



JUDICIAL DECISIONS ON BEACH HUTS IN PORTO SEGURO/BA

Decisões judiciais sobre a ocupação de barracas de praias em Porto Seguro/BA

Roberto Muhájir Rahnemay Rabbani

Universidade Federal do Sul da Bahia, Itabuna, BA, Brasil

Lattes: <http://lattes.cnpq.br/8576195795981994> ORCID: <http://orcid.org/0000-0002-3175-6332>

E-mail: rabbani@csc.ufsb.edu.br

Allívia Rouse Carregosa Rabbani

Universidade Federal do Sul da Bahia, Itabuna, BA, Brasil

Lattes: <http://lattes.cnpq.br/9716789774090901> ORCID: <http://orcid.org/0000-0003-0564-7113>

E-mail: alliviarouse@ifba.edu.br

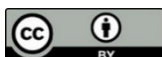
Neliana de Souza Ribeiro

Universidade Federal do Sul da Bahia, Itabuna, BA, Brasil

Lattes: <http://lattes.cnpq.br/2590969111344583> ORCID: <https://orcid.org/0000-0002-2469-4487>

E-mail: nelianasribeiro@gmail.com

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Roberto Muhájir Rahnemay Rabbani, Allívia Rouse Carregosa Rabbani e
Neliana de Souza Ribeiro

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ABSTRACT

The coast of Porto Seguro has undergone a process of irregular occupation with establishments known as beach huts being installed, which economically explore the coastal zone, occupy naval land without authorization from the Federal Properties Management Office, and suppress vegetation, as well as modify the landscape, causing environmental damage. In view of this, the Federal Public Prosecutor's Office, which has protection of the environment among its institutional duties, has filed 75 Public Civil Actions between 2009 and 2016, seeking to stop this harmful conduct, repair the degraded area, and hold responsible the beach huts, their representatives, the Federal Government, and the Municipality of Porto Seguro for their failure to supervise improper exploitation. The decisions rendered in these lawsuits show that the proceedings take from 3 to 9 years at the lower court level. As of July 2019, 86.66% of these lawsuits received a sentence, with convictions for environmental damage exceeding a sum of 2.6 million *reais*, data that indicate that procedural legislation is being complied with, while pointing out the need for coastal management to avoid damage.

Keywords: coastline; discovery coast; environmental damage; environmental responsibility; judicial decisions.

RESUMO

O litoral porto-segurense passou por uma ocupação desordenada com instalação ao longo da Orla de diversos estabelecimentos conhecido como barracas de praia, que exploram economicamente a zona costeira, ocupam terreno de marinha sem autorização da Secretaria de Patrimônio da União e causam supressão de vegetação além de modificarem a paisagem causando dano ambiental. Diante disso, o Ministério Público Federal, que possui entre as suas atribuições institucionais a proteção do meio ambiente, ajuizou 75 Ações Cíveis Públicas entre os anos de 2009 e 2016, buscando cessar as condutas lesivas, reparar a área degradada e responsabilizar as barracas de praia, seus representantes, a União e Município de Porto Seguro pela omissão no dever de fiscalizar a exploração indevida. As decisões judiciais prolatadas nessas ações apontam que o tempo de tramitação dos processos em primeira instância é de 3 a 9 anos, que até julho de 2019, 86,66% dessas ações foram sentenciadas e até o momento as condenações pelos danos ambientais causados ultrapassam a soma de 2,6 milhões reais, dados que indicam o cumprimento da legislação processual ao mesmo tempo em que aponta a necessidade de um gerenciamento costeiro à fim de que o dano seja evitado.

Palavras-chave: orla; costa do descobrimento; dano ambiental; responsabilidade ambiental; decisões judiciais.



1. INTRODUCTION

The Brazilian Federal Constitution of 1988 (CF/88) elevates the environment to the status of a fundamental right (MARQUES; CAMPOS, 2017) by providing, in Article 225, that everyone has the right to an ecologically balanced environment, essential to a healthy quality of life, ensuring its protection by the government and the community (LIMA, 2017). This constitutional vision aims to establish the defense of environmental resources in all their forms, ensuring them for all individuals (BELCHIOR; VIANA, 2017), as well as ensuring that economic and technological development incorporates environmental protection (ARAÚJO, 2017).

This constitutional guarantee of protection extends to the most diverse ecosystems, including the Coastal Zone, which is conceptualized as a territorial unit corresponding to the geographical space where the air, sea, and land interact, and including renewable and non-renewable resources (CAVALCANTE; ALOUFA, 2018). It covers a maritime strip and a land strip, with a coastline that extends for 8,500 km, following the contours of bays, recesses, gulfs, etc., and a diverse number of ecosystems such as mangroves, dunes, and *restingas* (MILANÉS BATISTA; SUÁREZ; BOTERO SALTARÉN, 2017). The maritime strip extends seaward for 12 nautical miles from the coastline, equivalent to about 22 km, and the terrestrial strip extends to the limits of the municipalities that are influenced by the phenomena that occur in the Coastal Zone (IBGE, 2018).

The coastal region has a convergence of biotic and abiotic factors and elements that give it characteristics different from other regions (LIMA, 2017). It houses a rich biodiversity and a set of ecosystems whose complexity gives rise to important evolutionary processes (OLIVEIRA, 2015). Coastal dynamics and interaction produce organic matter that supports ideal food chains that promote, for example, fishing, with high socioeconomic relevance to coastal communities, a macrosystem of great environmental relevance (LOUREIRO FILHO, 2014).

One of the factors that put pressure on the dynamic coastal region, beyond its ability to significantly alter its contour, is the anthropic pressure caused by urbanization in the terrestrial strip, which implies an increase in demographic density (YANES *et al.*, 2019). Twenty-seven percent of the Brazilian population live within the coastal region, approximately 50.7 million inhabitants distributed over 463 coastal municipalities (IBGE, 2018). Urbanization caused by the increased population density is associated with the development and carrying out of economic, touristic, and industrial activities, which provoke changes in vegetation cover and the dynamics of environmental resources that make up the coastal area (MOURA *et al.*, 2015).



Among the municipalities bordering the sea is Porto Seguro, which stands out as being one of the most sought-after destinations in the Northeast. It has 85 km of coastline and is made up of a diversity of ecosystems that are part of the Atlantic Forest central corridor. About 45% of its territory is still covered by native vegetation, and part of this area is protected by Conservation Units (UCs) (LAMAS *et al.*, 2014). In addition to natural resources, the city stands out for its historical, artistic, and cultural value, registered by the National Historical and Artistic Heritage Institute (IPHAN) and considered a National Monument. This set of features makes it one of the most attractive tourist destinations in Brazil, receiving about 1 million tourists per year (LAMAS *et al.*, 2014).

The local economy is driven by several segments. In addition to tourism, the production of pulp by multinationals and agriculture stands out. Tourism in the region is characterized as “mass tourism,” where large groups of people economically exploit the Coastal Zone (CERQUEIRA NETO, 2014), an indisputable portrait of the situation to which the beaches of Porto Seguro are subjected. While considering the effects of the privatization of the coast on the one hand, the expressiveness of tourism in the economy and its effect on municipal urban development is undisputed. However, it has occurred in a disorderly manner, leading to serious socio-environmental problems, such as housing in hazardous areas and environmental damage, such as suppression of the *restinga* vegetation, landfilling of the swamps, and building construction surrounding the mouths of rivers. (CERQUEIRA NETO, 2012).

In this scenario of irrational natural resource use, constant degradation of the environment, and anthropic pressure caused by demographic density (RABBANI, 2018) and mainly due to the development of economic activities, it is necessary to propose public policies that link protection of the environment to economic and social development (KHELIL *et al.*, 2019). The state, as the manager of administrative activities, has the duty to act to promote this link and control private activities that mitigate the protection guaranteed by legislation (RABBANI, 2012).

This control of harmful activities by public administration can be carried out through the environmental police power, which allows the government to supervise, license construction projects, embargo, impose fines (FARIAS; DAMACENA, 2017), and promote actions to seek redress for damages (DELPUPO; BUENO, 2017). However, it is possible to observe that the executive power of the State, which should act to supervise and control activities, is repeatedly the actor that permits and creates conditions for the perpetuation of damage to environmental resources (EFING; HAYAMA, 2017). Given the inapplicability of legislation, lack of management, and blatant environmental damage, the figure of the judiciary stands out as a safeguard, investigating environmental offenses and crimes, analyzing the real cases, and punishing those who have breached legislation (KONZEN; CAFRUNE, 2016), whether



it is the state entity that failed to act on its duty to supervise, or the direct public or private entity itself who caused the damage (SOUZA; HARTMANN; SILVEIRA, 2015).

Therefore, when damage has occurred, there is a duty to repair the damaged property or pay compensation when repairs are not possible (SÁ, 2017). The determination of responsibility for environmental damage is carried out by the Public Civil Action, a procedural legal instrument for environmental protection established by Law 7347 of 1985 (COELHO; REZENDE; CAMPOS, 2017), being incumbent upon the public prosecutor the constitutional and legitimate duty to propose actions that will hold the agents causing environmental degradation accountable (REIS NETO; SILVA; ARAÚJO, 2016).

The present study focuses on this context and aims to analyze the court decisions issued from within the Public Civil Actions (ACP). The data collected in the present study point to omissive conduct on the part of the federative entities, especially the city of Porto Seguro/BA, as well as commissive conduct on the part of individuals who maintain beach huts, and who use, occupy, and economically exploit the local Coastal Zone in areas of permanent protection characterized by the presence of *restingas*, mangroves, and rivers. These areas are continuously subjected to injurious action by the mentioned agents, causing the suppression of vegetation and landfilling of areas located along the shore. This study also makes it possible to verify the existence of a standard on which the judicial decisions rendered are based and whether the Public Civil Actions have fulfilled their purpose of protecting the environment.

2. MATERIALS AND METHODS

The survey of Public Civil Actions was conducted through documentary research at the Federal Courthouse, Judicial Subsection in Eunápolis, BA. The lower Federal Court is the one competent to act with regard to actions in which the Federal Government, municipalities, or federal public companies are involved as plaintiffs, defendants, assistants, or opponents, as provided by Art. 109, I, of the Federal Constitution of 1988. The processes under appeal, except for those that have been decided by the judge who issued the decision contested by appeal, are “written off” and referred to the higher court, which, in the State of Bahia, is represented by the First Regional Federal Court (TRF 1).

The data analyzed in this study were obtained from the website, where data from the proceedings of the lower and higher courts of TRF 1 are stored. The content of the rulings (decisions to continue with proceedings) and judgments (decisions terminating the proceedings), available in



“.pdf” format or on the Court's own electronic platform, was collected and organized into a spreadsheet, with process numbers in rows and categories to be analyzed in columns, applying percentage and mathematical calculations, as well as content analysis to the data obtained.

The categories used in the analysis were: process number; class; class description; author; defendant; defendant legal entity under private rights; individual defendant; distribution date; subject of the petition; current situation; date of last movement; location; type of enterprise; type of sentence; sentencing date; citation of expertise performed in the sentence; readjustment project; notes of the readjustment project; compensation amount; *quantum* compensation for individual; *quantum* compensation for legal entity under private rights; *quantum* compensation for municipality of Porto Seguro; *quantum* compensation for union; and form of payment. The survey of data through these listed categories allowed conclusions to be drawn about the 100 existing processes; time between protocol and sentence of 8 to 9 years; the types of sentences, whether obtained by agreement or with or without analysis of merit; the implications of the sentences, such as indemnity values attributed to each defendant; whether they have submitted a readjustment project; and whether or not project compliance is being verified along the coast.

The search on the TRF1 website for the lower court was carried out through the “procedural consultation” option, selecting the Eunápolis subsection, filling in the “name of the party” search field with the term “Porto Seguro Municipality,” and selecting the option “show the downloads,” which refers to processes filed or sent to the TRF 1. With the steps described, all processes in which the Federal Government or municipal and federal public companies, together with the Municipality of Porto Seguro were a party, whether as plaintiff, defendant, or interested third parties, were obtained.

The search for the term “Porto Seguro Municipality” initially generated a list of 167 processes. Those classified as Public Civil Actions were selected, generating a new list of 100 cases (January 2019). Of the PCAs filed by the MPF in the Federal Court in which the Municipality is a defendant, seven actions were excluded because they dealt with a subject other than the object of study: Abuse of Power, Misconduct, Conservation Units, Fees, and Professional Council. The remaining 93 actions were related to this study, selected based on the title of the subject attributed by the internal system of the Federal Court as “Injury to the Artistic, Aesthetic, Historical, or Touristic Heritage; Historical Heritage Damage; Environmental Damage; and Public Property.”

A new verification was performed with the remaining 100 PCAs. They were grouped according to the current process situation, which represents their status, making it is possible to observe more objectively the purpose of these actions. At this stage, seven cases were excluded from the list that



had been judged without analysis of the merits, that is, the process was terminated without a decision as to its content. Beyond this, two cases were closed without analysis of the merits, nine lawsuits involved other geographic locations, and seven processes dealt with subject matter different from that under study here. Seventy-five lawsuits remained, which were classified as: “in progress,” not yet subject to judgment; “under appeal,” processes where sentences have been rendered after analysis of merits, but which were appealed by one of the parties; “rectification of assessment,” addition of the initial petition and inclusion of the defendant; “judged,” cases where a decision was made on the merits, regardless of whether it was appealed or not; and “sentence without effect,” embargoes accepted. The survey of the analyzed data was carried out at two moments: first in January 2019 and again in July 2019.

From the 75 PCAs selected, a detailed reading of the interlocutory decisions (orders) issued by the judges was made. These decisions are intended to move the process forward. There are also judgments of merit, which are decisions that aim to end a phase of the process by deciding whether or not the claims made in the application are well-founded, and the study focused mainly on the content of those decisions. Therefore, the data obtained through the sentence content analysis were extracted and inserted into a spreadsheet in the categories mentioned above, in order to perform a quantitative and qualitative analysis.

At this point in the research, it was observed that several lawsuits whose sentences were decided in November and December of 2018 did not have digital files in “pdf” format. The probable reason for this is the volume of sentences issued during the months cited and the forensic recess that followed from mid-December 2018 to mid-January 2019. For these cases, data such as quantum indemnity and information about the readjustment project were empty in the case spreadsheet. However, the absence of such documents does not harm the study, because it was possible to find complementary information on the electronic platform to fill several of these categories, and because the number of cases with sentences corresponds a sample sufficiently large to make inferences.

3. RESULTS

3.1 Analysis of judicial decisions

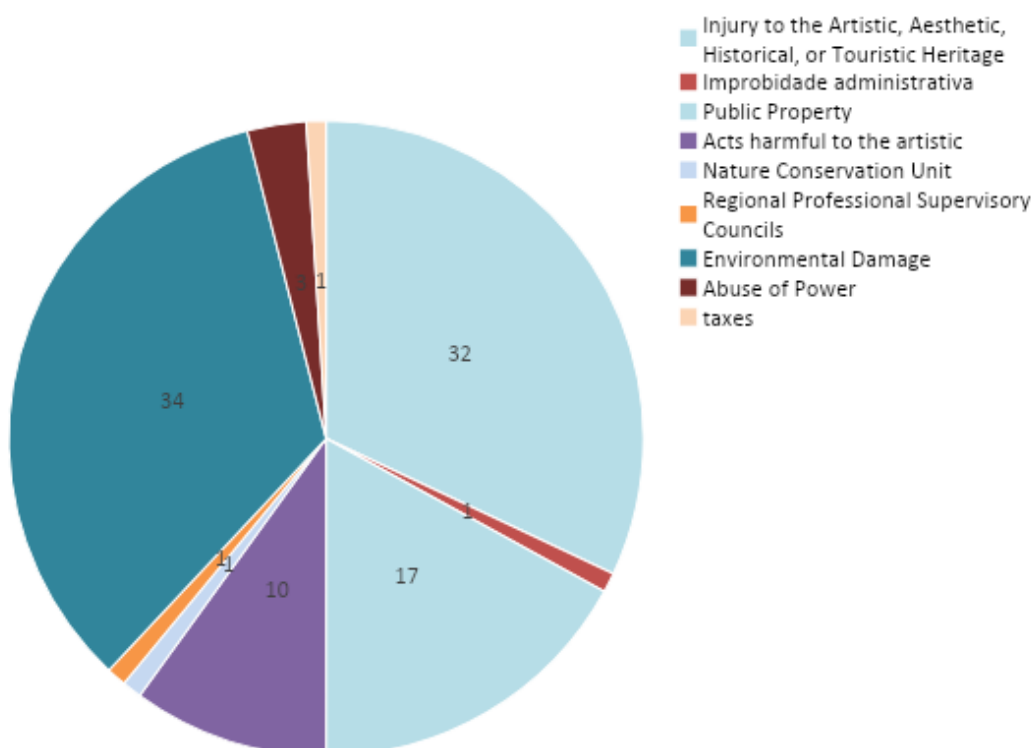
A search for the term “Porto Seguro Municipality,” in the procedure consultation on the website of the 1st Regional Federal Court (TRF 1), Subsection of Eunápolis/BA, generated a list of 100 (one hundred) PCAs filed between 2009 and 2016. The PCAs were distributed and registered by subject



and follow guidelines from the Court's internal system. Among the subjects observed in this first selection, environmental damage stands out with 34%. Other subjects include: acts harmful to the artistic, aesthetic, historical, and touristic heritage with 32%; public goods with 17%; damage to historical heritage with 10%; abuse of power with 3%; and nature conservation unit, regional professional supervisory councils, fees, and management misconduct, each with 1%, as shown in Graph 1.

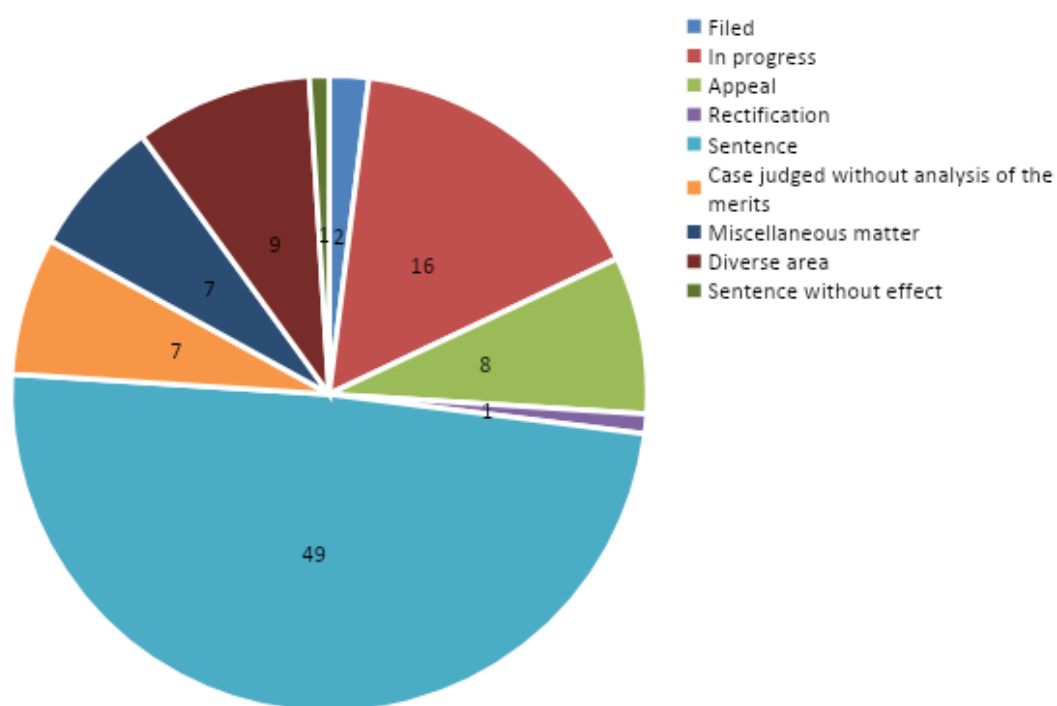
Of the protocolized PCAs registered and classified by subject, seven percent concern interests other than those proposed to be analyzed in the current study: abuse of power, nature conservation unit, regional professional supervisory councils, fees, and management misconduct, making this the first filter applied to the collected data.

Graph 1- Public Civil Actions with the Municipality of Porto Seguro as a defendant – Classified by Subject, January 2019.



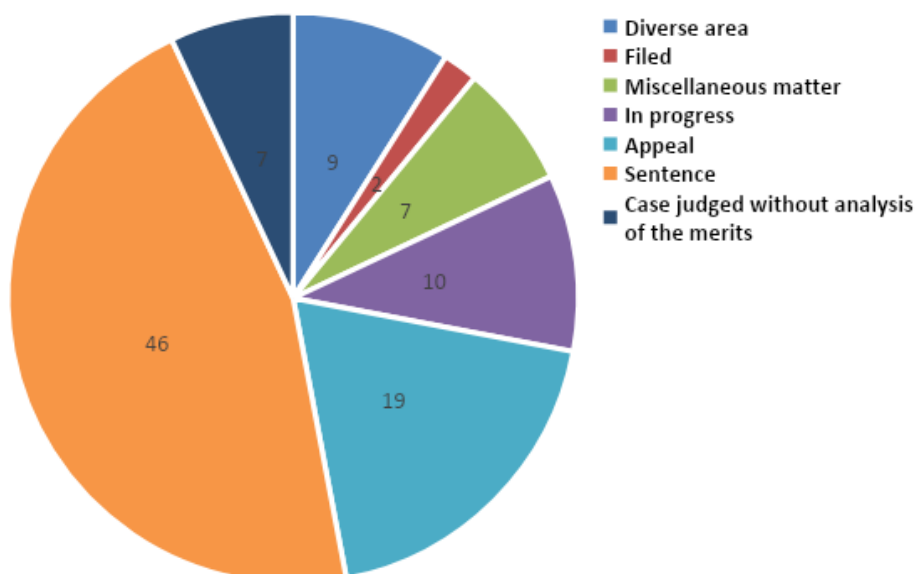
Source: Elaborated by the author

To better analyze the PCAs, a second classification was applied to the 100 processes to understand their current state. This dataset was inserted in the spreadsheet in the category called “current situation of PCAs,” as shown in Graph 2. The term “diverse area” was applied to processes with different geographical location than that proposed in the research, i.e., outside the coastal area (south or north). “Filed” refers to actions that are definitively closed after obtaining judgment without analysis of the merit; “In progress” refers proceedings where no sentence has been issued yet; “Rectification” refers to processes that have no sentence and require correction regarding data entered; “Sentence” is for proceedings that have a decision on the merits in the lower court; “Appeal” is for those who have been judged and re the subject of an appeal at the higher court; “Sentence without effect” is for processes who have received declaration embargoes (appeal sent to the judge who handed down the ruling) returning the processes to the procedure before sentencing; case judged without analysis of the merits and, finally, “miscellaneous matter” is for any process that does not deal with environmental damage.



Source: Elaborated by the author.

Graph SEQ Gráfico * ARABIC 2 – Status of Public Civil Actions in January 2019



Source: Elaborated by the author.

Graph SEQ Gráfico * ARABIC 3- Status of Public Civil Actions in July 2019

After further analysis of the movement of the legal cases in July 2019, it could be seen that the processes being rectified, filing embargoes, and that were in progress were being followed up. When comparing Graphs 2 and 3, it can be seen that, of the 18 cases that were in the process of producing evidence or waiting for sentencing proceedings, only 10 remained in this condition, meaning that eight new sentences were decided. In the same period, there was a significant increase in appeals from 8 to 19, due to the short time in which they must be filed following publication of the judgments. Changes in the current situation of the cases indicate continuous action by the judiciary when conducting the PCA proceedings.

In this manner, 25 of the 100 cases identified were excluded because they dealt with subjects classified as: different area, different subject, case closed, and case judged without analysis of the merits. The exclusion of these processes constitutes the second filter applied to the legal actions. As a result, a total of 75 processes that form the object of this research were found, and currently have the status shown in Graph 3.



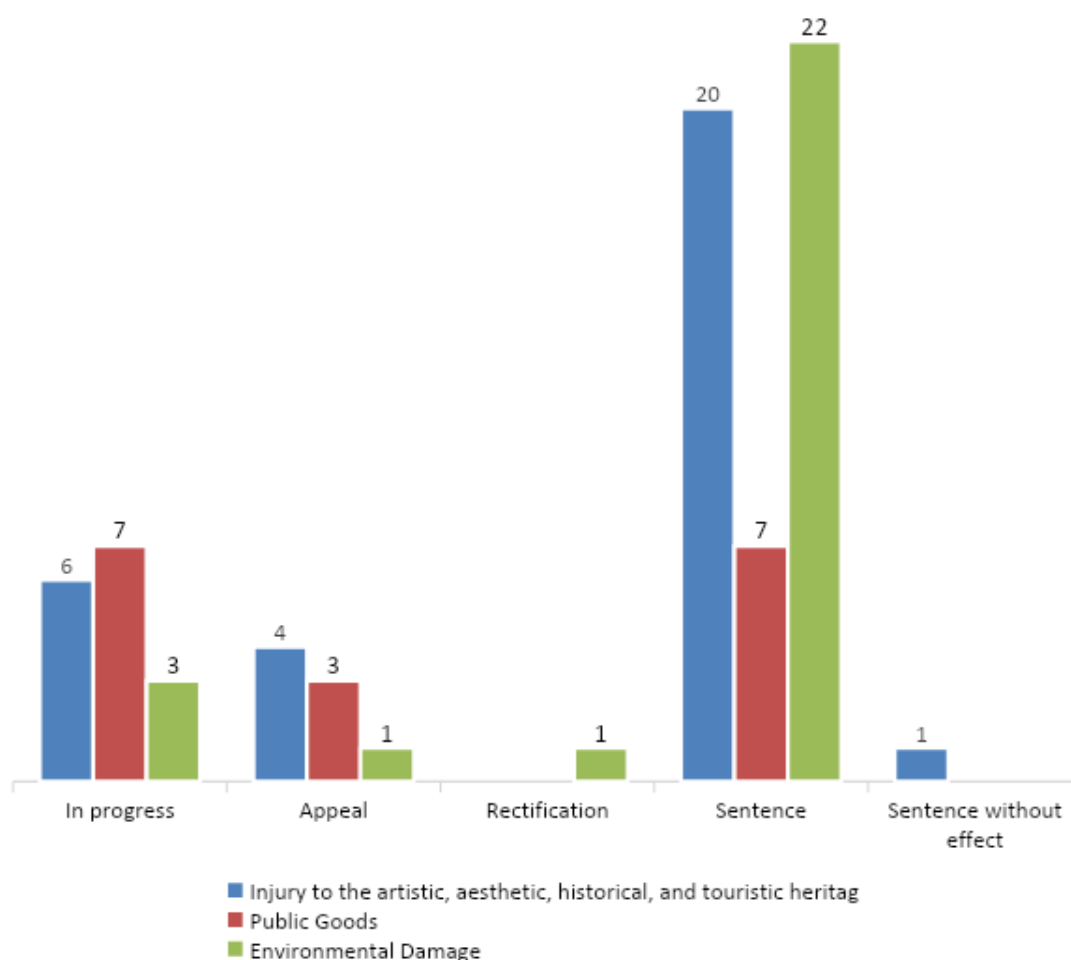
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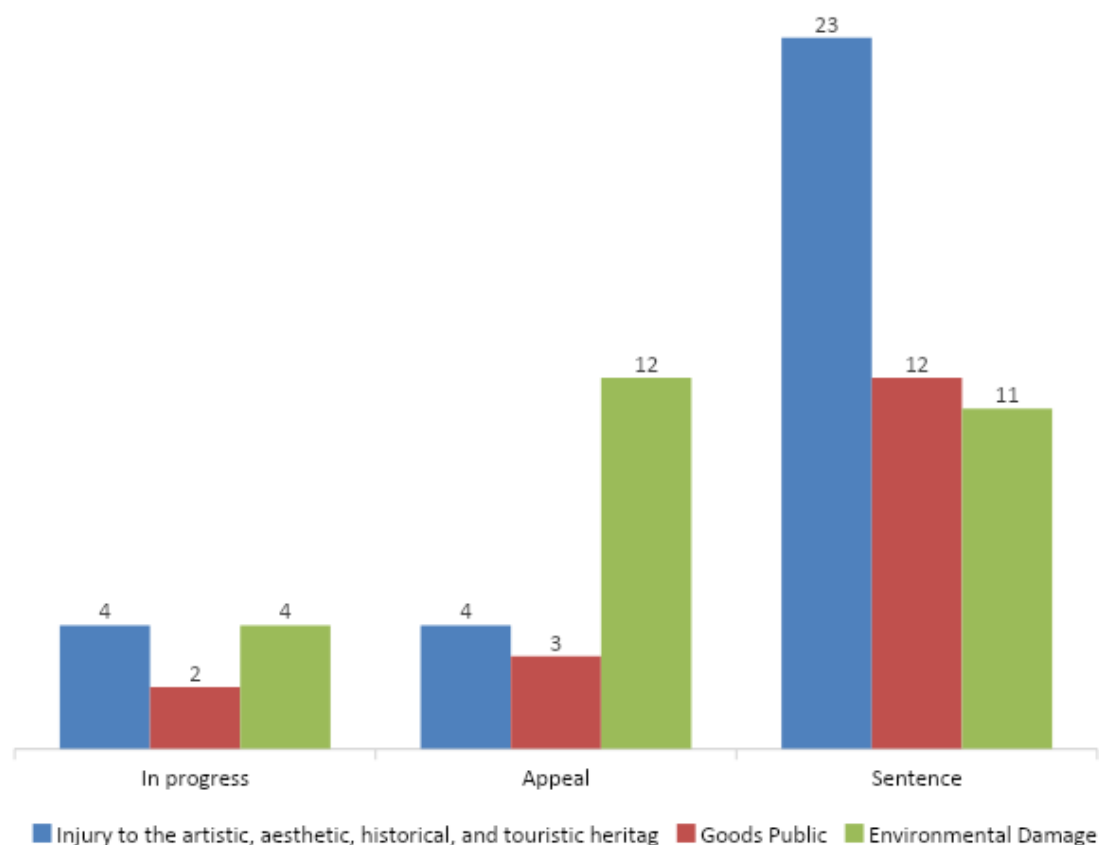
After excluding the 25 cases, the current situation data was analyzed and compared them with the “subject of the petition” category. The processes classified as “Damage to Historical Heritage,” which were initially recognized as an object of this research due to their name, were not included in the final count of 75, as they deal with a different area outside of that defined as the object of study, that is, outside of the South or North Coast area, as shown in Graphs 4 and 5.

Graph 4 – Current Situation of Public Civil Actions by subject, January 2019



Source: Elaborated by the author

Graph SEQ Gráfico * ARABIC 5 – Current Situation of Public Civil Actions by subject, July

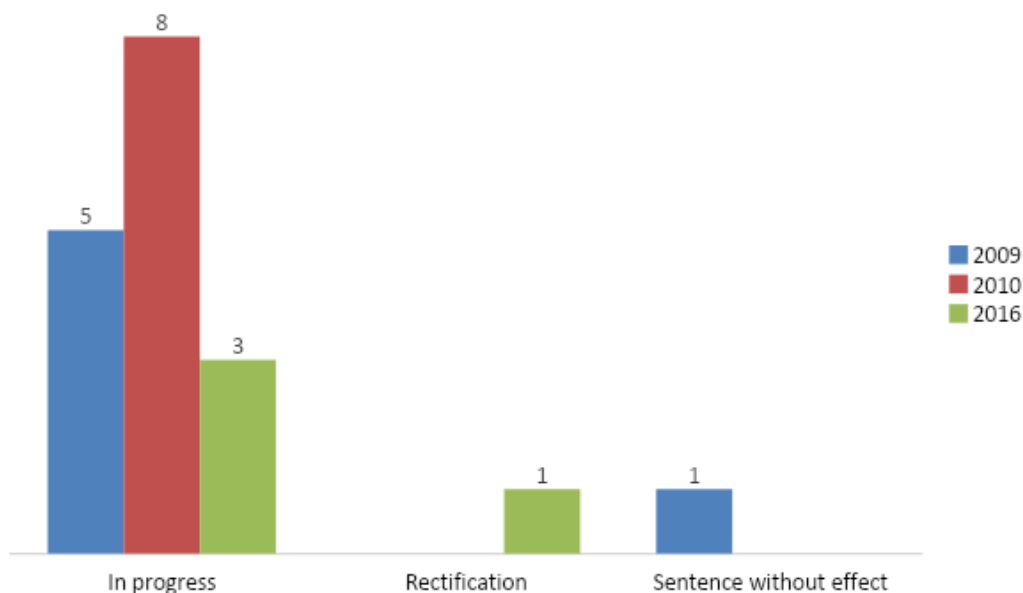


Analysis of the subjects of the petitions that make up the collection of selected cases did not make it possible to identify similarities or differences that justify the subject classification used by the Federal Court. All 75 of the PCAs' initial petitions concern economic enterprises known as "beach huts," represented by individuals or legal entities that use public goods and environmental resources, characterized by the Federal Prosecutor's Office as improper occupation, along the South and North Coast of Porto Seguro.

Regarding cases that were in progress and had not been judged as of January 2019 (18), six were filed in 2009, eight in 2010, and four in 2016, as shown in Graph 4. Of these, seven had sent readjustment projects to IPHAN and six were not approved, and those processes (disapproved) continued to expert investigation phase. In the analysis carried out in July 2019 (Graph 5), of the 10 lawsuits in progress, three were filed in 2009, three in 2010, and four in 2016. Of the projects that had not been approved by IPHAN as of January 2019, two had submitted new projects that were approved

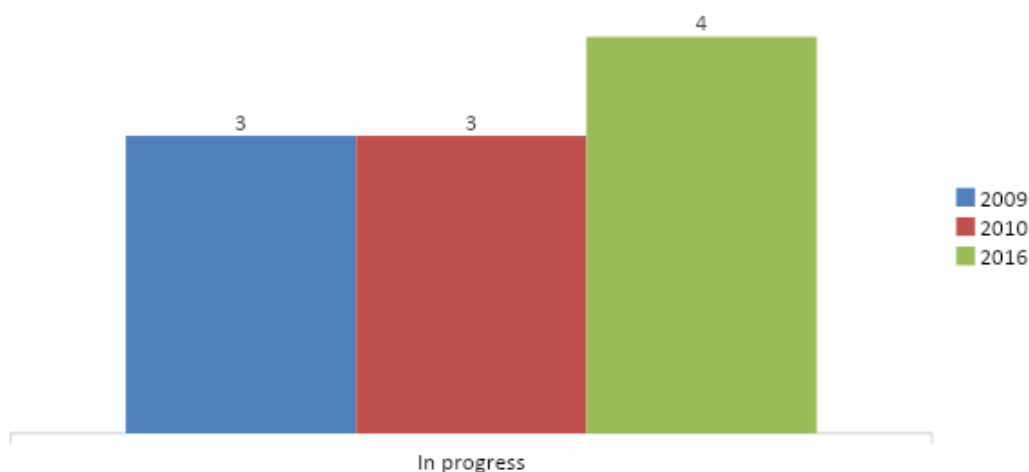
following analysis. In these cases, the accord was ratified. In three other cases, condemnatory sentences were issued, leaving only one case in the expert investigation phase.

Graph 6 – Public Civil Actions without sentences grouped by year of distribution, situation in January 2019



Source: Elaborated by the author

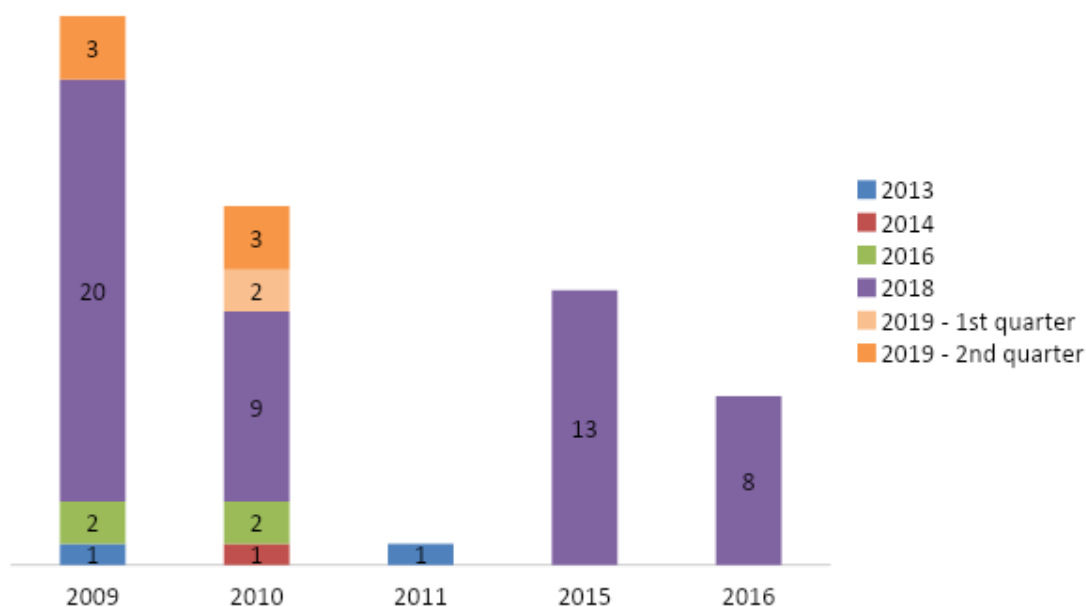
Graph SEQ Gráfico * ARABIC 7- Public Civil Actions without sentences grouped by year of distribution, situation in July 2019



Source: Elaborated by the author

Of the 75 PCAs selected, 57 had a sentence based on analysis of merits in January 2019. Of these, eight were appealed and referred to TRF 1. Of the total sentences published, 50 (88%) were rendered in 2018 and 4 (7%) in 2016, according to Chart 6. Updating the data for July 2019, the number of sentences increased to 65, as 8 new decisions based on the merits were issued in the first half of 2019. Therefore, of the total number of PCAs analyzed, 86.66% had a decision rendered on the merits of the case, with a total of 10 PCAs remaining in progress and without a sentence, according to Graph 7.

Of the PCAs filed in 2009 and 2010, 56.92% were sentenced in 2018 (29) and 2019 (8), which indicates a time of between 8 and 9 years from the distribution of the action until a decision on the merits is rendered. It happens that, during this period, the environmental damages portrayed in the Initial Petition by the MPF continued to be practiced by the defendants. In turn, the PCAs filed in 2015 and 2016 received a sentence about 3 years after the protocol, still an unreasonable period in order to prosecute a case that can prove the existence of environmental damage, but a relatively shorter time frame compared to the first group.



Graph 8 - Comparison between year of distribution and year of judgment - July 2019

Source: Elaborated by the author

Sentences were classified in this study as homologated and condemning sentences. In the first group are sentences obtained through conciliation and agreement between the parties (36). In these cases, approval was only possible upon approval of the readjustment project by IPHAN. As for condemnatory judgments (29), conciliation was not possible due to the following occurrences: a) failure to submit the project to IPHAN; b) rejection of the project, when presented; and c) when the specific location of the project precludes the readjustment, as it is an area where building is restricted.

Sentences published as of July 2019, have condemnatory judgements on 55,38%, and 44,62% had homologated sentences. For condemnatory judgments, environmental liability is in solidarity, so the compensation amount can be demanded from any of the defendants. In this category, 14 sentences refer to beach huts located in Caraíva, which have characteristics diverse from sentences for huts located elsewhere along the shore. On the South Coast, in Arraial d'Ajuda, there is one sentence against a hut located in Pitinga Beach and 14 on the North Coast.

For the PCAs related to businesses in Caraíva, none of the representatives of the huts established in this territory presented readjustment projects, and only individuals and public entities (Federal Government and Municipality of Porto Seguro) were defendants in the proceedings. For these actions, the Chico Mendes Institute for Biodiversity Conservation (ICMBio) acted as a third-party assistant and its technical report argued for the permanence of the huts with readjustments. The SPU, in turn, reported that the huts are used to support the local population, composed of fishermen and indigenous tribes, that the area would be destined for sustainable use of the region's resources, and that they would not be in charge of the land in question, which would be inserted into an area that falls under the jurisdiction of the National Indian Foundation (FUNAI) - Barra Velha Indigenous Village, the ICMBio - Monte Pascoal National and Historical Park, and RESEX Corumbau.

In only five cases in Caraíva was the beach hut owner held liable together with the Municipality and the Federal Government with regard to indemnity. In the other cases, only the Federal Government and the Municipality of Porto Seguro were convicted of damages caused to the environment. In all judgments, the indemnity amount stipulated for environmental damages was R\$ 10,000.00 (ten thousand *reais*), with the demolition of the buildings to be done by the individual, under penalty of daily fine. The judgments were published between October and November of 2018, and it was noted that 11 appeals were filed between January and May of 2019, which suspended the initial effects of the sentence such as demolition and payment of indemnity. Of the 29 condemnatory sentences, 65.5% have been appealed so far. In these cases, actions recognized as causing environmental damage will continue to be practiced by the defendants. For cases without appeals,



after the *res judicata* when the deadline for demolition of the huts is overdue, it will be up to the public entities of the Federal Government and the Municipality of Porto Seguro to carry out the demolition.

In the condemnatory judgments, the defendants were jointly sentenced to pay compensations ranging from R\$ 20,000.00 to R\$ 250,000.00. In two of the judgments, there was no condemnation of the public entities with regard to the environmental damage caused, a situation that suggests the presence of material error (equivocal) by the judge issuing the sentence, since the standard for condemnatory decisions point to joint liability of the public entities together with the other defendants of the action. In all actions, responsibility for the demolition of the hut fell to the individual or enterprise itself, under penalty of daily fine and public entities, falling in a subsidiary manner, if the obligation is not performed by the former, to the public entities. In three of the actions, the Federal Government and the Municipality were also ordered to pay a fine ranging from R\$ 20,000.00 to R\$ 30,000.00 for omission of their duty to supervise.

Regarding the 36 homologated sentences, all were conditioned on the approval of a readjustment project for the huts. Five of these refer to huts located at Pitinga Beach. For these cases, in addition to a period of nine months from the sentencing date in which to perform the readjustment, an indemnity amount was stipulated for environmental damages to be paid jointly by the individual or enterprise and by the Municipality of Porto Seguro. The indemnity amount stipulated in these lawsuits was R\$ 50,000.00, with 50% being the responsibility of the company and individuals and the remaining 50% falling to the Municipality. For all defendants, the obligation to pay was divided into installments, beginning in January 2020. It will be the responsibility of the Municipality of Porto Seguro to open a bank account in which deposits can be made and to recover the damaged areas.

Of the other 31 enterprises that received homologated sentences, the exact location could not be identified for eight of them, because the data collected on the website platform were insufficient. However, from the set of actions analyzed, it is possible to infer that the huts are along the North Coast, since actions from Caraíva have already received sentences, while those located at Pitinga Beach were listed among the processes already identified.

From the total of 36 sentences homologated, 13 PCAs did have pdf files available on the website, making it impossible to collect data regarding the time stipulated for readjustment of the huts, the indemnity value, or its division into installment payments. For the other 23 PCAs that could be consulted, the sentences stipulate a period of 8-10 months in which to readapt the beach huts and a compensation amount for environmental damage ranging from R\$ 30,000.00 to R\$ 60,000.00, with 50% of the responsibility falling on the individuals and private companies, while the other 50% fell to



the Municipality. The obligation to pay was stipulated to be in installments for all defendants, beginning in January 2020.

Apart from the 13 PCAs that received sentences but were not available on the website, the sum of indemnities from the 52 judgments (condemnatory and homologated) is R\$ 2,671,000.00. Of this total, the Municipality of Porto Seguro is the defendant that will pay the largest amount of indemnity. Due to joint liability, full compliance with the obligation to pay arising from the indemnity may be required of any of the defendants. However, if the values were equally divided between the defendants, the value stipulated in the condemnatory judgments would be the same for the Federal Government and the Municipality. It is noteworthy, however, that in the homologated judgments, only the Municipality, among the public entities, was obligated to pay for the environmental damages caused by state omission. Table 5 shows a division of the values arbitrated in the sentences, taking into account a hypothetical equal sharing of liability.

Table 5 - Individualized indemnity amounts established by court decisions for environmental damages caused along the coast of Porto Seguro (Bahia) from January 2013 to July 2019.

Sentence	Mun. P. Seguro	Federal Gov.	Private company	Individual	Total Indemnization
Condemnatory	R\$ 297,222.20	R\$ 297,222.20	R\$ 385,555.54	R\$ 479,999.97	R\$ 1,459,999.91
Homologated	R\$ 610,500.00		R\$ 381,750.00	R\$ 218,750.00	R\$ 1,211,000.00
Total	R\$ 907,722.20	R\$ 297,222.20	R\$ 767,305.54	R\$ 698,749.97	R\$ 2,671,000.00

Source: Elaborated by the author

Regarding the enterprises that accepted the readjustments, it is possible to see the visible effects of these processes everywhere. Beach huts have undergone and are undergoing changes in their architecture, reducing occupancy areas. The re-adaptation of the huts involves renovation of the structure or demolition and construction of new buildings, the reduction of the built area, the use of materials that do not stand out from the landscape, striving for harmonization with the natural environment, and the presentation of landscape design in order to form a vegetation cover around the building.



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4. DISCUSSION OF RESULTS

In the municipality of Porto Seguro, the Coast is an area of constant conflict due to the presence of diverse interests. In addition to the strong anthropogenic presence along the coast, the marine lands and beaches are occupied by various economic enterprises. Beach huts are part of the attraction that drives the local economy, primarily geared to tourism, however, this is not a valid argument justifying omission on the part of the municipality with regard to the duty to oversee the occupation of the permanent preservation area, the suppression of vegetation, the construction of structures that modify the natural landscape, and other actions that cause damage.

The list of 100 Public Civil Actions filed by the Federal Public Prosecution Service demonstrates its legitimacy as the plaintiff. Although the government entities would have a legitimate interest in using this instrument of defense, they were defendants in those cases. In the actions, there was a pattern to the condemnatory and homologated sentences, with most of them maintaining the same structure, differing only as to the taxpayer data and some peculiarities with regard to what was observed in the Civil Inquiry. The pattern of repetition of the factual situation and of the legal argumentation in the proceedings filed is the result of a system of action, based on the repetition of observed behaviors, highlighting existing specific facts such as whether the location is in Caraíva, on the South Coast, or on the North Coast.

The Municipality, the entity having local jurisdiction, was the defendant held most responsible to pay indemnities determined by the Court in the condemnatory and homologated judgments. These data reflect omission on the part of the municipal government of its the duty to monitor the environment and prevent conduct that causes damage. In addition to this omission, the Municipality also provided sanitary permits and operating permits to the enterprises, attesting to their direct contribution to the irregular propagation of the occupation of the coast, demonstrating objective responsibility.

The Public Civil Action is a procedural instrument for protection of the environment; however, its effectiveness is questioned due to the results it produces. Of the actions filed between 2009 and 2010, 56.92% took about eight to nine years to be processed. Actions filed between 2015 and 2016 took about three years. The probable reason for the reduction in processing time was the promotion of dialogue to allow the beach huts to be readjusted. Otherwise, the processing time would likely extend significantly as in the actions with a condemnatory sentence, whose effects can be suspended, due to appeals.



The high rate of resolution for sentenced cases (86.66%) does not reflect the long time taken and does not represent an immediate halt to the damage. In 55% of sentenced cases, readjustments were proposed, which were approved and are being implemented. However, in the 45% of cases in which condemnatory judgments were rendered, the factual situation of occupation and economic exploitation continues, even though the petition from the MPF included information on environmental damage to *restinga* and mangroves, as well as landfilling and landscape alteration without authorization from IPHAN. This harmful conduct continued to be practiced due to the procedural processes that suspend the effects of the sentence.

The maintenance of activities is also seen in the case of lawsuits filed against huts located in Caraíva. Of these, 78.57% of the sentences were appealed, suspending the effects of the sentence. It is important to highlight in this case the position of ICMBIO, who fought to maintain beach huts in that location, with the appropriate readjustments; and also the position of SPU to not oppose this maintenance, claiming that responsibility for this area belongs to FUNAI and ICMBIO because it is an area where an indigenous village and a forest reserve are located. In light of this situation, it can be understood that the homologations were not only carried out in these cases when a readjustment project was not presented or approved by IPHAN. Although the area has a confluence of competing responsibilities, each of them must act in favor of the environment, and not fall back on the argument of protection of indigenous peoples, or that they theoretically have the right to occupy and economically exploit the region without paying attention to the protection of environmental resources.

The indemnities stipulated in the homologated sentences are not supported by the expert investigation, but are based on the annual occupancy rate of the property according to Federal Properties Management Office, meaning that it is not possible to identify the specific damages caused by each specific property, beyond those linked to the landscape. This lack of materialization and actual identification of damage is a negative point against the homologated court decisions analyzed. Even though the indemnity amount is destined for a fund intended to help repair the environmental damage, it is not possible to say, without a specific technical report, that the amount determined is sufficient to repair the damage caused. Court rulings on damages therefore may not reflect the actual costs of remediation (where possible), and may even create conditions where the polluter prefers paying and continuing to pollute rather than avoiding damage to the environment.



With this type of judgment, it is important to note that the indemnity amount stipulated in the lawsuits over beach huts located at Pitinga Beach was 50 thousand *reais*, 50% of which was arbitrated to the Municipality and 50% to the other defendants (individuals or legal entities). In the other homologated judgments for huts located along the North Coast, the monetary sentence was between 30 and 60 thousand *reais*, repeating the previous division of 50% of the amount arbitrated to the Municipality and the remaining 50% to other defendants (individual or legal entity).

In the condemnatory judgments, there is no mention of conducting an expert investigation by a specialized technical professional capable of accurately identifying *in situ* the environmental damage arising from the irregular occupation. The condemnation values for these cases vary from 20 to 250 thousand *reais* and in two cases there was no condemnation of Public Entities with regard to the environmental damage caused, a situation that suggests the presence of material error (equivocal) on the part of the judge. In three of the condemnatory actions, the Federal Government and the Municipality were sentenced to pay a fine of between 20 and 30 thousand *reais* for their omission of the duty to monitor.

Therefore, the indemnity amounts attributed in the condemnatory judgments did not take into account the actual environmental damage caused by the defendants. However, it should be noted that, in all cases, there is an inspection report prepared by the judge together with the presence of representatives from IPHAN and the parties involved in the proceedings. Despite the public faith in this act, it must be highlighted that a detailed study is absent regarding the effects of beach huts on the local environment, indicating, for example, the effects of sound, the species suppressed by buildings, the impact of landfills, analysis of the disposal of solid waste and sanitary sewage, and other requirements.

The total sum received from indemnities was 2.671 million *reais*. The pecuniary condemnation fixed for the municipality was nearly 1 million *reais* and reveals the importance and recognition of their responsibility by the judge, given the irregular occupation of the Coastal Zone. In the condemnatory judgments, both the Federal Government and the Municipality jointly and severally responded for the indemnity amount and at the same proportion. However, in the homologated judgments, among the public entities, only the Municipality suffered a monetary sentence with an amount fixed in court that exceeds the sum applied to the defendants (individuals and legal private entities), making it possible to conclude that the municipal conduct was considered severe considering the irregular occupation and environmental damage occurring along the coast.



The readjustment projects presented for the beach huts, allowed by the judge so that such ventures could meet the environmental legislation, permit the defendant to make changes to the structure of his establishment and thus fit into a model less harmful to the environment. Approval of the projects by IPHAN was an essential requirement for the approval of the agreement between the parties involved in the process. The measure applied by the Court recognizes beach huts as important agents in the socioeconomic context of the municipality, however, this bias does not overlap with the ecological importance of the coastal region, which is why failure to comply with the readjustment project will lead to demolition of the enterprises.

Regarding the standard for sentences issued in homologation, it can be observed that all of them that reached an accord did so due to the approval of a beach hut readjustment project or because the defendant in the process agreed to the demolition of the structure. In turn, the condemnatory judgments occurred in the face of a definitive disapproval of the readjustment projects or a lack of submission of a readjustment plan. Failure in some cases was due to such establishments being in areas where approval would be impossible, such as those located in the region known as Ponta Grande, where there is a high level of erosion taking place.

When checking the readjustment projects of beach huts, effort has been made to comply with the provisions of the judgments. The conciliatory measure obtained in the judged PCAs primarily noted the economic impact that indiscriminate demolition could have on the municipality, whose revenue largely depends on tourism fostered by economic ventures located along the waterfront. On the other hand, the question remains whether the measures adopted will be sufficient to repair the existing damage and, moreover, to prevent the further worsening of damage to the environment. Therefore, it is not possible in the current situation to comply with environmental legislation and allow for economic and social development through the economic exploitation of the Coastal Zone. The integral preservation of the coastal environment would impose a great impact on the local economy and on the individuals that depend on it.

5. CONCLUSION

The condemnation of government entities symbolizes an advance and a response by the judiciary consistent with the protection guaranteed in environmental legislation, declaring that the state is responsible for damage caused to the environment, i.e., that its omissive or commissive conduct is subject to liability. However, when public entities are condemned, society bears a double



negative impact. The first, in relation to the right injured because an environmental good has been degraded, and the second because the society supports the state, and will end up suffering the costs that the state itself has caused or contributed to.

On the other hand, the condemnation of other defendants, individuals, and legal private entities reaffirms the defense of the environment in the face of environmental damage, even if the defendant is business enterprise fulfilling a social and economic function at the locality. In this sense, the application of coastal management as an environmental zoning tool is necessary to limit the arbitrary use of environmental resources, as well as the use of other instruments by the state to ensure environmental protection.

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Sobre os autores:

Roberto Muhájir Rahnemay Rabbani

Ph.D in Law at the Universidad de Santiago de Compostela, Spain (USC). Doctoral fellow at the Ministry of Foreign Affairs and Cooperation of Spain (MAEC-AECID). Master's Degree in International and Community Taxation by USC. Bachelor's degree in Law from the Federal University of Sergipe, Brazil. Substitute Professor at the Federal University of Sergipe. Attorneys in more than 745 cases. Professor at the Federal University of Southern Bahia (UFSB), acting on the Postgraduate Program in State and Society (PPGES) and the Environmental Sciences and Technologies Program (PPGCTA). Worked as an Adjunct Professor at the Law Department at the Federal University of Rio Grande do Norte (UFRN). Has published books and scientific articles in the area of Law, Environmental Taxation and the Environment.

Universidade Federal do Sul da Bahia, Itabuna, BA, Brasil

Lattes: <http://lattes.cnpq.br/8576195795981994> ORCID: <http://orcid.org/0000-0002-3175-6332>

E-mail: rabbani@csc.ufsb.edu.br

Allívia Rouse Carregosa Rabbani

PhD in Agricultural and Forestry Research at University of Santiago de Compostela [(USC) Spain]. Master in Agroecosystems (2010) at Universidade Federal de Sergipe [(UFS), Brazil]. Forest Engineering at Universidade Federal de Sergipe [(UFS) Brazil, 2008]. Computer technician at SENAC (Brazil). The researcher has experience in area of Forest Resources and Forest Engineering, with emphasis on the Conservation of Nature.

Universidade Federal do Sul da Bahia, Itabuna, BA, Brasil

Lattes: <http://lattes.cnpq.br/9716789774090901> ORCID: <http://orcid.org/0000-0003-0564-7113>

E-mail: alliviarouse@ifba.edu.br

Neliana de Souza Ribeiro

Mestre em Ciências e Tecnologias Ambientais no Programa de Pós-Graduação da Universidade Federal do Sul da Bahia – UFSB e Instituto Federal de Educação, Ciência e Tecnologia da Bahia - IFBA – com ênfase em Responsabilidade Ambiental por danos causados à Zona Costeira (2017/2019) e Graduada em Direito pelo Centro Universitário Adventista de São Paulo, Campus Engenheiro Coelho (2006-2010). Advogada, militante na OAB-BA, com atuação nas áreas do Direito Civil e Ambiental. Atua na avaliação de provas documentais e orais, realização de audiências e consultorias, além da elaboração de peças processuais, apresentação de pareceres, acompanhamento de processos e atuação na esferas judiciais e extrajudiciais.

Universidade Federal do Sul da Bahia, Itabuna, BA, Brasil

Lattes: <http://lattes.cnpq.br/2590969111344583> ORCID: <https://orcid.org/0000-0002-2469-4487>

E-mail: nelianasribeiro@gmail.com

Os autores contribuíram igualmente para a redação do artigo.



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