Court of Justice (STF) ruled on the constitutionality of Law 12,651/12, declaring unconstitutionality only in some expressions contained in its articles. For example, the phrases “facilities necessary to hold state, national or international sports competitions” and “waste management” being understood as situations of public interest (BRASIL, 2012, Art. 3, item VIII), and therefore subject to intervention on or the suppression of Permanent Preservation Areas (BRASIL, 2012, Art. 8).

Notwithstanding legal advances in promoting participation in legislation, as is the case of SNUC and PNAP, much progress remains only in theory. In practice, there are some political, economic and social situations that prevent a full insertion of participatory practices, as can

be seen in the discussions related to Law 12,651/12 and in the current publication of Decree 9,759/19.

FINAL CONSIDERATIONS

In weaving this brief history about the relationships of participatory policies in the Brazilian legislation regarding protected areas, it is possible to see that there is a guideline to realize co-responsibility regarding the protection of protected areas between the Government and society since the publication of the 1965 Forestry Code (Law 4,771/65). However, Law 4,771/65 does not establish participation of society in decision-making bodies; that Law focuses on participation in the forms of State help, as can be seen in Art. 16 of the aforementioned Law, concerning forests in the private holdings. According to that article, the owner is responsible for protecting the forest resources owned by him; participation in this context is shared, but also compulsory.

Over the years, discussions have become increasingly solid and grounded in a view that participation is beneficial to both society and protected areas. This tendency to broaden the discourse in favor of the participation of civil society in decision-making instances started in the 1980s, with the advent of the 1988 Constitution. Thus, the legislation on protected areas emerging at the beginning of the 21st century is characterized by a strengthening of the understanding of the concept of participation.

However, despite the advances observed in Law 9,985/00 and in Decree 5,758/06, the 2012 Forestry Code, due to the specific political situation, maintains the understanding of the concept of participation only as the duty of society to collaborate with the State in protecting the environment.

Finally, a study of the laws related to protected areas in Brazil made it possible to see that the view on participation found in these documents is part of a historical process marked by disputes over political participation in the country. It is a theme that changes according to the clashes among divergent positions and interests in the national context. Amid disputes of interest, legislation introduced participation in protected areas in the 1960s from a more restricted and authoritarian perspective. However, in the following decades, the idea of participation evolved, gradually broadening towards decision-making with the participation of society up to the 2000s.

Thus, it can be seen that these changes were not spontaneous; on the

contrary, they were the result of questioning, investigations, assessments of previous experiences, participation, and political struggles that continue to this day. Therefore, the concept of participation in protected areas is not concluded and continues to undergo changes and reformulations.

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