

EXECUTIVE SUMMARY

ANALYSIS OF ACCESS
TO FRESHWATER,
FISHING AND
AGGREGATED
RIGHTS BY
RIBEIRINHO
COMMUNITIES
IN THE

TAPAJÓS RIVER BASIN



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ANALYSIS OF THE REGULATIONS AND KNOWLEDGE OF THE RIPARIANS ON ACCESS TO FRESHWATER, FISHING AND ASSOCIATED RESOURCES IN THE TAPAJÓS RIVER BASIN

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Presentation

The Tapajós River basin occupies a strategic position between the agribusiness frontier that advances from central western Brazil and the international port of Santarém, located at the confluence of the Tapajós and Amazon rivers. The advance of agribusiness and the pressure to develop the infrastructure to drain grain production are triggering transformative processes in the Tapajós River basin, which is entering a new phase in its history.

This new phase is especially critical for traditional and indigenous populations. In the previous phase, the occupation followed the construction of the road

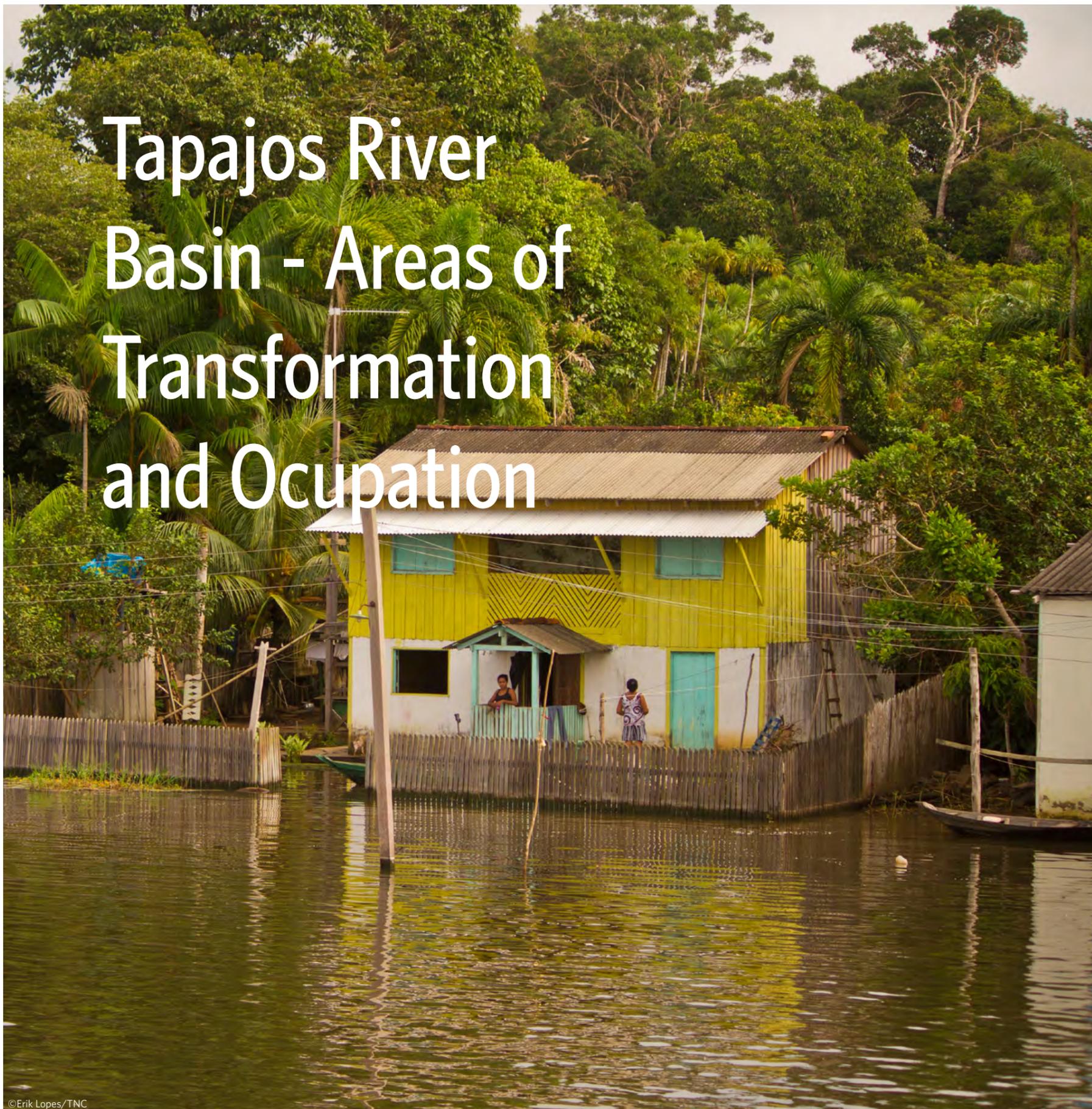
network and shifted the process of occupation the rivers to the mainland. In this new phase, the focus of the expansion returns to the rivers. This process is transforming the river system with unknown consequences for traditional communities and indigenous peoples who are concentrated along the rivers. An important consideration in assessing the consequences of this process is the interaction between cultural norms, traditional and indigenous institutions, legislation and government institutions will look like, especially in relation to two central elements of the way of life from traditional populations, the river and fishing.

The objectives of this study are to analyze the legal framework on the right of access to water, fisheries, and associated resources, and how these legal instruments interfere with the lives of Ribeirinho populations, to evaluate how these instruments are being applied, and the capacity of riverine populations to organize the access and use of these basic resources in the context of major transformations in the Tapajós River basin.

The study is divided into four parts: three are based on the review of relevant literature and the fourth presents two case studies. The first part analyzes the literature on traditional rural populations of the

Tapajós River basin and definition as social subjects. The second on definitions, concepts, and the role of legislation in relation to fresh water rights, fishing and its associated resources. The third presents an analysis of legislation on water resources (RH) and fisheries in relation to traditional norms and institutions. The fourth part presents two case studies, one from the community/village of Solimões in the Lower Tapajós and the other from the community of Pimental in the middle/high Tapajós near the Cachoeira de São Luís do Tapajós.

Tapajos River Basin - Areas of Transformation and Occupation



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The Tapajós river basin can be divided into three main zones, High, Middle and Low Tapajós, based on its history of occupation and the changes currently underway. The boundaries between the zones are approximate and there is a lot of overlap between the zones, especially between the Lower and Middle Tapajós.

Lower Tapajós: The Lower Tapajós includes the region of the Tapajós River lake up to the point where the river is restricted to the main channel. The Lower Tapajós is integrated into the Traditional Amazon, along the Amazon-Solimões River and the lower part of its main tributaries. In this region practically the entire riverside area is integrated in conservation units. There has been a strong activity of the Catholic Church organizations and the communities are organized around the ideas and philosophy of social-environmentalism

Medium Tapajós: The stretch of river that begins above the Tapajós lake and extends to the area of rapids and waterfalls that make navigation impossible. The center of this region is Itaituba, capital of the middle and upper Tapajós mining area. This region is also marked by the meeting of the Transamazon highways and the BR-163 highway, characterized by the grid area of settlements on dry land.

Upper Tapajós: This area begins with the waterfalls on the Tapajós River and extends to the limits between the states of Pará and Mato Grosso. It was inaccessible during much of the Luso-Brazilian occupation history and became a territory of indigenous people isolated by the waterfalls on the downstream edge and by the absence of access through the headwaters. Since the second half of the 20th century, this region has also become the focus of gold mining throughout the river network. The government's presence in this area is quite precarious and currently is where most of the transformations in the riverbed are located with the implementation of hydroelectric dams and the transformation of the river to make river transport feasible.

The organization of Ribeirinho communities varies among the three zones. The processes of change underway in each zone and the set of laws and norms that exist around issues of water resources, fishing, and Ribeirinho rights influence the ability of Ribeirinho communities and their organizations to use the available legal frameworks to order these resources and mobilize to deal with the changes. The high degree of organization of the communities of the Lower Tapajós, and the diminishing of this capacity between the Middle and Upper Tapajós, and at the same time the impacts of changes in occupation along the river and changes in the river system are intensifying.

Traditional rural populations of the Tapajós River basin and definition as social subjects:

The formal legislation regulating the human right of access and use of water is robust, having as main legal frameworks the National (Water Law - PNHR) and State Water Resources Policies (PEHR). However, this legislation is practically unknown and not applied to the Ribeirinho communities of Tapajós. The basin's water resources management structure has not yet been implemented, making it difficult to manage changes, transforming the basin, and making institutional mechanisms through which communities can participate in the planning of the use of water resources and defend their rights in relation to access and use of water in their community territories.

Water management in the Tapajós Ribeirinho communities follows mainly local rules that are defined according to historical cultural habits and social agreements that are strongly related to their degree of social organization. In relation to land and water dominance, both land and water rights are assured to the Ribeirinho in the form of the usufruct of these resources, considering that the federal constitution establishes that water is a public environmental good of common use, shareable and inalienable. The formal legislation does not have a guideline or objective that explicitly reserves water for ecological results. However, this purpose is also assured by general laws, especially the Water Law, the Environmental Crimes Law and the Brazilian Forest Code. The inspection and enforcement of formal legislation is also precarious about water resources in the context of the Tapajós basin.

The application of legislation on access and use of fishing resources is further developed thanks to the historical action of the Movement for Basic Education (MEB) and the mobilization of fishermen in the discussion of fishing agreements. Through this mobilization, fishermen have been able to impose their proposals for a policy of co-management based on community fishing agreements and organizing the access and use of fishing resources. However, legislation and especially government participation

still fall far short of what is needed to create the necessary governance conditions for sustainable management of fisheries resources.

The legal frameworks do not recognize specific rights of women on the riverfront to water and its associated resources and, again, these rights are associated with general legislation, in this case, ILO Convention 169, the National Policy for the Sustainable Development of Traditional Peoples and Communities, and especially the II National Policy Plan for Women. In the case of the eventual implementation of the integral management of the Tapajós River basin, as provided for in the PNRH and PERH, a major effort would be needed to raise awareness and include the Ribeirinho communities in this debate, at the risk of interfering with their rights of access to water and associated resources and intensifying conflicts over water resources in the region.

Case Studies in the Communities/Villages of Pimental and Solimões

The characteristics of the two communities and the problems they face in relation to access and use of water and fishing resources are consistent with the characteristics of the areas of the Tapajós basin. The Pimental community is on the borderline between the Middle and Upper Tapajós zones, while the Solimões community is located in the Lower Tapajós.

The Solimões community is visibly more organized, especially in terms of its management capacity. The rules for the use of natural resources, especially water resources, are well defined. In fishing, domestic or leisure use, there are agreements that govern the activities. In the case of Pimental, the scope of governance is more limited. Most of these isolated groups have no rules or agreements, and there are many conflicts amongst their leaders, who generally are unaware of the community's problems and do not exercise leadership over the other groups. The

organizational structure of the community, therefore, is quite weakened.

The differences in the degree the degree of Communities organization are especially evident now in the Covid-19 Pandemic period. In the Solimões village there was greater control of the disease with collective and protective actions carried out by the village in a unified way, where there was no external access to the community by collective decision, which was confirmed in tests carried out by the municipality with no case of the disease identified. While in the Pimental community, because there was no consensus of rules among the community members and no control of people entering and leaving, the disease affected several residents, not to mention the administrative management of the municipal governments that acted in a very precarious way.



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The transformations in the Tapajós River basin

In the Tapajós basin, after careful observation of the points mentioned, it is noticeable that there is a diversity in its occupation process, that there is not a similar pattern of use of natural resources for all the traditional population. The three areas of the Tapajós are experiencing different phases in the fight for their rights. What seems very clear to us is that although Brazilian legislation presents a set of legal instruments for the protection of traditional populations, these are totally unknown to them. What seems most present to us in the memory of the residents of Pimental is the law that regulates the benefit of insurance for fishermen, since they receive for 4 months a monthly resource in the amount of a minimum salary and now more recent emergency aid on behalf of Covid-19.

Also about guaranteeing rights, the residents who recognize themselves as indigenous are building their Consultation Protocols. In the Pimental Community, the residents have drawn up their Consultation Protocol where they explain how they want to be consulted and emphasize the need for collective consultation, with everyone together. In the Solimões community, with all its organized social capital, the legal instruments respected and recognized are the Management Plan, the Plan for the use of the Extractive Reserve, and the fishing agreement that until today has not been regulated by the state government. The communities, in general, are unaware of the legal rules that establish the use of water and natural resources, therefore, they do not know their own rights.

Conclusions

1. To understand the impacts of the transformations occurring in the Tapajós river basin, it is crucial to divide the basin into three main zones, High, Middle and Low Tapajós, that have different occupation histories and are undergoing different processes of change, governance conditions are different, as is the degree of organization of traditional communities. In general, the occupation of the upper and lower Tapajós is more recent. The processes of change are more intensive in the Middle and Upper Tapajós river, and the communities are less organized with less capacity to mobilize the government agencies responsible for environmental management and land use.
2. The changes that are transforming the basin are

3. The rules of access and use of water and fishing resources and the forms of territorial planning are more effective within their territories and in general the communities do not have the means to intervene in processes that occur outside their territories, but affect the access and use of water and fishing resources within their territories.
4. The HR Law offers a legal and institutional framework that organizations of traditional populations could use to intervene in activities outside their territories. However, the state HR Law has not yet been implemented and, therefore, there is no plan or institutional management structure for the Tapajós basin, although the activities that are transforming the access and use of water and fishing resources continue.
5. The HR Law does not directly affect traditional populations because the volume of water used by these communities is very small and usually directly related to domestic consumption. On the one hand, this benefits traditional populations, but on the other hand, communities become invisible in relation to legislation making it difficult to defend their rights.
6. Traditional populations depend on international human rights legislation and agreements to defend their rights of access, use of water and fishing resources. In the Middle and Upper Tapajós some traditional communities have developed Consultation Protocols specifying how companies and other groups interested in using their territories and resources should interact with them. However, due to the communities' low capacity to mobilize responsible government agencies, companies ignore the protocols and act unilaterally, ignoring the rights of local traditional populations.
7. The situation of the fishing legislation is similar to that of the HR Law. In this case there are agreements recognized informally by local government agencies, but since fisheries management legislation has not yet been implemented by the state, these agreements do not have the force of law and, therefore, the communities do not have legal mechanisms to order fishing within and outside their territories. The agreements only work within the conservation units of the Lower Tapajós.



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ACHIEVEMENT:



TECHNICAL COORDINATION:

