

THE SPECIAL FEDERAL INDIGENOUS COURT AS AN EXPRESSION OF PARTICIPATORY LEGAL PLURALISM



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ABSTRACT

This article conducts a case study of the Special Federal Itinerant Indigenous Court (JEFII), carried out in Mato Grosso do Sul, the first within the scope of the Federal Regional Court of the 3rd Region. To this end, the actions that took place in the municipality of Aquidauana (MS), from September 11 to 15, 2023 (Limão Verde and Bananal), and in Dourados (MS), from February 5 to 9, 2024 (Jaguapiru, Bororó and Panambizinho), which relied on participant observation to identify practices related to legal pluralism, were selected. The problem that guides the research is: Does the JEFII enable the application of legal practices based on legal pluralism for the granting of rights to indigenous peoples? The general objective is to analyze the adoption of legal practices based on legal pluralism aiming at the removal of barriers to access to justice. And the specific objectives: to analyze the concepts and characteristics of legal pluralism; understand the structure and functioning of JEFII, and explore the practices used in JEFII in the light of legal pluralism. The research adopts a qualitative method, with a descriptive, analytical and exploratory approach. The methodology includes a literature review, case study and participant observation.

Keywords: Human rights. Access to Justice. Indigenous Itinerant Justice. Legal Pluralism. Indigenous Peoples.

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INTRODUCTION

Access to justice for indigenous peoples often encounters economic, linguistic, cultural, and geographic barriers, which often prevents the effective guarantee of rights to these communities. This reality highlights the need to improve the Brazilian legal system so that it understands the specificities, transcends normative universality and guarantees the rights of indigenous peoples.

Studies on legal pluralism have proposed to investigate the interaction between state and indigenous orders, the result of counter-hegemonic thinking (*bottom up*) and that seek the cultural preservation of indigenous peoples, as opposed to state monism and liberal formalism, pointing to this path of transcending universality from an intercultural perspective. In this context, legal pluralism emerges as an approach that recognizes the coexistence of distinct normative systems within the same social and political space, ensuring that the legal practices and traditions of indigenous peoples are taken into account in the application of state justice. This perspective is opposed to traditional legal monism and liberal formalism, which tend to disregard the diversity of normative practices existing in pluricultural societies.

In 2022, the CNJ issued Resolution 454/2022, establishing specific guidelines for ensuring access to the Judiciary for indigenous peoples, aiming to solve the existence of repressed litigation and bring the judiciary closer to indigenous peoples, with the aim of ensuring access to justice in an inclusive and participatory manner.

In view of this scenario, this article conducts a case study of the Special Itinerant Indigenous Federal Court (JEFII), carried out in Mato Grosso do Sul, the first within the scope of the Federal Regional Court of the 3rd Region. To this end, the actions that took place in the municipality of Aquidauana (MS), from September 11 to 15, 2023 (Limão Verde and Bananal), and in Dourados (MS), from February 5 to 9, 2024 (Jaguapiru, Bororó and Panambizinho), which relied on participant observation to identify practices related to legal pluralism, were selected.

The problem that guides the research is: Does the JEFII enable the application of legal practices based on legal pluralism for the granting of rights to indigenous peoples? The general objective is to analyze the adoption of legal practices based on legal pluralism aiming at the removal of barriers to access to justice. And the specific objectives: to analyze the concepts and characteristics of classical and participatory legal pluralism;

understand the structure and functioning of JEFII, and explore the practices used in JEFII in the light of legal pluralism.

The research adopts a qualitative method, with a descriptive, analytical and exploratory approach. The methodology includes a literature review, case study and participant observation.

The case study is a qualitative methodology that makes it possible to comprehensively examine the dynamics, relationships and variables involved in complex situations, facilitating the identification of patterns, causes and effects that may not be evidenced in broader studies. The case study is a methodological strategy employed to analyze historical events, judicial processes, and public policies (MACHADO, 2017). The use of this method provides a contextualized understanding of the dynamics of care for indigenous people in itinerant courts, with a focus on practices related to legal pluralism

The research relies on participant observation in the Itinerant Indigenous Courts, in 2023 and 2024. The immersion technique allowed understanding cultural patterns and norms with a dialogical relationship between the evaluator and the community; experiencing the group studied with belonging and detachment, transforming it into an object of analysis (MACHADO, 2017).

In this way, it is expected to contribute to the debate on the effectiveness of an inclusive justice, sensitive to the cultural and social specificities of native peoples and aligned with the principles of human rights and citizenship.

LEGAL PLURALISM AND INDIGENOUS PEOPLES

The historical inequalities, political and economic domination, conflicts and suppression of cultural identities that have marginalized indigenous peoples since the arrival of the colonizers have triggered a struggle for recognition of the multicultural character of the population, in which indigenous peoples have become active agents in the defense of their rights, demanding the inclusion of their institutions in the state order. International documents, such as ILO Convention 169⁴ and the UN Declaration on the Rights of Indigenous Peoples⁵, reinforce this struggle.

⁴ Convention 169 of the International Labour Organization deals with Indigenous and Tribal Peoples and was adopted in Geneva on June 27, 1989 and entered into international force on September 5, 1991. In Brazil, this Convention was approved by Legislative Decree No. 143, of June 20, 2002, and came into force on July 25, 2003, when the country sent the instrument of ratification to the Executive Director of the ILO.

⁵ The Declaration was adopted by the UN General Assembly on 13 September 2007.

In Latin America, some constitutions have come to recognize the multicultural character of the population, in recent decades, especially Bolivia (2009) and Ecuador (2008), which enshrined indigenous self-government and legal pluralism, leaving aside monist constitutionalism – called "postcolonial" constitutionalism (Santos, 2010, p.60).

In Brazil, the Federal Constitution of 1988 represented a significant advance by dedicating an exclusive chapter to indigenous peoples, recognizing their social organization, customs, languages, beliefs, traditions and their original rights over traditionally occupied lands. Although a little more contained than the constitutions mentioned above, it presents the same challenge for its effectiveness as the others, since it implies the overcoming of the traditional conception of state law, by demanding the coexistence in the same social space of a state law and traditional rights, both recognized by the State.

According to Calixto and Conci (2022), the proposal for a polycentric legal model, in which different legal systems interact and mutually recognize each other, without a hierarchical relationship of superiority, aims to guarantee not only the protection of cultural diversity, but also the realization of the fundamental rights of historically neglected peoples.

And they explain that the existence of legal pluralism does not mean the denial of state law, but rather the acceptance that the state does not have the exclusive monopoly of normative production, because in a democratic system, the diversity of legal orders must coexist in a heterarchical and complementary way (CALIXTO; CONCI, 2022).

Legal pluralism refers to the coexistence of multiple normative systems in the same social and geopolitical space, recognizing both state legal practices and those that emerge from specific communities, social movements, and cultural groups (peasants, quilombolas, indigenous, settlers). This approach contrasts with the monist model, which exclusively privileges the official law produced by the State - aiming to overcome the exhaustion of the positivist state model and bring the law closer to broader social demands (FREITAS; GURGEL, 2019).

In order for indigenous peoples to exercise political self-government according to their traditions and laws, based on their ancestry, it requires some kind of autonomy in relation to the State (CARDOSO; CONCI, 2019). At the same time, it demands harmonization with the state system, since it aims to open up to cultural diversity.

In its communitarian-participatory aspect, legal pluralism proposes a horizontal and inclusive model, in which legal systems dialogue and influence each other. This approach

recognizes the role of social actors, especially those from excluded groups and populations, in the construction of legal solutions that respect their cultural specificities.

In this sense, community-participatory legal pluralism goes beyond the simple coexistence of legal systems. It seeks to establish an intercultural dialogue that promotes the recognition and appreciation of alternative legal practices, contributing to a more equitable access to justice, and in which "the experiences of regulations that go beyond the State are inserted" (Wolkmer and Wolkmer, 2020, p.14).

This approach values pluralistic and intercultural contexts for the protection of rights in a world marked by diversity, opposing the processes of exclusion generated by globalization, financial capital and neoliberalism, highlighting the relevance of community power and conferring new social legitimacy to the legal system.

According to Antunes (2013, p.252) "it means taking as a reference a practical-theoretical phenomenon that underlies a new culture in law". It is founded on a "manifestation underlying the justice system", functioning as a "kind of response to the fissures of the formal jurisdictional model" and which is sustained by the "action of social subjects in non-state public spaces".

Within this perspective, this legal pluralism has the potential to enable the use of practices that transcend state power, which expands access to justice and the visibility of native peoples, reaffirming their potential to meet social demands in contexts of diversity and inequality, promoting respect for the self-determination of indigenous peoples, and the realization that they have a complex and self-sufficient organization (Santos, p. 268).

For Curi (2012), the existing challenges are the need to overcome prejudices and ensure intercultural interaction with the dominant legal system, by applying a customary law that houses a "body of rules and customs delimited, recognized and shared by a given collectivity" (CURI, 2012, p. 237).

In the same vein, Maciel (2016) argues that access to justice for indigenous peoples requires a dialogue between national legal systems and indigenous normative traditions, as the legal systems of Latin American countries do not recognize their culture and forms of conflict resolution.

By virtue of uses and customs, indigenous peoples are marked by customary or customary law, founded on a worldview of ancestral principles that do not require written rules, and which have a strong oral tradition. According to Wolkmer (2003), community

legal pluralism recognizes customary rights, creating spaces for normative practices that directly meet popular needs.

In Brazil, although the 1988 Constitution recognizes indigenous customs and traditions, there is still resistance to the full implementation of these rights, especially in the implementation of mechanisms that guarantee their access to justice, so that the judicialization of indigenous demands often occurs in a context of inequality and lack of understanding on the part of legal operators about the specificities of these communities.

Aware of these problems, the Support Group for People in Extreme Vulnerability (Gapex) of the TRF3rd Region⁶ identified obstacles in judicial proceedings involving the indigenous population in the Judicial Section of Mato Grosso do Sul in a technical meeting with leaders and researchers.

Among the obstacles, the following stand out: i) the need to improve communication between the Judiciary and the communities in respect of local customs, including more appropriate times for hearings⁷; ii) the difficulty in carrying out virtual acts due to cultural barriers and access to the internet⁸; iii) the language barrier, with the need for interpreters who act actively in the hearings; performing a "double translation" of the language and the law, adapting to the cultural context. Therefore, cultural interpreters, in addition to linguistic ones, are essential to adapt the process when it involves indigenous plaintiffs/defendants.

The above difficulties led to the creation of a technical note⁹ to improve judicial procedures in the TRF 3rd Region, enabling the agency to think about coping strategies to improve access to justice for this vulnerable population.

This intertwining seeks the coexistence between traditional peoples and the dominant culture, proposing the overcoming of a condition of vulnerability for a scenario in which the voices of the subaltern layers are effectively heard in the public sphere, allowing the incorporation of their demands into political agendas, as part of a process of social legitimation (CALIXTO; CONCI, 2022).

⁶ Group established by GACO Ordinance No. 37, of June 06, 2022 of the TRF3rd Region. The meeting was held on 08/19/2022, available at <https://youtu.be/9hJKSWTO3yM>

⁷ Described by Valdelice Veron, Guarani-Kaiowá leader – present at the technical meeting.

⁸ Appointed by indigenous experts as Ivo Macuxi – present at the technical meeting.

⁹ Technical Note No. 2/2023 Process SEI 0000729-90.2019.4.03.8002 Available at https://www.jfms.jus.br/documentos/clims/SEI_9613136_Nota_Tecnica.pdf

SPECIAL FEDERAL ITINERANT INDIGENOUS COURT

The JEFs adopt simplified procedures, making it possible to carry out multiple procedural acts in a single hearing. In addition, they promote conciliation and contribute to the reduction of procedural costs. However, the Federal Court is not present in all municipalities¹⁰, which makes it difficult for vulnerable populations, such as indigenous people, quilombolas, riverside dwellers and settlers, to access justice. To minimize this difficulty, the Itinerant Federal Special Courts take judicial services directly to these communities.

After Constitutional Amendment 45/2004, it was determined that all Courts should create itinerancy projects to reach repressed litigation in places of difficult access. Since then, the itinerant court has served as an instrument of approximation between the judiciary and the population that lives in an isolated community, on the margins of state services, in a situation of social, geographic and economic vulnerability.

To implement the postulate of access to justice, the Itinerant Federal Special Courts have as principles those established in article 2 of Resolution 460/2022 (CNJ), highlighting: (a) broad jurisdiction; (b) judicial and interinstitutional cooperation; (c) universality of jurisdiction; (d) process and procedure conducted based on the criteria of orality, simplicity, informality, procedural economy, speed and effectiveness, favoring the immediate collection of evidence, the holding of a single hearing and promoting, whenever possible, self-composition and efficiency in communications and subpoenas; (e) approximation of the services of the Justice system to the vulnerable society or that is in places of difficult access; (f) guarantee of digital access to the digitally excluded; (g) promotion of acts of citizenship and guarantee of human rights.

The principles that guide itinerant actions show that this mechanism goes beyond simple procedural analysis or formal access to the judicial system. Through this initiative, it seeks to ensure the realization of human rights and citizenship to the population served, with special attention to the promotion of the dignity of the human person.

With civil jurisdiction for cases of up to sixty minimum wages, the demands in the federal itinerant courts concern social security and assistance rights - social rights of the second generation of Human Rights¹¹. The most frequent lawsuits deal with assistance

¹⁰ In Mato Grosso do Sul there is a subsection of the Federal Justice in Campo Grande, Dourados, Três Lagoas, Corumbá, Ponta Porã, Naviraí and Coxim.

¹¹ The first generation of Human Rights encompasses the need for the State to abstain to guarantee personal autonomy – these are individual freedoms, such as assembly, conscience, religious freedom. These civil and

benefits of continued provision to the elderly and the disabled¹²; and social security benefits such as old age pensions, sickness benefits, disability retirement (post EC 103/2019 called temporary and permanent disability), death pension and maternity pay for the special ¹³insured. In smaller quantities, there are requests for accident assistance and imprisonment assistance for special insured persons. The demands are resolved in one day, distributed at the same time, and the defense by the Federal Public Defender and hearings held on a first-come, first-served basis are ensured. In the reality of Mato Grosso do Sul, there is an agreement with the Federal University in which students assist in the distribution of cases and in the hearings, supervised by a professor.

In addition to general normative acts on itinerant justice, the CNJ issued Resolution 454/2022 establishing specific guidelines for ensuring access to the Judiciary for indigenous peoples, establishing the following principles: self-identification of peoples; interethnic and intercultural dialogue; indigenous territoriality; recognition of the social organization and the specific forms of each indigenous people for resolving conflicts; prohibition of the application of the guardianship regime; and self-determination of indigenous peoples, especially peoples in voluntary isolation.

In this context, the JEFII moves judges, civil servants and technical staff from various institutions of the Justice and Citizenship System to indigenous lands. The judicial

political rights are also known as negative freedoms. Then there are positive benefits – what is conventionally called the second generation of rights – such as social assistance, health, education, work, leisure. These are the so-called social, economic and cultural rights. Subsequently, third-generation rights refer to a diffuse or collective entitlement, such as the right to peace, social development, a healthy environment, self-determination of peoples, communication – also called rights of solidarity or fraternity.

¹² Governed by Law 8.742/1993.

¹³ A small rural/peasant worker or artisanal fisherman who carries out his activities without employees - in a family economy regime, that is, when the work of all family members is essential to subsistence, is considered special insured. Indigenous people are considered special insured in a situation analogous to small rural producers and artisanal fishermen.

Governed by Law 8.213/1991: Art. 11. The following individuals are mandatory Social Security insured: VII – as a special insured: the individual residing in the rural property or in an urban or rural agglomeration close to it who, individually or in a family economy regime, even with the occasional help of third parties, under the condition of:

a) producer, whether owner, usufructuary, possessor, settler, partner or sharecropper granted, rural borrower or lessee, who explores activity:

1. agriculture in an area of up to 4 (four) fiscal modules;
2. rubber tapper or plant extractivist who carries out his activities under the terms of item XII of the caput of article 2 of Law No. 9,985, of July 18, 2000, and makes these activities his main means of livelihood;
- b) artisanal fisherman or similar fisherman who makes fishing his usual profession or main means of livelihood; and

c) spouse or partner, as well as a child over 16 (sixteen) years of age or equivalent to the insured person referred to in subparagraphs a and b of this item, who are proven to work with the respective family group.

Paragraph 1 - The family economy regime is understood to be the activity in which the work of the family members is indispensable to the subsistence and socioeconomic development of the family nucleus and is carried out in conditions of mutual dependence and collaboration, without the use of permanent employees.

procedures, as well as the issuance of documents, are adapted to respect the languages, customs and traditional practices of the peoples served. There is also an effort to integrate leaders and interpreters in the process, ensuring representativeness and mutual understanding in the mother tongue during the hearings.

In addition to judging cases of federal jurisdiction, the JEFII promotes education in rights, making communities aware of their rights and duties, as well as access to citizenship, since several institutions also participate with the mission of regularizing citizenship by issuing documents such as identity cards, individual registration, voter registration and birth registration.

THE SPECIAL FEDERAL INDIGENOUS COURTS IN THE VILLAGES OF MATO GROSSO DO SUL

According to the 2022 Population Census, Brazil has 1,693,535 indigenous people, corresponding to 0.83% of the country's total population. Mato Grosso do Sul has the third largest indigenous population in the country, with 116,469 people - which represents 4.22% of the state's population (Brasil, FUNAI, 2023). The state is home to eight ethnic groups (Guarani, Kaiowá, Terena, Kdwéu, Kinikinaw, Atikun, Ofaié and Guató) and six mother tongues (Guarani, Terena, Kdwéu, Guató, Ofaié and Kinikinaw).

Thinking about serving this population, the JEFII was carried out in the municipality of Aquidauana (MS), from September 11 to 15, 2023, registered in SEI Process No. 0002163-75.2023.4.03.8002 and in the municipality of Dourados (MS), from February 05 to 09, 2024, registered in SEI Process No. 0002681-65.2023.4.03.8002.

The action had the participation of several institutions¹⁴ responsible for restoring citizenship and access to justice to the population served, adapting to their specific needs.

In Aquidauana (MS), the indigenous people of the Limão Verde and Bananal villages were served¹⁵, at which 252 hearings were held, 170 agreements formalized

¹⁴ In the two actions, implementing the principle of cooperation and collaboration established in Resolution No. 460/22 of the CNJ, the following effectively participated: National Institute of Social Security (INSS), Attorney General's Office in the State of Mato Grosso do Sul (PR/MPF-MS); Federal Prosecutor's Office in the State of Mato Grosso do Sul (PF/MS); Federal Public Defender's Office in Mato Grosso do Sul (DPU-MS); Federal University of Mato Grosso do Sul (UFMS); State Secretariat of Justice and Public Security of the State of Mato Grosso do Sul (SEJUSP-MS); Court of Justice of the State of Mato Grosso do Sul (TJMS); Federal Attorney's Office in the State of Mato Grosso do Sul (PU/MS); Regional Electoral Court (TRE); Internal Revenue Service; Association of Civil Registrars of Natural Persons of the State of Mato Grosso do Sul (ARPEN/MS); National Indian Foundation (FUNAI); Secretariat of Indigenous Health (SESAI); Aquidauana City Hall; City Halls.

¹⁵ Communities located 70 kilometers from the nearest urban center.

(67%) and a total of R\$ 705 thousand in Small Value Requisitions (RPVs).¹⁶ The lawsuits filed were, in general, related to the social security/assistance area, with 37 referring to retirement by age, 26 disability benefits, 82 maternity salaries, 10 death pensions, 23 assistance benefits, 61 sickness benefits, among others.

A point that deserves to be highlighted was the great demand for the inclusion of ethnicity in the birth certificate and in the identification document, services that had the highest demand for service 765 and 296, respectively.

In Dourados (MS), the communities served were Jaguapiru, Bororó and Panambizinho¹⁷. In this edition, 432 hearings were held, formalizing an agreement in 322 of the processes, 73.5% and a total of R\$ 1,081.10 in RPVs. Of the total number of lawsuits filed, 158 refer to sickness benefits, 26 disability retirements, 24 old age pensions, 143 maternity salaries, 55 elderly or disabled LOAS, 24 death pensions, 7 imprisonment benefits and 1 request for temporary nationality.

In this itinerant incursion into Dourados, participant observation found many cases of adolescent mothers, who are most often abandoned by their partners when pregnancy is confirmed; as a result, there is a high rate of requests for maternity pay, a benefit that represented 33% of the lawsuits filed by the Federal Court. There was also a great demand for the issuance of official documents. In the five days of service, 2,204 documents were issued, of these, 623 identity cards and 580 birth/marriage certificates, the others are voter registration cards and individual registration.

Table 1 indicates the amount of services provided in the two actions:

Table 1 – Special Federal Indigenous Court

SERVICES	TOTAL
Identity card	919
Individual Taxpayer Registration - CPF	779
Birth certificate	1345
Voter registration card	696
Certificate of rural activity - Funai	509

¹⁶<https://web.trf3.jus.br/noticias/Noticiar/ExibirNoticia/426133-jef-itinerante-indigena-realiza-mais-de-tres-mil-atendimentos>

¹⁷ The Jaguapiru Village is located seven kilometers from Dourados. The Bororó Village is ten kilometers from the municipality. Panambizinho is located 25 kilometers from the city. Available in <https://web.trf3.jus.br/noticias/Noticiar/ExibirNoticia/428388-juizado-especial-federal-itinerante-indigena-atende>

DPU/UFMS	1338
DPE	693
TJ/MS	875
INSS	275
Distributed shares	691
Hearings(PF,DPU,MPF,UFMS/UFGD)	684
Agreements	492
Percentage of agreement	71%
Small Value Requisition - RPV	R\$ 1,786,907.49
Skills	345
Vaccination	129
Quick test	100
Cadúnico	714
Dental care	178
Animal vaccination	100
Total attendances	9580

Source: Sei Process n. 0002163-75.2023.4.03.8002 and SEI n. 0002681-65.2023.4.03.8002

On this topic, a study was carried out with participant observation in the two editions of the Special Federal Itinerant Indigenous Court of Mato Grosso do Sul. The immersion technique made it possible to understand cultural patterns and norms through an interaction between the evaluator and the community.

Participant observation identified that the following practices were used in the JEFII: participation of community members in the hearing as language interpreters (all were teachers who were members of the community, enabling technical and cultural translation), participation of indigenous leaders in previous meetings and during the event, valuing the production of oral evidence and judicial inspection.

As already recorded, another topic identified by participant observation was the high demand for issuing birth certificates to include ethnicity in the document. Given the importance of identifying and preserving cultural identity and integrity. It is not a simple issuance of a document, but rather the recognition of the group to which the indigenous person belongs, conferring dignity on him. Belonging ensures the individual as a subject of rights in the collective construction of identity (TAVARES, 2014).

One point that caused discontent among the population was the impossibility of including ethnicity in the National Identity Card¹⁸, as the new document does not have a field for this observation, which makes it difficult for indigenous people to prove their origin.

From another aspect, it was observed that the itinerant service reveals a situation of social exclusion and segregation in relation to the justice system in the communities. Despite the relative proximity to the urban center, most authors report that they do not travel to the city due to the high cost of transportation and the distance from the urban center, which can be characterized as a barrier to access to justice (AMARAL, LEITE and MARCIANO, 2025, p. 10/11).

It was observed that the holding of the itinerant court presents itself as an alternative to the barrier of access to justice due to the geographical location and economic conditions. Indigenous communities live in remote areas, where the state judicial system does not reach efficiently. For this reason, Rocha (2020) warns that the geographical and cultural distance between indigenous communities and the urban centers where judicial institutions are concentrated is one of the main obstacles to access to justice. The itinerant justice seeks to mitigate this problem by moving magistrates and civil servants to indigenous territories, promoting hearings and *on-site services*.

As for the barriers caused by the linguistic issue, the translator-interpreter of the Kaiowá-Guarani language promoted the understanding of the acts of the audience in the search for rights. The translator, chosen from among village teachers, appointed by the local leadership, with at least two per incursion. This format of justice favors a greater understanding of indigenous legal traditions, allowing solutions that are more appropriate to the reality of these communities and reducing the legal alienation that has historically marginalized native peoples (Rocha, 2020).

As for cultural issues, the characteristics of participatory pluralism in which multiple actors contribute to the result are highlighted, which is observed in the test in an itinerant hearing facilitated by the proximity to the community, equipped with school certificates, medical care forms, testimonies of social workers and teachers who provide care in the region, electoral documents, in addition to the possibility of judicial inspection. The two consultations in an indigenous community had a high rate of demand resolution, 71% (492 agreements).

¹⁸ Regulated by Decree 10,977 of February 23, 2022.

The core of the social security hearing is the proof of the quality of special insured in a family economy regime – proving the work with the land. For the granting of this benefit, there cannot be exclusively testimonial evidence to prove the quality of special insured¹⁹, however, in some cases, the rigidity of the rule and jurisprudence could be relaxed in the face of the identified oral tradition (not formalized in documents) in a teleological interpretation that seeks substantial equality.

The identification of oral tradition as a characteristic of indigenous tradition allows several barriers to be removed in the production of evidence and represents an application of legal pluralism, by making the interpretation of evidence more flexible by recognizing indigenous cultural issues. In some cases, oral evidence was privileged, as it is a population that does not have abundant material evidence (documents) of the sale of goods, vaccines, inputs.²⁰

In general, the indigenous people of this region plant cassava and gherkin, the core of judicial evidence, and in the absence of written documentation, there is the possibility of judicial inspection of the rural property to prove the status of special insured²¹.

To prove the social vulnerability of the perpetrator and grant assistance benefit, a judicial inspection was also carried out at the residence – ensuring proof of the situation of social vulnerability²².

As can be seen, the compatibility of the practices of indigenous itinerant justice with legal pluralism has provided access to the rights of native peoples, respecting their traditional norms, values and procedures, in an alternative to the traditional model of legal positivism and state monism, in the promotion of justice for marginalized communities.

It is characterized by a practice that takes into account the relationships, values and needs of these populations, prioritizing conciliation as an essential instrument for the construction of dialogue and decision-making. It establishes an interaction between legal norms and the values of the community, contrasting with the vertical and unilateral imposition of the law by the judge, characteristic of the traditional model, which is based on coercion as a central element of law (ANTUNES, 2013).

¹⁹ Precedent 149 of the STJ: Exclusively testimonial evidence is not enough to prove rural activity, for the purpose of obtaining a social security benefit.

²⁰ Available at: <https://web.trf3.jus.br/noticias/Noticiar/ExibirNoticia/426133-jef-itinerante-indigena-realiza-mais-de-tres-mil-atendimentos>

²¹ Judicial inspection is a verification test that the judicial authority performs directly on people or things involved in the process.

²² Available at: <https://web.trf3.jus.br/noticias/Noticiar/ExibirNoticia/428861-jef-itinerante-indigena-realiza-4770-atendimentos>

It promotes the redefinition of relations between the State, civil society and communities, expanding the channels of participation and promoting the democratization of the administration of justice. This approach enables the inclusion of new legal subjects, values and practices, moving away from the strictly processualist view of the system (ANTUNES, 2013).

In this way, community-participatory legal pluralism is established as a new paradigm, allowing the incorporation of different practices and perspectives in access to justice, and compatible with the practices of the JFII, which values a decentralized justice model, breaking with rigid technical procedures and prioritizing conciliation over state coercion.

EXPANSION OF THE INDIGENOUS ITINERANT AND ACCESS TO JUSTICE

Access to justice is a fundamental human right recognized in several international treaties, such as the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966). Initially, this right was restricted to mere access to the courts, but it was expanded by the studies of Cappelletti and Garth (1988), who identified three waves of renewal of access to justice: elimination of economic barriers, protection of diffuse rights and creation of alternative mechanisms for conflict resolution.

However, indigenous communities still face geographical, social and cultural barriers to accessing justice.

ILO Convention 169 establishes the right of indigenous peoples to access justice, including mechanisms adapted to their reality, such as interpreters. However, the absence of the Federal Justice in municipalities with a large concentration of indigenous population makes it essential to search for new solutions, such as the expansion of the Itinerant Courts, to ensure the effective access of indigenous peoples to justice.

Thinking about extending the itinerant service to indigenous communities, in April 2024, the TRF3rd Region created the Caminho do Acordo project in the Conciliation Centers (Cercons) with a lean itinerant structure – which has a judge, federal judiciary employees and a partnership with the Federal Public Defender's Office, FUNAI, the Federal Prosecutor's Office and INSS – which leads to the resolution of pre-procedural social security demands of retirement due to rural age, pension for death and maternity salary to the riverside, settler and indigenous populations of Mato Grosso do Sul.

In the year of creation, the project prioritized indigenous villages and was held on April 17 and 18, in the Bororó village, in Dourados/MS; in the Taunay-Ipegue village, in the municipality of Aquidauana/MS, on May 20 and 21; in the Jaguapiru village, in the region of the municipality of Dourados/MS, on July 2 and 3; and in the Buriti Village, in the municipality of Dois Irmãos do Buriti/MS.

Through the Caminho do Contrato project, during the year 2024, 1,200 services were carried out, culminating in the approval of 181 agreements and the issuance of RPVs in the amount of R\$ 755,413.13, ensuring quick and effective solutions for hundreds of people²³. It is necessary to emphasize that both the Path of Agreement and the Itinerant Indigenous Courts take place in alternating and concomitant calendars.

The results demonstrate that the initiative is an efficient mechanism to guarantee rights and strengthen indigenous citizenship, reducing structural inequalities. This intercultural interaction is an essential step for the Federal Justice to be more inclusive and allows judges, interpreters of the law, to experience traditions, languages and forms of social organization of the communities. In addition, it guarantees respect for local customs and improvement in procedural acts, in addition to the participation of the community in the justice system – proximity that avoids decisions that disregard its culture. Thus, it is concluded that the Itinerants are fundamental to expand access to justice, evidencing the need for its continuity and expansion.

CONCLUSION

In Brazil, although the Federal Constitution of 1988 has advanced in recognizing the territorial and cultural rights of indigenous peoples, the practical application of these norms still faces challenges. Indigenous itinerant justice, in this sense, represents a solution to operationalize this recognition, by taking the Judiciary to the communities and enabling the conciliation between state law and indigenous tradition.

Legal pluralism refers to the coexistence of different normative systems within the same territory, such as the ancestral right of indigenous peoples and Eurocentric state law. This approach breaks with the modern liberal view, which assumes that all rights emanate exclusively from the State by recognizing the coexistence of several systems.

²³ SEI 0000108-83.2025.4.03.8002 and available at web.trf3.jus.br/diario/Consulta/VisualizarDocumento?CodigoTipoPublicacao=1&CodigoOrgao=1&CodigoDocumento=0&IdMateria=549925&NumeroProcesso=0

The communitarian-participatory aspect of legal pluralism inserts the debate on access to justice, breaking with the strictly procedural view. This approach proposes decentralization and social participation, fostering more democratic practices in the legal system, such as itinerant justice.

The central idea of this model is to redefine civil society as a space where new social subjects exercise their rights and contribute to the construction of community justice. Thus, legal pluralism not only responds to the deficiencies of the formal jurisdictional system, but also values the autonomy of social groups in the production of norms and conflict solutions.

The research concluded that the Special Itinerant Indigenous Court enables the application of legal practices based on legal pluralism for the granting of rights to traditional peoples. This conclusion is evidenced in the following practices: holding hearings in the locality where the indigenous person lives, hearings with the participation of various actors and members of the community, use of an interpreter of the language and who knows the culture, recognition of oral tradition, and judicial inspection.

Thus, the JEFII experience uses several practices that affirm the importance of participatory legal pluralism in promoting a more inclusive justice system adapted to the needs of indigenous populations. By recognizing and respecting the normative systems of these peoples, the JEFII contributes to the strengthening of indigenous citizenship and cultural identity and is configured as a concrete expression of dialogue between state law and the specific needs of the indigenous population.

This interaction, mediated by participatory legal pluralism, reveals a promising path for the construction of a justice system that welcomes the diversity of the numerous ethnic groups that coexist in Mato Grosso do Sul as an essential element of its legitimacy.

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