The contested nature of Afro-descendant *quilombo* land claims in Brazil

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Abstract

In Brazil, Afro-descendant quilombola communities were for the first time in history recognised as legal rights-holders to land in the 1988 constitution; one hundred years after the abolition of slavery. Drawing on fieldwork in the quilombo Bombas in the state of São Paulo, and review of relevant literature, this contribution explores the historical trajectory of the constitutional quilombo provision and how it has been translated into practice. Combining a discussion of the use of self-identification and the concepts of 'regulation', 'force', 'market' and 'legitimation' when analysing the dynamics of access and exclusion, we show how struggles over land are simultaneously enacted in controversies over the meanings of quilombola identity and its implications.

Keywords: access; Afro-descendants; Brazil; exclusion; land struggles; quilombola identity

1. Introduction: the Brazilian *quilombo* in a Latin American context

All over the world, groups of people historically excluded from formal land rights have since the 1980s mobilised in response to redefined political and legal orders, and claimed rights and access to land – and contested natural resources. In this article, we give an account of the struggles of one Afro-descendant *quilombola* community, Bombas in the state of São Paulo in south-eastern Brazil, and their cumbersome efforts of securing legal rights to land in a territory where they have lived for generations. We situate their struggle at the interface of two analytical axes: one represents the political dynamics of meaning construction and the negotiation processes necessary for the legitimation of their claims (Leite 2015); the other relates the Bombas case to a larger political-economy context framed through the contentious interaction of major mechanisms of *access* (Ribot and Peluso 2003) and *exclusion* (Hall, Hirsch and Li 2011), as articulated in the historical interlinkage of political power and control over land in Brazil. Although this article presents the land struggle of a Brazilian *quilombo* – understood as remaining runaway slave communities occupying territories that have sustained their livelihoods over time – it is also relevant for other marginalised groups elsewhere in the world either struggling to get rights to land or to benefit from already conquered land rights.

In Latin America, the crumbling dictatorship regimes in the 1970s and 1980s opened a space for mobilisation and political organisation of previously excluded and marginalised groups. A broad range of civil society actors and social movements, including indigenous and black

movements, started to organise to promote formal citizens' rights and more participatory forms of democracy (Escobar and Alvarez 1992, French 2009a). While lobbying for equal rights – as embedded in the predominant conception of citizenship – these advocates also aimed at a redefinition of citizenship. Their 'project to extend citizenship' included the right to difference, involving cultural dimensions and the recognition of rights based on collective identities (Dagnino 2005). When Brazil in 1988 passed its so-called 'Citizen Constitution', it was in the forefront in responding to the developing demands throughout the Americas for extended citizenship and identity-based rights for both indigenous peoples and Afro-descendants (French 2009b, Loloum and Lins 2012, Paschel 2016). The Constitution's Article 231 states that 'Brazil's indigenous peoples are the original and natural owners of Brazilian land and their land rights have precedence over other land rights', while Article 68 of the Transitory Constitutional Provisions Act states that 'Final ownership shall be recognised for the remaining members of the ancient runaway slave communities [*quilombos*] who are occupying their lands and the state shall grant them the respective title deeds' (Brazil 2010). The constitution also provided a legitimation of indigenous and Afro-descendant *quilombola* populations' cultural rights through Articles 215 and 216 (Leite 2015:1229).

The 1980s stand out as a critical decade, not only through the making of a new democratic constitution in Brazil, but also in setting the stage for the identity-based movements that would shape the new politics of representation and cultural recognition from the 1990s onwards. These developments were more generally inspired by Latin American liberation theology, as well as Freire's pedagogy of the oppressed (Machado et al. 2017), and were further connected to global trends, in scholarly analyses termed 'cultural politics' (Isin and Wood 1999) or the 'politics of recognition' (Taylor 1994). The constitutional basis for the political recognition of a quilombola identity in Brazil was established at a highly symbolic moment; one hundred years after the final abolition of slavery (Scott 1988, Schwartz 1992). However, when the quilombo provision legitimated access to land through titling, it literally referred to the rights-holders as '*remanescentes das comunidades dos quilombos*' – that is, 'remaining members', 'descendants' or 'survivors' of original quilombola communities (French 2006). Among Brazilian legislators, it was assumed that only a few such communities had survived and continued to exist, and that all would be identified and granted land within a few years (French 2009b, Arruti 2006).

This assumption turned out to be far from the realities developing on the ground. According to current estimates, around 5000 quilombos exist throughout Brazil (Leite 2015).[1] The large number of contemporary quilombos – with constitutional rights to claim significant land areas – has apparently taken broad sectors of Brazilian society by surprise. The potential scale of current quilombo land claims is perceived as a threat by agencies representing other interests and sources of legitimation, opening battlefields of contentious land claims, and the use of diverse mechanisms of exclusion and 'counter-exclusion' (Hall, Hirsch and Li 2011:170). The contested nature of quilombo land rights in Brazil is highlighted by the fact that only about half of the identified communities have been through the authentification processes necessary for an officially certified cultural identity as quilombo and that only 167 title deeds have been emitted.[2]

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[1] Estimates from the National Coordination of Quilombola Communities (CONAQ).

[2] Certification is issued by the Palmares Cultural Foundation, named after the most famous of the seventeenth-century quilombos, while land titles are emitted by the National Institute for Colonisation and Agrarian Reform (INCRA) and land agencies at the state level (Farfán-Santos 2015). The 167 land titles regularise 762,535 hectares (CPI-SP 2017). The total land area of Brazil is a little over 850 million hectares.

In Portuguese, there is already a range of published research and analysis of the Brazilian *quilombo* as a basis for socially acknowledged and legally supported claims to land (e.g. Pacheco de Oliveira 1994, Almeida 2002, Arruti 2006, Leite 2008, Andrade 2015); but also in English we find a growing body of research on the politics and contestations associated with defining, redefining, and negotiating the concept of *quilombo* (e.g. Linhares 2004, French 2006, 2009b, Machado 2006, Penna-Firme and Brondizio 2007, Loloum and Lins 2012, Leite 2012, 2015, Farfán-Santos 2015, Thorkildsen 2015, 2016).[3] While building on published research along the axis of meaning and identity politics, which we believe is essential to understand the inherent complexities of any *quilombo* mobilisation to secure land rights in Brazil today, in this article we focus on how the recognition of constitutionally established *quilombo land rights* also imply the exclusion of individual land rights, and other politically defined land uses – in our case, 'nature conservation'. We show that quilombos' land struggles emerge in a historically constituted political economy linking political power to control over vast areas of land.

First we give a brief account of the concepts related to 'access', 'exclusion', and 'ethnic identity', which are used in our analysis, and briefly describe the process of primary data collection in the quilombo Bombas in the Ribeira Valley in south-eastern Brazil. In the next section, we situate the struggles of contemporary quilombos in a larger historical context shaped by a political economy of regulated exclusion, followed by an account of how the 1988 constitution provided a new legal order opening up for quilombo land claims, and the cultural politics of negotiating this redefined quilombo identity. Then we present our analysis of Bombas and the inhabitants' struggles for quilombola recognition and formal land rights, and how this struggle developed in response to the state's definition of their traditional territory as a 'strictly protected area' of nature conservation.

2. Conceptual framework and methodology

2.1 Access, exclusion, and identity

Struggles over access to and control over land is one of the central topics of political ecology (cf. Escobar 2008:13, Borras et al. 2011). A useful theoretical contribution is provided by Ribot and Peluso in *A Theory of Access* (2003:153), which makes a distinction between land rights and access; defining *access* as 'the *ability* to derive benefits from things' (italics in original). Someone may have property rights (the rights to benefit), but may be unable to do so without access to capital or political influence (the ability to benefit). Ribot and Peluso (2003) refer to powers, embodied in and exercised through structural and relational 'mechanisms', which in practice influence the terms of legally defined access to land and resources.[4] In their work on Southeast Asia, Hall, Hirsch and Li (2011) have focused on the dilemmas associated with increasing pressure on land. In *The Powers of Exclusion* they describe 'the changing ways in which people are excluded from access to land' (Hall, Hirsch and Li 2011:4). Seeing exclusion as structured by power relations, they distinguish between four mechanisms of exclusion – *regulation, market, force* and *legitimation*. 'Regulation' is used to refer to formal and informal rules that govern land access and exclusion (Hall, Hirsch and Li 2011:15). The 'market' should be seen as operating in a structure formed by regulation, force and legitimation, shaping supply and demand (Hall, Hirsch and Li 2011:17). 'Force' involves exclusion by violence or the threat of violence used by both state and non-state

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[3] Afro-Latin America is, however, still considered to be "relatively understudied" (Busdiecker 2015:174).

[4] Following Ribot and Peluso, we have here chosen to use the term *mechanisms* as shorthand for means and powers of access and exclusion.

actors to control, maintain or gain access (Hall, Hirsch and Li 2011:16-17). 'Legitimation' can, according to Hall, Hirsch, and Li (2011:18-19), be used to justify both status quo and change. It establishes the moral basis for exclusive claims, for use of force, and it entrenches regulation. When analysing a concrete case, as well as the changing ways in which people have been excluded from land over time, we find that these mechanisms interact within the larger political economies of access to and exclusion from land and resources.

Hall, Hirsch and Li describe how *legitimation* plays a central role in contemporary collective mobilisations by groups of people seeking to counter their exclusion from land, referring to these collective mobilisations as 'counter-exclusions' (2011:170). In Brazil, the constitutional recognition of *quilombos'* land rights in 1988 opened a space for social mobilisations of counter-exclusion based on the *quilombola* identity. While Article 68 legitimated quilombos' rights, their realisation in the form of access or maintaining access to land (Ribot and Peluso 2003:159) required a further definition of 'quilombo' as part of operational regulations. In this process, anthropologist Fredrik Barth's theory of 'ethnic groups' came to play an important role. Barth emphasised that 'ethnic groups are categories of ascription and identification by the actors themselves' (1969:10). He conceptualised ethnic boundaries as persisting 'despite a flow of personnel across them' (1969:9), offering a process-oriented and relational approach. While Barth's theory sought to explain the dynamic and fluid character of ethnicity, Hall, Hirsch and Li point to how ethnic identity becomes prominent in contemporary mobilisations 'as the grounds on which groups mobilise to contest exclusions and assert claims' (2011:171). In their perspective, land rights are inherently exclusive – excluding some groups for the benefit of others, or excluding some forms of use to be replaced by other uses (Hall, Hirsch and Li 2011:8). The case presented in this article shows how, in a larger political economy of regulated exclusion, the titling of quilombola land will legalise access at community level, while the process also brings up conflicts that affect all community members involved. We show how the tension between access and exclusion lies at the heart of these land struggles; both on the ground where people asserting competing claims confront each other, and on the national scale where arrangements for land access are subject to debate and diverse – sometimes conflicting – institutional practices, as well as continued political struggles.

2.2 Primary Data Collection

The primary data presented in this article was obtained through fieldwork in the Ribeira Valley in São Paulo state in south-eastern Brazil, carried out by the first author in the period 2010–2013. Fieldwork included participant observation in the quilombo Bombas in the municipality of Iporanga between autumn 2010 and spring 2011. This community is located in a remote and sparsely populated area covered by Atlantic Forest. There is no road access, electricity, piped water, basic sanitation, health services or communication facilities in Bombas, making it one of the most geographically isolated and disadvantaged quilombos in the Ribeira Valley. Its entire territory is overlapped by a strictly protected area, the Upper Ribeira State Touristic Park (PETAR), which was the first protected area to be established in São Paulo state. With its numerous water sources as well as limestone caves and dense forest supporting a high degree of species richness and endemism, Bombas is often considered to be the 'jewel in the crown' by environmentalists. Despite these unique characteristics, it is one of the least studied quilombos in the region.

Data collection in Bombas involved getting to know community life through stay-overs in different homes, visits to agricultural fields, informal conversations and participation in community meetings. Fieldwork made it possible to attend twelve negotiation meetings on land rights, involving the Bombas community, state authorities and mediatory NGOs.

Participant observation with registration in a field diary was complemented with altogether 60 open-ended interviews with quilombola inhabitants and leaders from ten different communities in the Ribeira Valley, government officials, politicians, representatives of NGOs, activists, lawyers and researchers. Further insight into the struggle for the realisation of quilombos' land rights was obtained through attendance in different public hearings in Iporanga and São Paulo, and through participation in a manifestation in São Paulo in 2014 against the Proposed Constitutional Amendment 215/2000, which among other things, intends to restrict the quilombo provisions.

3. The meaning of 'quilombo' in a political economy of regulated exclusion

3.1 The colonial legacy
Brazil has one of the most unequal structures of land distribution in the world, where 1% of the population owns 45 % of all land (USAID 2011). The origin of this unequal land access and the historic interlinkage of political power and control over land in Brazil both date back to Portuguese colonisation, when enormous land areas called *sesmarias* were conceded to a small number of colonial settlers, based on their commitment to improve 'vacant' land (Loloum and Lins 2012). The *sesmaria* system concentrated land ownership in the hands of landed elites who, to a large degree, relied on African slave labour to 'improve' the land through market-oriented production. The colonial regulation of access to land facilitated Brazil's slave-based economy, in which the role of enslaved Africans was corroborated by their own *exclusion* from land. While 'force' was at the heart of the colonial state's exploitation *and* exclusion of enslaved Africans, interacting mechanisms of 'regulation', 'market' and 'force' shaped the colony's slave-based economy (cf. Hall, Hirsch and Li 2011:16). A common form of 'counter-exclusion' by enslaved Africans was the flight into fugitive communities established on unoccupied land, called *mocambos* or *quilombos*;[5] the term *quilombo* gaining currency from the late seventeenth century (Schwartz 1992).[6] It was first used in connection with the largest and most famous of the fugitive slave settlements, Palmares, which stretched over the border of the states of Pernambuco and Alagoas (Anderson 1996). At its apex, Palmares probably hosted between 11,000 and 20,000 inhabitants, and had its own blacksmiths and army (Carneiro 1958, Schwartz 1992). Though this settlement was subject to 'force' through a series of incursions and reprisals by both Dutch and Portuguese colonisers, the quilombo Palmares resisted attacks during most of the seventeenth century. The final battle took place in 1694, and Palmares' iconic leader Zumbi was captured and executed on 20 November 1695 (Schwartz 1992).

Portuguese colonial law (Ultramarine legislation) from 1740 defined a quilombo as 'any habitation of five or more black fugitives residing on land that was uninhabited and uncultivated' (Leite 2008:970). The definition refers to the minimum number of runaway slaves considered to represent a potential for revolt, adding geographic isolation and an existence opposed to civilization (Almeida 2002). As fugitive slaves, quilombolas were considered 'criminals of the state' illegally occupying land, and were further thought of as

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[5] In the English-speaking West Indies and Guyana *maroons* has been used with reference to fugitive slaves, as well as their descendants (Mintz 1985); in Spanish *cimarrones*. Along the Spanish-speaking Caribbean coast of Guatemala, Honduras and Nicaragua, the term *garifuna* has been used to refer to Afro-descendants. In Colombia and Ecuador, *palenques* referred to (fortified) villages of runaway slaves (Halpern and Twine 2000, Escobar 2008).

[6] Swartz (1992) traces the etymology of both *mocambo* and *quilombo* to the Angolan KiMbundu language, where *mukambo* may refer to a hideout, while *kilombo* could refer to a 'warrior settlement' or circumcision camp for a male initiation society.

lazy, natural savages (Farfán-Santos 2015). The legal definitions acted, according to the analytic framework proposed by Hall, Hirsch and Li (2011), as a mechanism of 'legitimation'; justifying not only the exclusion of Afro-descendants from access to land, but also the use of force in upholding this exclusion. While exclusion of Afro-descendants from access to land underpinned the political economy of the colony, we can in this period also identify a specific constellation of mechanisms framing this exclusion: i) A regulation of access through *sesmarias,* which was consolidated into the historic interlinkage of elite political power and control of vast areas of land; ii) exclusion from access to land upheld by force – if necessary, military force; and iii) legitimated by a legislation that turned resistance into criminal acts against the state. In our time, insurgent Palmares' use of force when resisting slavery, oppression, and the criminal label was, in turn, through Transitory Article 68 in the 1988 constitution 'translated' (Callon 2007) into an important criteria to legitimate *quilombo* land rights; that is, within a historically different constellation of mechanisms of access and exclusion.

3.2 Contested continuities: independence, abolition and a struggling democracy

As the *sesmaria* system ended with Brazilian independence in 1822, 'vacant' or uncultivated lands (*terras devolutas*) were confiscated by the state. Occupied lands were then attributed to their effective occupants, who also received land titles. This benefited, among others, quilombolas who could get their previously unregulated lands registered; regulating, as well as legitimating their access to land. This state of affairs ended already in 1850, with the enactment of the first Land Law (*Lei de Terras)* pushed for by Brazilian elites who sought to protect their landholdings and strengthen their ability to be competitive exporters on an expanding international market. The implementation of this Land Law affected existing quilombos' ability to acquire legal land titles, as it effectively excluded people without access to capital and created various legal means for expropriating land. In practice it led to expulsions, enclosures, registration of quilombo land as 'vacant', and the seizure of quilombo lands for failure to pay taxes (Leite 2015). Elements of 'market' were introduced, facilitating access for those able to pay, while excluding quilombos that were unable to maintain their own access (cf. Ribot and Peluso 2003:159); while 'regulation' continued as the most prevalent mechanism for excluding quilombos from land, reproducing the historical linkage of political power and control over vast land areas.

The same year as the Land Law was enacted, the slave trade closed and put an end to enslaved Africans being brought to Brazil. Weinstein (2001) shows how Brazilian-born slaves began to formulate a notion of themselves as Brazilian citizens with legal rights, and started to actively assert their aspirations for freedom and autonomy. They also used discourses of citizenship to claim and legitimise access to land, resisting the criminal label associated with quilombos. Meanwhile *abolitionists* appropriated the term 'quilombo' to highlight a range of inequalities for slaves and former slaves – including land distribution, labour and educational rights – signalling a wish for social change and the transformation of Brazilian society. Nevertheless, when slavery was finally abolished in 1888 and the first republican constitution was promulgated in 1891, the issue of land for former slaves and their descendants was not addressed. Though quilombola settlements continued to exist, they were omitted from the legislation, since it was believed that with the abolition of slavery they would simply disappear (Almeida 2002). Thus, the last decades of the 19th century saw a change in citizenship status for part of the Afro-descendant population, but there were no provisions for regulated access to land for former slaves, nor were existing quilombos legitimated by the republican state.

In the 1930s, 'quilombo' came to gain a new meaning when the Brazilian Black Front (FNB) used the term as a symbol of political resistance against the 'whitening ideology' and the exclusion of black people during the republican project of modernisation (Leite 2015, Farfán-Santos 2015). FNB – with between 40-200,000 members – was one of the first organisations to demand equal rights and participation of blacks in Brazilian society (Pereira 2010). However, the movement's mobilisations ended abruptly in 1937 with President Vargas' coup d'état. With re-democratisation, organisation of black people surged again in the mid-1940s, but this time through the establishment of black theatres such as the Black Experimental Theatre (TEN), and the publication of the Journal *Quilombo* (Pereira 2010). In 1964, Brazil experienced another coup d'état by the right-wing military, which seriously repressed any form of social mobilisation. But again, with political liberalisation in the late-1970s, a space opened for the establishment of the Unified Black Movement (MNU). MNU actively accused the Brazilian state apparatus of structural racism, disrupting state discourses that had denied the existence of racism and downplayed the country's cultural and ethnic heterogeneity (Leite 2008, Cardoso and Gomes 2011, Paschel 2016). Activists in the black movement and several members of the Parliament took demands for criminalisation of racism, affirmative action, as well as multicultural citizenship for Afro-descendant quilombola communities to the National Constituent Assembly that drafted the 1988 constitution. These and other civil society lobbying efforts in the Constituent Assembly contributed to the enactment of quilombos' cultural protection, and their rights to land as formulated in the constitution's Transitory Article 68.

Since the promulgation of the 1988 constitution, 'legitimation' (Hall, Hirsch and Li 2011) has been the main mechanism underpinning quilombos' ability to claim access to land. However, the constitution did neither specify who the quilombos were, nor regulate their access to land. It provided a constitutional legitimation, without a regulation. This contributed to disputes over how to define 'legitimate' quilombos and how to implement the provision in practice. Initially, it was interpreted as legally restricting land rights to descendants of groups that had escaped or rebelled violently against enslavement before abolition in 1888 (Linhares 2004). The quilombo of Palmares served as the ideal quilombo; a large, rural community that had fiercely opposed the slave system and reproduced elements of African society and culture (Schmitt, Turatti, and Carvalho 2002). This interpretation has clearly affected the ability of communities with different histories and socio-cultural practices to benefit from the quilombo provision. As we will show below, the contemporary quilombo Bombas is one of these. It has been able to move ahead with recognition and land claims, and in the following we will lay out the conditions and struggles shaping this process.

3.3 How to make the quilombo provision operational through regulation?

The Palmares Cultural Foundation was the first federal agency to put forward an official definition of *quilombo* in 1994; as 'any black rural community composed of descendants of slaves, who survived through subsistence agriculture, and with cultural manifestations linked to the past' (Leite 2012:251 in Farfán-Santos 2015:121). This definition focused on race (blackness) and livelihood; it implied requirements of 'authenticity' and a search for a heroic past of African cultural resistance and survival. Farfán-Santos (2015:110) holds that 'authenticity' created a demand for these communities 'to tell a specific history of their past as it has been written and incorporated into the Brazilian national imaginary'. Oral tradition and memory in these rural communities had, however, historically suppressed such references to a slave background or signs of African identity (Penna-Firme and Brondizio 2007). This is

confirmed by Escobar (2008:209) describing the 'puzzling absences' of African origins and slavery in explicit collective memory in Colombia; while Kosek (2004:352) emphasises that forgetting as such 'is not just an *absence* of memory but an active process'.

An interpretation of the 1988 constitution which required Afro-descendants to *demonstrate* suppressed connections to African origin and cultural practices for quilombos to be legitimate claimants to land, was soon opposed by the Brazilian Association of Anthropologists (ABA) (Pacheco de Oliveira 1994). It offered an alternative definition based on Barth's (1969) conception of ethnic groups, emphasizing that the critical focus should be 'the ethnic *boundary* that defines the group, not the cultural stuff that it encloses' (Barth 1969:15). By defining modern quilombo descendants as 'ethnic groups organised around their own rules of membership and belonging', ABA shifted the focus from race and culture towards ethnicity, seeking to make Transitory Article 68 more applicable to contemporary realities (Farfán-Santos 2015:212). This self-ascribed legal identity as a basis for exclusive rights to land brought forward new rounds of contestation. But it also created a framework of self-ascription for communities that historically had been operating with more fluid and inclusive conceptions of identity; which in the case of Bombas resulted in considerable internal negotiation, open disagreement, and also violent controversy.

At the national level, the struggle over how to define 'legitimate' quilombos were central in delaying the implementation of the quilombo provision. The dispute over which federal government agency should be responsible for regularising quilombos served to further slow down implementation (Loloum and Lins 2012). Was the quilombo provision a cultural question and thus the responsibility of the Palmares Cultural Foundation (FCP) under the Ministry of Culture? Or was it a land question and the responsibility of the National Institute of Colonisation and Agrarian Reform (INCRA) under the Ministry of Agrarian Development? These controversies come out in an interview held with a lawyer fighting for quilombos' rights [São Paulo, May 2011]:

> In Brazil, you start discussions in order to distract people from getting done what needs to be done. The constitution says title to the land. The first discussion – they spent years discussing – was if this article [Transitory Article 68] was self-applicable or if we needed a law to regulate it… Then we started discussing "is this a land question or a cultural question?" So then you had people saying it should be the Palmares Cultural Foundation and others saying it should be INCRA. And I said; "it doesn't matter who it is if you give them the money to do what they got to do and the structure." They spent years fighting this. And the third question was: Do you have to expropriate lands before you give the title to the quilombos, or do you give the title first and then expropriate?

In the early 1990s, a quilombola movement grew out of the black movement, becoming an independent movement defending its own agenda based on quilombos rights to land and cultural protection.[7] In 1995, after significant pressure from this movement to implement the quilombo provision, INCRA was given the responsibility to issue land titles for quilombos situated on federal public lands. In connection with the tercentenary of the death of Zumbi, the last leader of Palmares, 1995 was declared a year of national celebration of quilombos. On Zumbi Memorial Day on November 20, also known as Black Consciousness Day, President Cardoso announced the first legal recognition of a quilombo in Brazil; Boa Vista in the state

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[7] The quilombola movement also continues to struggle for affirmative action and the combat of racism together with the black movement (Cardoso and Gomes 2011).

of Pará (Andrade 2015).[8] INCRA had proposed to title individual lots inside Boa Vista, but the community claimed collective ownership to secure areas of habitation and work for all present and future community members. This collective and inalienable form of land ownership means that individual land titles held within the territory will lose the status as private property, and land can no longer be sold, transferred or rented out (Santilli 2010). This implies that although collective ownership produces long-term access and security for the community members, individuals and families wanting to keep their private land titles may be against it. Still, Boa Vista inspired other quilombos to claim collective ownership, which laid the ground for the institutionalisation of collective ownership as part of current regulations (Andrade 2015). We see that elements of regulation were proposed, discussed and re-negotiated throughout the 1990s; until the federal government in 1999 transferred the competence for administering the titling procedure from INCRA to the Palmares Cultural Foundation, asserting that *quilombo* was mainly a cultural issue. Since the Foundation lacked budget funds to compensate third parties for expropriation, it did not deal with competing or overlapping land claims. When quilombos' land rights entered into conflict with private property or public uses, the titling processes were usually halted.

4. A field of struggles against exclusion: the contentious land claims of the quilombo Bombas

The Ribeira Valley in south-eastern Brazil holds a large concentration of quilombola communities. A total of 88 quilombola communities have been identified by the Coordination and Advisory Team for Black Communities in the Ribeira Valley (EAACONE) (Figure 1). The origin of these communities is closely connected to the colonial history of mining and slavery in the region. Alluvial gold was found in the Upper and Medium Ribeira in the 1550s, and the initiation of mining activities stimulated the introduction of enslaved Africans in the beginning of the seventeenth century (Carril 1995, Diegues 2007, Oliveira Jr et al. 2000). But the rapid exhaustion of gold deposits in the Ribeira Valley and new discoveries of precious minerals in the neighbouring state of Minas Gerais led many miners and slave-owners to leave the region (Diegues 2007). As a result of this early de-articulation of the regional economy from the international market, many enslaved Africans were liberated or abandoned relatively early compared to the rest of Brazil. Already around 1780, the free black population outnumbered the slaves in the Ribeira Valley, and in 1886, two years before the abolition, only 10% of the black population was enslaved (Carril 1995).

[FIGURE 1 HERE]

Afro-descendants in the Ribeira Valley benefited from this shift in the core area of mineral extraction in the colonial economy also in terms of access to land. Previous mining areas and abandoned farms were donated or sold to former slaves (Santos and Tatto 2008). Historical records and oral accounts reveal that the oldest quilombo, Ivaporunduva, dates back to 1802 when the slave owner liberated the slaves who had served her and donated the land to the former slaves upon her death (Oliveira Jr et al. 2000). Most early quilombos were located along the principal river of the Valley, the Ribeira de Iguape River, which served as a key means of transport during colonial times. With time, individuals or families ventured off into

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[8] The day has been celebrated since the 1960s, but was only officially established in 2003 and approved in 2011.

new areas and settled down on unoccupied or abandoned government land. Many chose to live in remote areas to avoid being re-enslaved, or being recruited to the military in connection with the Paraguayan War (1864/65–1870) (Oliveira Jr. et al. 2000). In contrast to Palmares, the quilombos in the Ribeira Valley were small and had not aggressively resisted the slave system. Neither were these quilombos exclusively composed of fugitive slaves, but included former slaves who had bought their freedom, freed slaves, new immigrants, and various groups excluded from the larger society.

The passing of the 'Golden Law' (*Lei Aúrea*) abolishing slavery in Brazil in 1888 did not substantially alter the situation for the former slaves and descendants of slaves in the Ribeira Valley. For about a century, 'things were left as they were' (Hall, Li and Hirsch 2011:19), and quilombolas provided for their own livelihoods. They had access to land, but this access was neither formally regulated nor legitimated by the state. Community members engaged in small-scale agriculture, animal-rearing, fishing, hunting and collection of forest products, both for subsistence and sale to the local market. This situation began to change in the second half of the twentieth century, when we see an increasing pressure on land in the region. In the 1960s and 1970s, infrastructure development and tax incentives for cattle ranching and banana plantations provided by the military government attracted immigrants. Rises in land prices encouraged some quilombolas to sell land to immigrants, while other lands were simply 'grabbed', resulting in increasing conflicts between quilombola inhabitants and third parties (Adams et al. 2013).

From the mid-twentieth century, environmentally protected areas were established in this historic mining hotspot. The absence of operating market forces and the long economic stagnation in the region had resulted in the largest and best preserved remnants of Atlantic Forest in Brazil – one of the most threatened biomes on the planet (Myers et al. 2000) – and numerous limestone caves with endemic subterranean species had been discovered. The protected areas were based on notions of 'untouched wilderness' (Diegues 1998), and resident Afro-descendants were 'invisible' in the Park regulations. As pointed out by Kosek describing the establishment of U.S. National Parks, in defined 'wilderness' areas, local populations were deemed to have 'no right place in the landscape' (2006:156). In the 1980s, Brazilian authorities started implementing Park regulations in the Ribeira Valley, and quilombolas started to face threats of eviction and being fined for 'environmental crimes' (Ferreira 2004, Diegues 1998). In this way, environmental protection was both used to legitimate state control over land and resources (Ribot and Peluso 2003: 169), and to legitimate the use of force to exclude quilombos from the Parks that overlapped their traditional territories.

The Upper Ribeira State Touristic Park (PETAR) was the first protected area to be established in the state of São Paulo, in 1958. The strict protection was legitimated by the need to protect the well-preserved and biodiverse forest and the caves hosting a threatened blind albino catfish (*Pimelodella kronei*). Although PETAR's territory overlapped the entire territory of the quilombo Bombas, forest authorities did not take the community's presence into account when drawing Park boundaries, and did not inform community inhabitants about the Park after its establishment. But PETAR was a 'paper Park' for three decades, and community life continued as usual. Small home gardens with a wide variety of vegetables, herbs and fruits were planted, short-term subsistence crops were cultivated in agricultural plots using shifting cultivation techniques, domestic animals were reared and forest products extracted. The inhabitants were mainly self-sustained, but when producing a surplus they sold crops, processed manioc flour and sweets, pigs, and palm hearts to the local market. Both agricultural activities and internal social cohesion reached a climax in the 1970s, when about

80 families lived in Bombas (Thorkildsen, 2014). Bombas inhabitants only became aware of PETAR when measures were taken to implement Park regulations in 1987. In interviews, Bombas inhabitants tell how their subsistence practices suddenly became illegal, and how Park authorities and environmental police started to appear in their territory to enforce Park regulations and threaten them with eviction. The mechanisms of 'force' was used when Bombas inhabitants were handcuffed and arrested, and when they were fined and got their rifles and agricultural tools confiscated. This contributed to an exodus of inhabitants and a drastic reduction in Bombas' population.

As a strategy of 'counter-exclusion' (Hall, Hirsch and Li 2011), the remaining Bombas inhabitants continued their subsistence practices in more remote areas, which were less accessible for control by forest authorities. But the long distances and the smaller sizes of the agricultural plots resulted in insufficient food production. The remaining community members also faced increasing difficulties in proceeding with agricultural activities due to the low remaining workforce, and did not get access to social services and basic infrastructure due to their 'illegal occupation' of a strictly protected area. Ribot and Peluso (2003:164) point out how illegal access refers to the enjoyment of benefits from things in ways that are not socially sanctioned by state or society, but stress that illegality is a matter of perspective. In Bombas, inhabitants perceived the Park establishment as illegitimate, not their own presence.

In the late 1990s, Bombas inhabitants initiated a new strategy against exclusion from their territory. Instead of hiding, they entered a process of making themselves visible, seeking to legitimise their presence and their livelihood practices. Knowledge of quilombos' rights to land in the 1988 constitution and access to state benefits had been gained through active Catholic Church-members in Bombas, but also from other quilombola communities in the Ribeira Valley engaged in a local movement (*Movimento dos Ameaçados por Barragens* – MOAB) mobilising people against the large dams that were being planned in the Valley (Thorkildsen, 2016). A Bombas inhabitant reflects on this process in an interview [Iporanga, June 2011]:

> We didn't even know that we had rights. Now, we know that we were Angolans, Africans, we know that we came with ships, we were brought here to work as slaves. But we didn't know that we had this right.

A debate ensued in the community on whether they actually were 'quilombolas' and should opt for official recognition from the state as such. At first, many were sceptical. Their experience with public authorities mainly consisted in their encounters with park authorities and the environmental police who had fined and threatened them. They did not trust the state. Another Bombas inhabitant mentions the general uncertainty in an interview [Bombas, January 2011]: 'Before we did not understand what a quilombo was, if it was good or bad, everyone was in doubt'. This was the starting point of an internal process to establish, not only a common identity, but redefined society-state relations (cf. Wolford 2010:106), and in this context, a locally grounded *legitimation* in terms of 'what was right and appropriate' (Hall, Hirsch and Li 2011:18).

Although knowledge of the history of slavery had until then been supressed, and no slave-descendant community in the Ribeira Valley had referred to itself as a quilombo before the term was used in the 1988 constitution, the opportunity to gain legitimate land access based on a recognised quilombola identity set this process in motion. A reinterpretation of their own history led residents to valorise their distinct cultural traits and community practices;

articulated in a belonging to Bombas' territory as – borrowing Kosek's (2006:106) terms – a 'product and site of material histories and cultural politics'. Thus, some residents started to consider identifying themselves as *quilombola*. Li's elaboration of the concept of 'self-identification' captures well this processes:

> [A] group's self-identification as tribal or indigenous is not natural or inevitable, but neither is it simply invented, adopted, or imposed. It is, rather, a *positioning* that draws upon historically sedimented practices, landscapes, and repertoires of meaning, and emerges through particular patterns of engagement and struggle. (Li 2004:339, italics in original)

In 2003, the criterion of 'self-identification' also gained legitimacy at the national level. The Brazilian Anthropological Association and the quilombola movement had long advocated for self-identification, and when President Inácio Lula da Silva took office he issued decree 4.887/2003. The decree defined quilombo as a 'self-identified, ethno-racial group with its own historical trajectory, a specific relationship to the land, and the presumption of a black ancestry connected to forms of resistance to historical oppression' (Farfán-Santos 2015). It further expanded the concept of 'occupied lands' to include the areas needed to guarantee quilombos' physical, social, economic and cultural reproduction – not only land in current use.[9] The decree also shifted titling competence back to INCRA, while the Palmares Cultural Foundation was given the authority to issue quilombola certifications; separating the recognition of land rights and the titling function from that of cultural recognition.

In Bombas, after numerous internal discussions almost all community members came to support quilombola recognition. However, the members of one family in particular refused to be identified as quilombola, opposing the restrictions involved in legalising a collective ownership, since it also meant they would be unable to sell their land in case they wanted to leave the area. They would therefore not participate in a struggle for collective access. In an interview, a government official made the following statement about internal resistance to quilombola recognition [São Paulo, June 2011]:

> It is part of the process to have some not wanting to be classified and others who do. In all communities there is a conflict-laden process. The question of recognition alters internal dynamics such as distribution of power. It [quilombola recognition] is an external dynamic that brings internal conflict to a group and initiates discussions of the balance of what one will gain and lose. The inhabitants are part of a network of kinship, neighbourhood, participate in exchanges, but when one starts to mess with the title that a person has managed after many generations, they do not want to lose it. Then people from the outside state that "they are not united". This is not right, they are united, but they are also the product of conflictual internal processes. What the public agent is searching is homogeneity, that everyone thinks the same thing and wants the same. This is idealistic. The public agent looks for things to confirm pre-established hypothesis with basis in pre-conceived notions of what an ideal quilombo is. Then you cannot have conflict or disagreement.

Internal disagreement over quilombola identity and collective ownership is common, and there are many examples of this in the literature (French 2004, Arruti 2006, French 2006,

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[9] Both the self-identification principle and the concept of occupied lands in decree 4.887/2003 are in line with the ILO Convention 169 on Indigenous and Tribal Peoples; ratified by Brazil in 2002. Here quilombolas fall under the category of 'tribal peoples'.

Loloum and Lins 2012, Farfán-Santos 2015). Diverse positions and internal resistance is no exception, but part of the process of constructing a new political identity. However, disagreements and resistance may lead to open conflict when a common identity is associated with exclusive rights, including rights of exclusion. When land operates not only 'as a symbolic ground for the reproduction of identity and community' (Kosek 2004:331), but also constitutes an important material source of livelihood, violent clashes may ensue – internally and with external agents representing conflicting claims and sources of legitimation.

Within Bombas, despite one family being against quilombola status, in 2002 the community proceeded with a request for recognition with support from the majority of the residents, self-identifying as quilombola. A literate resident from Upper Bombas had the quilombola association officially registered, and was also elected as the first President of the quilombola association of Bombas. The land agency in São Paulo (ITESP) then carried out an anthropological study elaborating on the origin of ancestors, traditional land use, as well as religious and labour practices (Silveira 2003). But before ITESP's anthropological report was published, São Paulo's Environmental Office halted the quilombo recognition process. The Environmental Office claimed that environmental studies of the territory had to be carried out in addition to the anthropological studies, due to Bombas' location inside a protected area under their jurisdiction. An ITESP official explains the uncoordinated actions of the state in the following way in an interview [São Paulo, February 2011]:

> In the past, we conducted studies of the quilombola territories without asking for the opinion of the Environmental Office. In 2003, after some quilombola areas that overlapped Conservation Units had been recognized by ITESP, the Forest Foundation requested that all areas under its management had to be assessed before the [quilombola] recognition could be published. It was at this time we were working in Bombas.

Due to Bombas inhabitants' strained relationship with forest authorities and their practices of enforcing Park regulations, Bombas refused to accept environmental studies inside their territory until the community had been recognised as a quilombo. This led to a conflictive deadlock. While Bombas inhabitants claimed land rights based on a quilombola identity and historical occupation, forest authorities claimed the area to be a protected area based on its environmental and biodiversity values. Both parties claimed rights of exclusion based on overlapping land claims, backed by discordant sources of legitimation.

The Brazilian NGO *Instituto Socioambiental* (ISA) had through their work in the area gained the confidence of local people. In 2010, they were able to intervene to assist the Bombas community in proceeding with the quilombola recognition process. At that point, research for PETAR's management plan was carried out, and the forest authorities again showed interest in carrying out environmental studies inside Bombas. ISA convinced Bombas residents to enter a negotiation process, with ISA and the legal entity of the anti-dam movement – EAACONE – as mediators between the Bombas quilombola association, the Forest Foundation and ITESP (Thorkildsen, 2015). When this negotiation process started, the family that had positioned itself against quilombola recognition reacted by resorting to open threats and violence. The use of force created fear and insecurity, and led to high levels of social tension within the community.

The tense situation in the community accelerated during 2013. As a result, the Bombas quilombola association wanted to conclude the disputes and decided to proceed urgently with

the recognition process. It therefore accepted a territorial proposal presented by the Forest Foundation, which excluded a substantial part of Bombas' historical territory. This area, called Córrego Grande, covered 648 hectares. This exclusion was justified by the need to protect the threatened endemic albino catfish and the Atlantic Forest in the name of the 'national public good'. After this proposal was accepted by the community, the family who had opposed quilombola recognition eventually decided to leave.

Bombas was, however, not immediately recognised as a quilombo as promised by state authorities, and as a result continued without access to social programs and infrastructural development. The quilombola association then proceeded to file a lawsuit against the state in March 2014, demanding: 1) official quilombola recognition, 2) retrieval of PETAR's boundaries overlapping Bombas' territory, and 3) construction of an access road and provision of other infrastructural development. After significant pressure from the Public Attorney on behalf of the Bombas community, ISA and EAACONE, Bombas was finally recognised as a quilombo by ITESP – the state agency in charge of quilombola recognition in São Paulo – on 16 November 2014. This achievement was, in turn, connected to the symbolic significance of Zumbi Memorial Day, also celebrated as Black Consciousness Day four days later, on 20 November 2014. Official recognition as a quilombo is, however, only the first step in the process of gaining land rights. Bombas has not yet been granted a land title, and not until a complete land title is registered will the community have secured access to its historical territory. So far only the oldest quilombola community in the Ribeira Valley has managed to obtain a registered complete land title – after 15 years of struggle (Figure 1).

5. Concluding discussion

The analysis presented in this article has aimed at connecting processes and struggles at national and local levels by drawing upon two distinct – but in this case complementary – theoretical perspectives: A political economy framework focusing on access and exclusion from land, and a politics of recognition perspective focusing on identity ascription and contestation. Combining these perspectives has allowed us to properly contextualise the Bombas case, while at the same time highlighting the complexities involved in contemporary quilombolas' land struggles in Brazil.

In the article, we argue that the operation of mechanisms such as regulation, legitimation, force and market have been instrumental in providing or preventing enslaved Africans and their descendants' access to land in Brazil. During colonial times, 'force' was the prevalent mechanism used to exclude enslaved Africans from land rights. Runaway slaves who established quilombos were viewed as a serious threat to a stable social and political order, legitimating the use of force to suppress these groups and enforce their exclusion from land. Only in periods of de-articulation to international markets did runaway and freed slaves gain land access, either through occupation of unregulated lands, through donations or by buying land at low costs. Some quilombos got their land access legitimated by the state after the end of the *sesmaria* system, while the Land Law of 1850 again excluded quilombos from legitimate and legal land titles. Thus 'regulation' became significant in the continued exclusion of quilombos from legitimate access to land. After the official abolition of slavery in 1888, quilombos were again omitted from legislation securing land rights, and as a result many quilombos' lands were seized by force by neighbouring landowners, but also by the state, or by private companies taking advantage of their precarious legal situation (Leite 2015). Only at the centenary of abolition of slavery, were quilombos eventually granted rights

to land. But, as we have seen, Transitory Article 68 of the 1988 constitution has had a hard time in reconfiguring a historically exclusionary land structure.

Successive Brazilian governments' handling of the quilombo provision have been based on shifting and partly ambiguous interpretations, resulting in long, slow and conflictive titling processes and unresolved land ownership status in thousands of quilombola communities. As a result, we have seen increased local conflicts between quilombos and third parties, between quilombos and state authorities, as well as among quilombola residents presenting different kinds of claims to land. In Bombas, inhabitants had direct experiences with force as a 'mechanism of exclusion' in their territory from the 1980s onwards; while residents opposed the forest authorities' legitimation of strict protection, using different strategies to resist exclusion from their territory when threatened by enforcement of Park regulations. First, residents concealed their subsistence practices; then they came forward, and based on a negotiated self-identification as a quilombo they pleaded recognition and land titles. With support from the Catholic Church, other local quilombola leaders and ISA, they entered a negotiation process with state authorities, and finally filed a lawsuit against the state. After years of struggling, Bombas was officially recognised as a quilombo by ITESP, but still the overlapping boundaries of PETAR have not been retrieved – and no land title has been issued. In 2017, the recent privatisation of PETAR and other protected areas in the Ribeira Valley, and federal proposals to weaken the quilombo provision pose new challenges for the inhabitants of Bombas and other quilombos.

Since 2004, we have seen a series of political moves at the national level, initiated by powerful groups in Brazilian society, seeking to dismantle regulations and delegitimise the quilombo rights as enacted in the Transitory Article 68. These initiatives have been presented to the Supreme Court, and later formulated as constitutional amendments supported by influential media campaigns (Rapoport 2008, Farfán-Santos 2015). The legal challenges, as well as the public delegitimation efforts launched, indicate that powerful interests fear that implementation of the quilombo provision will result in expropriation of large land areas from established landowners, restricting their power to frame economic development and maintain the unequal power balance structuring the Brazilian political economy. In the case of Bombas, what has been at stake is more specifically a contested area of 'strict environmental protection', which also implies potentials for tourist development associated with the State Touristic Park. However, the concept of 'untouched wilderness' (Diegues 1998) underlying the establishment of the park, had no room for the resident quilombolas. The idea of 'nature reserves' carry claims to timelessness, but have historically been based on exclusion of some – to the benefit of others. As asserted by Kosek: 'One need only look at the evictions of Native Americans from such icons of wild America as Yosemite, Yellowstone, and Glacier National park…to understand the deep and material contradictions of claims to pure, untouched nature' (2006:145). More recent publications on 'green grabbing' (e.g. Fairhead et al. 2012) have further pointed out that there is no inherent contradiction between environmental agendas and continued 'accumulation by dispossession' by powerful groups in political economies of exclusion.

Brazil can no longer be said to stand in the forefront in extending rights to marginalised and excluded groups. Still, a large number of quilombos urgently need to get their land titles emitted *and* registered in order to secure their access to land in the future. In this article, we have argued that the quilombo provision set the stage for a unique opportunity for legitimate land claims benefiting a historically excluded part of the Brazilian population. But at the same time, it opened up new fields of contestation. In order to be able to benefit from rights to land

through legally confirmed and legitimate access, quilombolas have needed to engage in continuous struggles – here exemplified by Bombas. Incessant struggle is, however, not limited to quilombolas in the Ribeira Valley, but is also the case of many other Afro-American populations and indigenous peoples in Latin America as well as other marginalised peoples on other continents. This has been a recurrent theme in numerous attended meetings, public hearings and manifestations with quilombolas, indigenous peoples and other traditional peoples in Brazil, where the people present affirm: "The struggle continues!" – *A luta continua*!

Authors' bio

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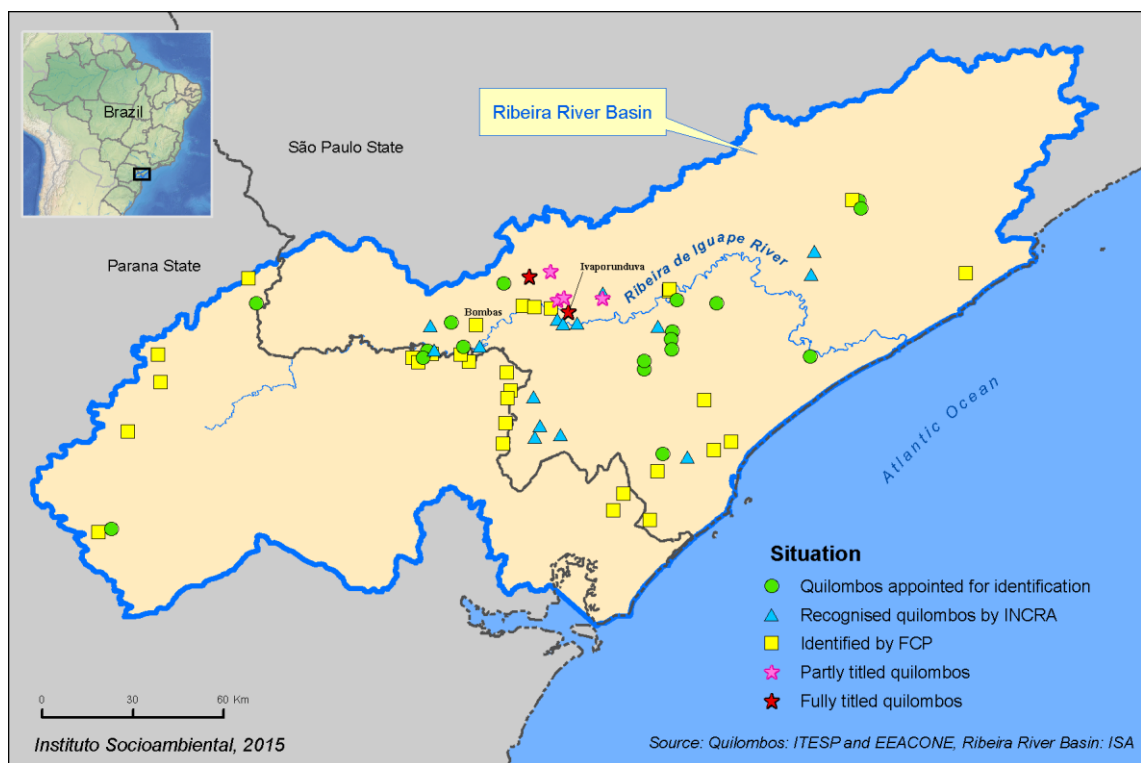
Figure 1: Distribution of quilombola communities in the Ribeira Valley showing the different stages of the titling process. In the state of São Paulo, 25 quilombos have been officially recognised of which six have gained land titles. However, only two have been fully titled, of which one has a registered land title. Sources: Quilombos * Land agency in São Paulo (ITESP) and Coordination and Advisory Team for Black Communities in the Ribeira Valley (EAACONE) Boundary of Hydrographic Basin * the socioenvironmental NGO *Instituto Socioambiental* (ISA) 2012 (based on map published ISA in Andrade and Tatto 2013. Permission to reproduce has been obtained from the rightsholder © [ISA]).