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LEGAL SILENCE, SPATIAL VIOLENCE: UNMAPPED JUSTICE IN ZONES OF INFORMALITY IN THE GLOBAL SOUTH

SILÊNCIO JURÍDICO, VIOLÊNCIA ESPACIAL: JUSTIÇA NÃO MAPEADA EM ZONAS DE INFORMALIDADE NO SUL GLOBAL

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ABSTRACT
Legal silence is not an absence. It is a spatial technology through which states and corporations manage territory, defer recognition, and sustain extractive economies while insulating themselves from accountability. This article develops that claim through a comparative critical legal geography (CLG) of two sites in the Global South where juridical voids convert contested land into resource frontiers: Nigeria's Niger Delta, a region governed by a colonial architecture of statutory dispossession, and Brazil's Amazonian territories, where constitutional recognition of Indigenous rights coexists with its systematic operational deferral. In both cases, we argue, "informality" is not a condition that communities find themselves in, but a juridical status deliberately maintained against them: their land claims are held in suspension, available to capital precisely because they remain unavailable to law. Drawing from CLG, decolonial theories of space, and the political economy of extractivism, we explore how colonial land and resources laws have persisted into modern legal form and have created what we call "zones of legal duality," where the very same law that creates legal silence also contains the tools of resistance, even if imperfectly. Our comparative analysis shows that legal silence and spatial violence use the same grammar in both cases, but that resistance comes in its own unique spatial and juridical manifestation because of the different histories of resistance in each place. Our conclusion proposes an architecture of unmapped justice: not giving up on legal cartography but rather rebuilding legal cartography from below using legal practice, counter-mapping, and decolonial knowledge.

KEYWORDS: legal silence; spatial violence; critical legal geography; territorial justice; indigenous rights.

RESUMO
O silêncio jurídico não é uma ausência, mas uma tecnologia espacial pela qual Estados e corporações gerem o território, postergam o reconhecimento e sustentam economias extrativistas, blindando-se contra a responsabilização. Este artigo desenvolve essa tese por meio de uma geografia jurídica crítica (GJC) comparada de dois espaços no Sul Global onde vazios jurídicos convertem terras disputadas em fronteiras de recursos: o Delta do Níger (Nigéria), regido por uma arquitetura colonial de espoliação normativa, e os territórios amazônicos no Brasil, onde o reconhecimento constitucional dos direitos indígenas coexiste com seu sistemático adiamento operacional. Argumenta-se que a "informalidade" não é uma condição natural das comunidades, mas um *status* jurídico deliberadamente mantido contra elas: suas reivindicações fundiárias ficam suspensas, disponíveis ao capital, inacessíveis ao Direito. A partir da GJC, das teorias decoloniais do espaço e da economia política do extrativismo, examina-se como leis coloniais fundiárias e de recursos persistiram na forma jurídica moderna, criando "zonas de dualidade jurídica", nas quais o mesmo Direito que gera o silêncio também contém, ainda que imperfeitamente, instrumentos de resistência. A análise comparativa revela que o silêncio jurídico e a violência espacial compartilham a mesma gramática em ambos os casos, enquanto a resistência assume formas espaciais e jurídicas singulares conforme as distintas trajetórias históricas locais. Conclui-se propondo uma arquitetura da justiça não mapeada: não o abandono da cartografia jurídica, mas sua reconstrução a partir de baixo, via práxis jurídica, contracartografia e saberes decoloniais.

PALAVRAS-CHAVE: silêncio jurídico; violência espacial; geografia jurídica crítica; justiça territorial; direitos indígenas.

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INTRODUCTION

Silence is never neutral in the legal system. In cases where the state refrains or abstains, where the law is not upheld, and when constitutional rights are established but subtly deferred, absence does not translate into emptiness. Throughout this article, our reference to the term, "legal silence" is to a structured omission by which states and corporations control territory. By this, we refer to an act, in the words of Delaney, of non-recognition that renders communities legally invisible, suspends their claims to land ownership, and exposes them to violence that the law purports to prohibit but operationally permits (Delaney 2010, 14)[1]. Through a CLG comparison between two extractive peripheries of the Global South, the Niger Delta in Nigeria and the Indigenous lands of the Amazonian territories in Brazil, we explore how silence functions, what it produces, and how it is challenged, particularly in relation to the Munduruku lands of the Tapajós basin and the larger mineral corridor of Pará-Amapá. These are locations whose geographical separation heightens the significance of their similarities. In both cases, the heritage of colonial legal architecture, developed to extract and designed over centuries, persevere in postcolonial legal form (Anghie 2004, 1–9). Both include Indigenous groups whose connection to the land predates the state's creation, yet this ancient relationship has not earned them formal recognition. It has, on the contrary, been systematically withheld from them by the very legal orders whose legitimacy their prior presence ought, in principle, to unsettle. Still in both landscapes, the communities have mobilised law, however partial and imperfect, as a terrain of struggle (Comaroff and Comaroff 2006, 1, 35).

From the foregoing, the thesis we put forward has three interconnected components. First, following Agamben, legal silence is not the failure of law but rather its functioning in zones of informality, spaces where full recognition is neither granted nor denied and where such lack of definite position makes the land and its resources exploitable for capital, while denying the community the right to seek remedy through law (Agamben 2005, 3–6). Second, this silence results in spatial violence in a certain way: violence that does not come from acts of violence alone, but from the spatial configurations, maps, legal provisions, legal silences that make communities expendable and yet juridically invisible[2]. Third, in both places there exists what we call legal duality: the law that makes silence possible is also the site where communities engage in resistance (Thompson 1975, 258–269). This is not an optimistic view of law. Law's inherent tensions do exist; communities live

[1] Delaney's concept of the "nomosphere" names the field of human existence constituted by the intersection of law and space, within which silence functions as a modality of social power rather than an absence of it.

[2] On this, see Nixon (2011, 2–17).

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within them and use them to their advantage.

1 RESEARCH QUESTIONS, OUTLINE OF METHODOLOGY, AND PAPER'S ANALYTICAL DEVELOPMENT

The research is structured upon three research questions. First, in what ways do legacies of colonial legalities embedded in property and resource statutes contribute to dispossession in extractive economies? Second, in what ways does legal silence function as a spatial violence in the Niger Delta and the Brazilian Amazon? Third, what are the responses from the communities, and what can they tell us about the potential and limitations of using law as a strategy of resistance?

As methodology, we triangulate the doctrinal analysis of property, environmental and resource statutes, as well as judicial decisions (Hutchinson and Duncan 2012, 84), with the testimonies of communities and secondary legal, political geographical and postcolonial literature (Holder and Harrison 2003, 1–12). We do not make any claims to the ethnography of the communities under scrutiny. What we offer instead, is a theoretically grounded comparative reading of legal texts and their spatial consequences, supplemented by analysis of the political and juridical mobilisations through which communities have contested those texts (Hirschl 2014, 15–42). The value of this comparative frame, grounded in the work of Darian-Smith and McCarty (2017, 88–104) on trans-local legal comparison, lies in what it reveals that neither case study could disclose alone: a transnational grammar of dispossession that reproduces colonial spatial logics across different constitutional and historical contexts[3].

This paper's entire analysis is therefore presented as follows: Section two discusses the theoretical framework, which starts from legal silence, goes on to spatial violence, and then embeds them both into CLG. Section three outlines the colonial origins of extractivism in the Global South. Sections four and five present the paper's case studies and are organised in such a way that allows us to draw parallels and make comparisons between the two. Comparative analysis is offered in section six where the focus is on legal duality and the importance of struggle. In section seven, we conclude the paper with the discussion of the normative implications of the study through a normative agenda of temporal justice.

[3] For the comparative methodology informing our approach to Global South legal comparison, see Santos (2009, 103).

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2 THEORETICAL FRAMEWORK: LEGAL SILENCE, SPATIAL VIOLENCE, AND THE LAW-SPACE NEXUS

In this section, we map out the foundational theoretical framework for understanding the intricate relationship between silence, space, and violence. Drawing on Critical Legal Geography (CLG), we demonstrate how law, far from being an abstract and neutral arbiter, is intricately linked to the production and organisation of space, often with violent consequences. We explore the core tenets of CLG as a spatial technology, focusing on the co-constitution of law, space, and power (Pettersen 2022). This will culminate in the discussions of the legal dimensions of legal silence as "spatial violence"[4] which, in a Foucauldian sense, functions as a deliberate instrument of governance, demonstrating its potency in shaping socio-legal relations[5]. This will be achieved by extending its understanding beyond overt physical aggression to arrangements. Concurrently, these theoretical pillars provide a robust analytical lens through which to examine the unmapped injustices in zones of informality, as outlined in the paper.

2.1 LEGAL SILENCE AS A SPATIAL TECHNOLOGY

Legal silence may seem to be a concept of rather straightforward meaning, but in fact, there is more to its interpretation beyond mere silence. From one standpoint, the idea of silence in law may just indicate that law does not state anything, but it also does not state many other things (Cover 1986, 1601–1605)[6]. However, it does not account for the fact that legal silence plays an important role in sustaining the spatial orders and it does not define the difference between the legal silence and legal absence. Legal silence in this context is not an absence of the law (Farmer 1996, 262–265). Thus, an absence implies that the law has not arrived, implying that there exists a gap in regulation or statute that could have provided for the law.

Silence is an absence produced in a law that is present, capable of speaking, but chooses not to do so (Bourdieu 1987, 814–817). For example, in Nigeria's Niger Delta, environmental laws officially prohibit significantly, the damage they tacitly enable[7]. In the same vein, Brazil's Constitution of 1988 recognises the territorial rights of the Indigenous population in the Amazon

4 See Galtung (1969, 168–172).

5 On this, see Foucault (1991, 87, 100–104). Foucault's account of governmentality, the management of populations through selective deployment of knowledge, norms, and strategic silences, provides the theoretical basis for understanding legal silence as an active governance instrument.

6 Cover's canonical essay establishes that law operates through the threat and actuality of violence; its silences are no less operative than its commands, chosen non-speech is part of law's coercive architecture.

7 For legal silence as strategic non-enforcement in the Niger Delta context, see Ibeanu (2000, 51–54).

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region as original and inalienable (Anaya 2004, 97–102). Thus, in both cases, what we see is not absence, but the legal silence, that is, the lack of implementation of the laws, the invisibility of the populations acknowledged by the law, the discrepancy between statutory promises and the territories' spatial realities (Valverde 2009, 143).

This distinction is very crucial, since it alters our perception of accountability and remedy. If legal silence were an absence, more law would provide the answer. However, if legal silence is the productive act of existing laws, then the questions become not just what does the law say, but also who does the law serve when it says nothing? In this case, legal silence can be considered governance: a process through which the state governs the territory, enables accumulation, and postpones the political consequences of dispossession (Delaney 2010). This is what David Delaney (2010, 15) refers to as the "active nothing of nomospheric space,"[8] that is, a structuring absence that organises the field of social possibility without declaring itself.

We also distinguish between two very different phenomena: legal silence and legal silencing. Silencing, on the one hand, refers to the social process in which the voice of the community gets muted, discredited, or silenced (Scott 1990, 18–23). Legal silence, on the other hand, refers a legal-spatial process in which the formal apparatus of law is selectively used to produce certain conditions (Galanter 1974, 95–104)[9]. Thus, going by Scheingold's "myth of rights", laws exist but the mechanisms for their enforcement remain underdeveloped; courts are available but inaccessible; the constitution recognises the rights of the people but does not acknowledge them (Scheingold 1974, 5–13). In such a way, silencing can occur amid silence, but these two concepts are separate, and blurring the lines between them may mean missing the structural nature of the harm. The example of Brazil is illustrative: the indigenous population had quite an access to courts and even won several lawsuits but still finds itself in zones of informal relations where dispossession takes place. The problem here is not an absence of juridical voice but the silence of the implementation apparatus of the state[10].

Mariana Valverde (2015, 3–12, 90–96) instructive introduction of "legal chronotope"[11] adds the temporal dimension to this insight. For Valverde, law controls not only space but also time: it defers recognition, prolongs the litigation, and creates such thing as "legal time" that is completely

8 See also Blomley (1994, 42–44), on the productive character of legal non-recognition.

9 Galanter's classic and foundational sociolegal analysis provides us the tool to demonstrate how the formal apparatus of law is systematically and selectively deployed to advantage powerful actors and produce conditions of structural exclusion for repeat users without resources.

10 For the gap between constitutional recognition and spatial reality in Indigenous Brazilian law, see Yamada and Oliveira (2024, 110).

11 Valverde's analysis of how law produces and manages time, not only space, is central to our discussion of the Marco Temporal doctrine in Section 5.1.

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detached from the temporality of pressured communities (Valverde 2015)[12]. Boaventura de Sousa Santos' (2007, 47) idea of "abyssal line" gives the underlying structure to both of these concepts: the legal-epistemic split between the visible and invisible, the sayable and silenced, the law and outside of law. From these perspectives, legal silence, in our reading, is the mechanism through which that line is drawn and maintained in specific spatial configurations.

Consequently, for this article, legal silence is understood as the intentional, productive denial of recognition, enforcement, or protection of the law in ways that preserve spaces of informality as spaces where extractive capital can operate. Legal silence is different from legal absence since the law does exist; it is different from legal silencing since the process of action involves spatial as much as the social. It is also different from regulatory failure since the latter entails unintended dysfunction whereas the former, as we demonstrate in our two case studies, is the constitutive feature of legal-spatial orders designed for the sake of extractive accumulation.

2.2 SPATIAL VIOLENCE AND ITS LEGAL DIMENSIONS

For this paper's purpose, the concept of spatial violence refers to organised violence through spatial arrangements; this is not only violence in space but the violence through space, through the spatial arrangements that make harm possible and designate some communities as expendable and vulnerable[13]. Conceptually, this definition builds on Henri Lefebvre's theorisation of space as neither inert nor passive; instead, space is socially produced through law and other relations (Lefebvre 1991, 279–285). In essence, when law produces a space, it produces simultaneously, the conditions of harm and protection within it.

Spatial violence materialises in zoning laws that locate industrial pollution within the proximity of poor communities, property arrangements that deprive communities of their land rights for corporate extraction to happen (Mitchell 2003, 18–23). It also materialises in the lack of infrastructure that makes some populations live without access to clean water or legal protection while others have access to such resources (Mitchell 2003, 18–23)[14]. These are all the products and spatial expressions of deliberate legal-political decisions regarding what Mbembe (2019, 66–78) describes as who counts and who does not in terms of bodies and environments.

[12] See also Valverde (2004), showing how laws over things are treated as more impersonal and less politically contestable than laws over persons, a distinction that structures how resource rights are legally organised in both our case studies.

[13] For spatial violence in legal geography, see Mitchell (2003, 18–23).

[14] See also Harvey (1973, 78–83). Harvey's political-economy account of the structural violence embedded in urban resource allocation illustrates how infrastructural distribution in cities systematically disadvantages poor communities.

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A related concept from Latin American political ecology literature, "sacrifice zones" theorised by scholars including Alberto Acosta (2017, 43–56) and Eduardo Gudynas (2015, 35–42), and Horacio Aráoz (2012)[15] is pertinent to the broader discourse of spatial violence and legal abandonment explored in this article. Drawing from scholars engaged with the concept, sacrifice zones are not unintended consequences of development; they are established implicitly and effectively by the accumulation of legal-spatial decisions and practices (Cole and Foster 2001, 22–34). They feature in the lack of protection of Indigenous territories, lack of environmental standards in extraction areas, and the lack of standing for communities whose environment is being destroyed by extractive practices (Bullard 1990, 3–10). Strikingly, there is no explicit designation of sacrifice zones; there is no law that states this designation. Instead, it is done through the grammar of omission and silence, through what is unsaid, unenforced, and unrecognised (Gudynas 2011, 443–446).

Kreichauf's (2018, 58–62) analysis of spatial violence induced by forced migration and as an instrument through which legal systems deprive migrants of their rights and confine them to zones of instability illuminates a parallel logic in similar processes in the context of extraction. The same way legal systems of migration deprive migrants of their rights, in the Brazilian Amazon and Nigeria's Niger Delta, legal systems governing extraction deprive communities of their rights while protecting corporations from liability (Bello 2025, 791–811). Violence, in this context, is structural and systematic rather than incidental; it is produced through intentional spatial arrangements that put some people at risk while insulating others.

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2.3 CRITICAL LEGAL GEOGRAPHY: SPATIALISING LAW

Critical Legal Geography provides us with analytical tools to engage with our theoretical framework. From the field's foundational claim, emanating from Braverman, Blomley, Delaney, and Kedar (2014, 1), law and space have a co-constitutive relationship because they not only interact but also co-produce through ongoing social practice. In this context, the law of property is not an attempt to police already existing land; it makes the legal persons and spatial distinctions through which land becomes available, exchangeable, or invisible (Braverman, Blomley, Delaney, and Kedar 2014, 1)[16].

[15] On sacrifice zones in the Latin American context specifically, see Horacio Machado Aráoz (2012, 74–82). For the original use of "sacrifice zones" in a broader global context, see Lerner (2010), which, though focused on the United States, provides the definitional framework that Latin American scholars have productively adapted to the Global South.

[16] See also Gray (1991, 252–260), in which he demonstrates that property law is a constitutive legal technology that creates (rather than merely recognises) spatial rights and the legal persons who hold them.

Thus, environmental law does not merely react to harm; it draws the borders of harm, of those being harmed, and of liability (Hayward 2005). The co-constitutive relationship between law and space that CLG foregrounds is not our starting claim but our analytical consequence: we arrive at it through the specific legal-spatial operations of silence and violence that our case studies document.

From the foregoing, CLG's critical contribution, for our purposes, lies precisely in its emphasis on the inherently power-laden nature of legal space. As Blomley and Bakan have argued in one of their early and seminal essays, law cannot be seen as a transcendent and universal system, but rather as a historically and geographically contingent process which actively organises and categorises space, thus assigning meanings to it (Blomley and Bakan 1992, 669). In other words, legal silences are, essentially, spatial silences, as any withholding of recognition of a community's land claim results in a space that is juridically void and ready to be inscribed by the more powerful actors.

The dialectical tension between the power of the law and the spatiality of resistance is, for CLG, neither resolved by optimism nor foreclosed by pessimism. This is because law, from Unger's Critical Legal Studies assessment, is at once an instrument of subjugation and a medium of emancipation; the same statute which silences a community's land claim can, under changed conditions, become the foundation of that very demand (Unger 1986, 1–17). This duality, as will be demonstrated in section 6, becomes the cornerstone of our comparative argument and central analytical finding.

3 THE COLONIAL ECHO: LEGAL LEGACIES AND THE GRAMMAR OF EXTRACTIVISM

The legal regimes concerning land, resources and environment in Nigeria and Brazil have unmistakably colonial roots. Recognition of this legacy is analytically indispensable, not just historically relevant, since these silences inherent to the law of today are the legacy of the legal architecture of colonialism and have been perpetuated and, indeed, deliberately reproduced by postcolonial states and international capital (Mamdani 1996, 16–22). This section explores the profound ways in which colonial administration imposed legal-spatial regimes primarily intended for resource extraction, resulting in the establishment of foundational inequalities in land tenure and governance that persist to this day. Also, it examines how, in the postcolonial era, many states in the Global South have inadvertently or deliberately reproduced these colonial models of extraction,

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leading to the proliferation of "sacrifice zones" where environmental and human rights are systematically violated for economic gain.

3.1 MAPPING COLONIAL POWER

In the two territories, colonial administration was a process of mapping and re-ordering space around the logic of extractivism, resulting in legal-spatial regimes focused on state sovereignty over the resources and the obliteration of Indigenous property rights (Hemming 1978, 143)[17]. In Nigeria, the Petroleum Ordinances of 1914 and 1916 granted proprietary rights to all oil lands to the crown, thereby depriving communities of any stake in subsurface resources. In Brazil, colonial and imperial land law deemed territory that did not fit into European agricultural practices as *terra nullius*, or empty territory ready to be annexed. As noted by John Hemming (1978, 143) in his study of colonial Brazilian land law, "Indians who did not conform to colonial patterns of land use were considered to waste the land and thereby forfeit their rights to it." Both doctrines persevered into independence in substantially transformed but functionally comparable legal forms.

3.2 POSTCOLONIAL CONTINUITIES AND THE RISE OF "GLOBAL EXTRACTIVISM"

It is the postcolonial continuation of the above-mentioned pattern that makes the concept of extractivism crucial to this analysis. As conceptualised by Alberto Acosta, the extractivist model is not only a development strategy but also a way of organising societies (Acosta 2017, 7–15)[18]. In this system, resource extraction becomes the main logic of law, governance, and spatiality and produces far-reaching socio-ecological effects as well as channeling resources away from societies (Castro 2011, 23–31)[19]. This framing allows for transcending the "resource curse" scholarship which treats extractive pathology centrally as economic (Karl 1997, 5–18) and focus on the role of extractivism in actively reframing legal frameworks, rewriting property rights, and silencing community claims.

Consequently, Milton Santos's theory of spatiality provides CLG with a set of underused but powerful analytical vocabulary despite its pertinence to the field. The Brazilian geographer,

[17] For Nigeria, see Falola and Heaton (2008, 58–72). On the colonial production of spatial order as a legal enterprise, see Bhandar (2018, 12–20).

[18] See also Viveiros de Castro (2011, 23–31), on the ideological mechanisms through which extractivism constructs Indigenous land as available for development.

[19] See also Escobar (2008, 58–66), who presents a compelling argument of how extractivist development channels resources outward from peripheral territories while producing socio-ecological devastation for the resident communities.

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whose theoretical foregrounding remains insufficiently integrated into the critical legal geography literature despite its direct relevance, makes a distinction between "luminous" and "opaque" territories within the spatial logic of global capitalism (Santos, M. 2002, 213–218). For Santos, while "luminous" spaces are made visible, legible, and productive for capital, "opaque" territories are rendered invisible, marked as marginal, only made available for exploitation precisely through their marginality (Santos, M. 2002)[20]. The Niger Delta and the Brazilian Amazon are therefore not simply neglected or underdeveloped territories, but zones actively darkened through the lens of legal architectures working for the benefit of the luminosity of extractive capital. Santos's conceptual framework therefore allows us to connect the micro-spatial analysis conducted by legal geographers with macro-political-economic analysis of the global extractive regime all through our case studies.

The concept of "informality," as we employ it in this paper, designates a certain legal status of communities, rather than something inherent to them. It is neither absence of law, nor presence of an alternative law, but a condition of a deliberate suspension, where land claims of these communities are neither legally recognised, nor rejected officially (Roy 2009, 78–85). This leaves them in a legal spatial limbo, where their territories remain open to exploitation by global capital and extractive industries. Extractive activities may take place under concessions issued by states, whereas communities lack any legal grounds for contesting them (Scott 1998, 32–47). Thus, in in both Nigeria's Niger Delta and Brazil's Amazonian territories, this spatial limbo is not accidental but structural, perpetuated by legal architectures that serve the spatial logic Santos (2000, 79) identifies as the "technoterritorial violence" of global capital. These dynamics, we shall demonstrate in the next sections which present our case studies.

In both sections 4 and section 5, our analytic focus turns toward Nigeria's Niger Delta region and the Amazonian territories of Brazil, as *loci* where colonial legal geographies are neither erased by independence nor passively endured, but continuously contested, remobilised, and reimagined. In both regions, as we shall see, colonial law laid down what Boaventura de Sousa Santos (2002, 103) terms the *abyssal line,* that is, "a system of visible distinctions which divide what exists from what is rendered non-existent, the legal from the extra-legal, the recognised from the invisible."

[20] Santos's distinction between "luminous" and "opaque" territories, developed within his broader theory of the spatial logic of global capitalism, provides an analytical vocabulary directly applicable to the legal-spatial arrangements this article examines. His related work, *Por uma outra globalização* (Santos 2000), develops the normative counterpart: the possibility of a different spatial logic organised around social rather than extractive needs. Santos's framework deserves greater integration into CLG scholarship, particularly in the context of Global South legal geography, where his grounded theory of spatial differentiation offers resources that Northern theoretical frameworks do not always provide.

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4 CASE STUDY 1: NIGERIA'S NIGER DELTA AS THE ARCHITECTURE OF LEGAL SILENCE

The Niger Delta has produced extraordinary hydrocarbon wealth for over six decades and almost nothing for the Indigenous oil communities (Bello 2023, 103–123; Ikelegbe 2005, 210–215). This outcome is the product of a legal architecture deliberately constructed to separate communities from resources, from rights, and from recourse, an architecture that is colonial in origin and postcolonial in its continuation (Cooper 2005, 117–131). The foundational instrument is Nigeria's Land Use Act of 1978. As Ike Okonta and Oronto Douglas (2001, 34–46) have argued, the Act functions not as a neutral instrument of property governance but as a juridical mechanism that strips Niger Delta communities of claims to both surface land and subsoil resources. By vesting all land in the state, the Act effectively erased pre-colonial and communal land relations, converting customary tenure into a form of licensed occupancy revocable for "public" use, a category that systematically includes oil concessions and systematically excludes community welfare (Ebeku 2006, 155–165). The colonial roots of this move are traceable directly: the Petroleum Ordinances of 1914 and 1916 established Crown ownership of all oil lands, removing subsurface resources from any possibility of community ownership[21]. Independent Nigeria inherited and adapted rather than dismantled this legal architecture. Communities in the Delta thus find themselves doubly dispossessed: stripped of claims to what lies beneath their land and to the surface itself.

For us, this is legal silence in its most structural form. The state has not merely failed to recognise community rights; it has actively organised the law to erase them, producing a juridically empty space available for capital inscription. The silence is productive: it enables oil corporations to operate, multiplies the state's revenue, and insulates both state and corporations from community claims, all without explicit declaration.

4.1 ENVIRONMENTAL SILENCE AND CORPORATE IMPUNITY

Legal silence in the Niger Delta is not only constitutional and proprietary; it is environmental. Nigeria's environmental legislation, including the Petroleum Act of 1969 and the Environmental Impact Assessment Act, formally exists. These statutes speak, but their enforcement is purposefully muted because regulatory bodies are chronically under-resourced, their inspectors few

[21] Petroleum Ordinance 1914 (Nigeria); Petroleum Ordinance 1916 (Nigeria); Land Use Act 1978 (Nigeria). For the legal architecture of postcolonial resource sovereignty in Nigeria, see Ogoriba (2014, 116–119).

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and liable to be captured, and the prescribed penalties are not commensurate to the magnitude of harm routinely caused by oil corporations[22].

The UNEP 2011 assessment of Ogoniland was a definitive international verification of what communities in the Delta region had been claiming for decades: the pollution of the Delta region is not episodic or accidental. It is a long-standing and systematic problem that is officially prohibited under an official legal system (UNEP 2011, 9–14). The study revealed the presence of hydrocarbons in drinking water 900 times the WHO safety threshold, in sediment samples suggesting contamination of the area going back sixty years (UNEP 2011). From the CLG perspective, this environmental devastation cannot be perceived as a breach of legal order; instead, it is an authorised condition of space, produced by legal order's strategic silence on enforcement.

This silence produces cascading spatial consequences. When farmlands get destroyed by oil multinationals' activities, and rivers poisoned, communities whose subsistence depends on those resources face a forced choice. The state's response to artisanal oil refining, locally known as *kpo-fire*, the logical adaptation of communities to structural dispossession, has been to criminalise it, deploying military force against communities whose offence is surviving within spaces abandoned by law (Obi 2010, 219–236)[23]. In Michael Watts's (2013, xxvii) formulation, artisanal economies are not acts of deviance but "tactics of endurance in spaces abandoned by law's promise of justice."[24] The criminalisation of survival is, therefore, from our perspective, spatial violence in its most legible form: law's silence on dispossession is compounded by law's voice on subsistence.

4.2 RESISTANCE AND ITS LIMITS

Niger Delta's Communities are not mere passive recipients of such muffled enforcement. The movement led by Ken Saro-Wiwa and the Movement for the Survival of the Ogoni People (MOSOP) has transformed the rhetoric of human rights and environmental justice (Bello 2021; Soyinka 1996, 1–24) into a discourse about spatial justice. It presented the Niger Delta as a living space that is systematically devastated, thus constituting a form of genocide (Saro-Wiwa 1995, 67–74)[25]. Saro-Wiwa's courtroom statement, made in a tribunal designed to muzzle him, was counter-cartography of sorts: an inscription of the community claim within an officially sanctioned document

[22] For the systematic character of non-enforcement in Nigerian environmental law, see Ibeanu (2000, 51–54).
[23] Obi situates artisanal refining within broader socio-economic marginalisation and dispossession.
[24] See also Watts (2001, 189–212).
[25] For MOSOP's spatial legal politics and Saro-Wiwa's articulation of the Delta as a living territorial claim, see Okonta and Douglas (2001, 112–128).

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of a state that had refused them legal personhood (Okonta and Douglas 2001, 112–128). His execution, alongside eight of his co-activists (the "Ogoni Nine") in 1995 (Ake 1996, 78–87) graphically demonstrated the cost of legal struggle in zones where silence is enforced not just by regulatory neglect, but by sovereign violence.

More recent cross-jurisdictional litigation against Shell in Dutch courts have culminated in limited but important victories, which indicate that the architecture of legal silence can be breached from the outside[26]. At the same time, such victories illustrate the structural challenges that come with legal battle in an environment that is hostile to community-based claims. This is because remedy is constantly granted in terms of individual torts rather than structural changes, and proof has been left to communities, not corporations. From this reality, it is evident that the architecture of legal silence does not collapse because of a finding by a Court in the Hague, as seen in Shell's appeal against the 2021 judgment in 2024[27]. It persists in the spatial-legal organisation of the Delta, requiring sustained struggle across multiple legal forums and political arenas simultaneously.

5 CASE STUDY 2: BRAZIL'S AMAZON – CONSTITUTIONAL RECOGNITION, LEGAL DUALITY, AND JURIDICAL PRODUCTION OF INFORMALITY

If the Niger Delta illustrates legal silence in its most structural form, the Brazilian Amazon illustrates with a distinct clarity, the concept of legal duality. It illustrates a legal order that genuinely promises recognition and genuinely withholds it, that has produced landmark constitutional protections and systematic strategies for their deferral. The Brazilian case, as we argue, is not reducible to what any structuralist reading might characterise as a condition of pure legal silence. Instead, going by Gauri and Brinks' (2008) comparative analysis of how constitutional rights are both activated and neutralised through judicial and administrative implementation, it is indicative of a law that expresses and muzzled by the state and powerful actors in its implementation. It also illustrates a constitutional language and spatiality productively intertwined (Gauri and Brinks 2008, 1–35) in ways which people have learned to navigate.

The Constitution of 1988 (CF/88) marked a decisive rupture in Brazil's constitutional tradition, specifically with the colonial and imperial regime of legal tutelage under which Indigenous peoples had long been treated as wards of the state. As Article 231 provides, the "original rights of

[26] *Milieudefensie et al. v Royal Dutch Shell plc*, Gerechtshof Den Haag, 15 November 2021. See also Mayer (2021).
[27] *Shell Plc v Milieudefensie et al.*, Gerechtshof Den Haag, 12 November 2024, ECLI:NL:GHDHA:2024:2100; see for analysis Johannsen, Kotzé, and Macchi (2025, 270–278).

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the indigenous peoples over the lands that they traditionally occupy" are a part of the constitution itself, predating the state's formal establishment; and it is Article 231 itself that assigns to the Union the constitutional responsibility for demarcating those lands[28]. By interpretation, the lands in question are thus inalienable, non-transferable, and only exploitable subject to free, prior and informed consent (FPIC) requirements of the concerned communities. Also, Article 225 provides as a constitutional asset of trans-individual nature, the right to an ecological "balance of nature." This constitutional framework has been hailed by legal and political science scholars on Latin America as one that transcends a rhetoric tool[29]. For Stavenhagen (2002, 24, 44), it has provided tangible legal means for Indigenous communities, and its protection of territorial rights is a break from colonial and imperial legal order that that preceded it.

Consequently, the enduring problem is not the absence of a constitutional framework, but what happens to it between its formal recognition and spatial reality. Successive governments consistently delay the land demarcation and administrative procedure according to which those constitutional rights gain geographic characteristics due to the pressure from agribusiness, mining, and infrastructure lobbies (Hochstetler and Keck 2007, 133–152). For example, in the Pará-Amapá mineral corridor, where large-scale extraction of bauxite and other minerals takes place at the expense of Indigenous and Quilombola lands, indigenous populations have laid claim to customary ownership of lands that remain un-demarcated[30]. Yet at the same time, there are federal concessions made to multinational companies in the area. The problem with this legal framework is not that it denies the rights of the Indigenous people, but that it defers it, keeps it in suspension, and in that suspension produces the notion we have referred to in this paper as informality: the legal status of non-inclusion and non-exclusion (Oliveira and Garcêz 2024, 238).

5.1 THE MARCO TEMPORAL DOCTRINE AND THE WEAPONISATION OF LEGAL TIME

It is arguable that no dimension of Brazilian Indigenous law demonstrates the temporal element of spatial violence more effectively than the Marco Temporal doctrine (Cademartori and Ku 2022). Created by the Supreme Federal Court's (Supremo Tribunal Federal – STF) ruling in *Raposa*

[28] Constitution of the Federative Republic of Brazil 1988, art. 231. FPIC requirements are detailed in art. 231(3) and supplemented by ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, ratified by Brazil in 2002.

[29] See, for example, Conklin and Graham (1995, 697–702).

[30] For the political economy of deferred demarcation in the Pará-Amapá corridor, see Ricardo and Pantoni (2019, 44–52).

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Serra do Sol of 2009, the Marco Temporal doctrine states that the Indigenous peoples' right to their territories is constitutionally protected. This is particularly so in cases where the Indigenous population physically occupied the territories in question by 5 October 1988, the date of coming into effect of the Constitution[31]. Therefore, Indigenous communities displaced through violence of colonialism, forced eviction, and military relocation prior to this date discover that dispossession has become a legally valid reason for denying their rights to the territory in question (Wolfe 2006, 388–393). It is instructive that these incidences were not present at the constitutional moment, implying that the Constitution does not protect their claim.

The Marco Temporal doctrine is, therefore, a paradigmatic case of what Valverde (2015, 90–96) calls legal chronotopes weaponised against communities. In this case, the state selects a temporal reference point and makes it the origin of rights that the Constitution's own text describes as "original" and pre-constitutional (Lima Filho 2023). This contradiction, we argue, is not incidental but instructive: rights that predate the state cannot, without violence, become contingent at a moment in the state's history. The Marco Temporal doctrine performs exactly this violence, with Maurício Terena, Legal Coordinator of the Articulation of Indigenous Peoples of Brazil (APIB), characterising it precisely in the way Terena terms it: Marco Temporal "maps absence where Indigenous presence has been violently erased." (Terena 2020, 48, translation ours)

In *RE 1017365*, decided in September 2023, the Supreme Federal Court emphatically overruled Marco Temporal with a 9-2 majority decision. In his majority opinion, Justice Luiz Fux emphasised that "constitutional protection of Indigenous territories cannot be conditioned on physical occupation only in 1988,"[32] and that lands associated with the ancestors and traditions of the Indigenous people are protected under the Constitution regardless of their demarcation status (Yamada and Oliveira 2024, 110–111). This ruling, we submit, is indicative of a true judicial revolution in that it illustrates the productive conflict that exists in the system of legal duality. However, the practical impact of the decision remains contested given that it is subject to legislative challenge through the Temporal Framework Bill, and the process of demarcation itself is controlled by the executive at its own pace (Ferrante and Fearnside 2023). Thus, while the legal rupture is real, the spatial transformation it is expected to produce remains a site of contestation.

[31] Supremo Tribunal Federal, Petição 3388 (Raposa Serra do Sol), judged 19 March 2009, DJe 25.09.2009. For analysis of the Marco Temporal doctrine and its spatial consequences, see Terena (2020, 48).

[32] Supremo Tribunal Federal, RE 1017365, judged 27 September 2023. For analysis of the ruling's significance and limits, see Yamada and Oliveira (2024, 110–116).

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5.2 STRUGGLE FROM BELOW: THE MUNDURUKU CASE

It is pertinent to examine the Munduruku community's struggle against the São Luiz do Tapajós dam in the Sawré Muybu Indigenous Territory to demonstrate how constitutional principles, international standards, and cosmology can be brought together in one spatial legal argument[33]. In reaction to the threat of the-then proposed flooding of their territory due to the building of a hydroelectric plant, the Munduruku community relied on the principles of ILO Convention 169 concerning the duty of consultation and the provisions of CF/88 on the protection of the territory (Charters and Stavenhagen 2009, 184–200). However, the cosmological perspective of the Munduruku people that views the Tapajós River as constituting the Munduruku world made them see that their case was not only about legal violation of their rights. It is also about the fact that laws should be interpreted in accordance with the ontological context of these laws (Viveiros de Castro 1998, 469–488).

In other words, the perspective above is not simply a rhetorical approach. On the contrary, it is a legal-spatial argument about the character of Indigenous territory which conventional legal categorisations struggle to accommodate since land is inseparable from the life, relations, and ontological realities through which territory is constituted (Blaser 2010, 1–15). Therefore, when the Munduruku struggle finally resulted in the official demarcation of the Sawré Muybu territory on 25 September 2024 (Lombardi, Martins, and Martins 2026), it could be viewed as a certain recognition of the argument made above. Nevertheless, as Oliveira and Garcêz (2024, 244) argue, that demarcation cannot be considered as completed until boundaries are set physically and illegal occupants are evicted.

APIB's declaration captures the political and legal logic of this struggle: "we are not invaders. We are the original peoples of these lands. To deny our rights is to deny the Constitution itself." (APIB 2016, quoted in Yamada and Oliveira 2024, 107). This is counter-cartography in our sense: not simply a political claim but a legal argument that insists the Constitution must be read through the experience of the communities it was meant to protect. The struggle for Sawré Muybu, drawing from Williams (1991, 11–14), demonstrates that legal duality is not a stable equilibrium between silence and recognition but an ongoing site of contestation in which communities' spatial legal practices are what give constitutional text its spatial content.

[33] For the Munduruku campaign's legal and political dimensions, see Treece (2016). The cosmological dimension of Munduruku territorial claims is developed in Shepard and Chicchón (2001).

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6 COMPARATIVE ANALYSIS: LEGAL DUALITY, STRUGGLE, AND THE GRAMMAR OF DISPOSSESSION

The juxtaposition of Nigeria's Niger Delta and Brazil's Indigenous territories illuminates what we describe as the duality of legal-spatial power. This, we see in law as both an instrument of violence, marked by silence and dispossession, and a resource of resistance, capable of amplifying voice and producing counter-geographies of justice. This duality lies at the heart of Critical Legal Geography (CLG), which understands law not as an inert system of norms but as active practice shaping, legitimising, and at times unsettling spatial orders (Blomley 1994).

6.1 PARALLEL STRUCTURES, DIFFERENT TEXTURES

Both cases juxtaposed, the Niger Delta and the Brazilian Amazon illuminate a common structural grammar while displaying fundamentally different legal-spatial configurations. This parallelism, and the difference it makes visible, is the comparative argument's analytical payoff. In the Delta, legal silence is systemic and, from the community's perspective, relatively undisguised: statutory protections formally exist but go unenforced, communities are stripped of land rights by explicit legislation, and state-corporate collusion has been documented extensively enough to attract transnational litigation. The legal space is what Achille Mbembe (2019, 92–100) would call necropolitical: ordered by the logic of who may be exposed to harm[34].

In the Amazon, the configuration is structurally different. For Brazil's Indigenous communities, there is no constitutional or legal text that speaks for them in the way CF/88 speaks. This is, however, not cause for uncritical celebration of Brazilian constitutionalism; the silence is closer to the absolute end of the spectrum. The same constitutional order that enabled Marco Temporal also enabled the 2023 reversal. The same STF that upheld doctrines enabling dispossession also, under sustained political pressure and constitutional argument, ruled against them (Ferrante and Fearnside 2023). Brazil thus demonstrates legal duality in its most developed form: law is genuinely available as a terrain of struggle, yet also genuinely complicit in the dispossession that struggle contests (Taylor 2008, 133–134).

What both the Niger Delta and Brazil's cases confirm is that law alone is insufficient. But they differ in the extent to which law's contradictions can be exploited, and that difference is itself a consequence of the different histories and strategies of struggle in each context. Thus, legal silence is

[34] For the concept of necropolitics applied to petrostate governance in the Niger Delta, see Watts (2001, 188–205).

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the condition that struggle responds to and, in responding, partially transforms. It is not an inert backdrop but an active spatial arrangement that struggle must contest, displace, and remake (Soja 2010, 47–63). The silence of the Delta is not static: the Ogoni's environmental claims, the cross-border litigation against Shell, the ongoing community mobilisations that refuse to accept dispossession as final, all represent attempts to break that silence and compel legal speech. Brazil's constitutional order represents, in one sense, what has been achieved by generations of Indigenous struggle: a legal text that formally speaks where colonial law was silent[35]. But the struggle for the meaning and implementation of that text continues, and the silence that remains is no longer the silence of constitutional non-recognition but of implementation's perpetual strategic deferral (Pacheco de Oliveira 2011, 38–49).

6.2 THE STATE, CAPITAL, AND THE PRODUCTION OF INFORMALITY

In both contexts, the state mediates between communities and extractive capital, but the form of mediation differs in instructive ways. In Nigeria, Michael Watts's (2001) concept of petro-violence captures the dynamic. Oil wealth concentrates political power; community protest is reframed as a security threat rather than a legitimate democratic claim; and the state-corporate alliance is sufficiently open that communities have been able to bring it before international tribunals (Watts 2001, 191–195). In all these, legal silence is enforced not only by regulatory inaction but by militarised policing of extractive zones.

In Brazil, state mediation is more contested and more variable across political administrations; the recognition of Indigenous rights by the Constitution is a result of the political successes achieved by the Indigenous movement and its allies during the 1988 constituent assembly (Ramos 1998, 84–102). However, subsequent administrations have been actively hostile, particularly under Bolsonaro's systematic demolition of demarcation procedures, or more favourable, as seen under Lula's presidency (Gimenez 2023, 351–371). Eduardo Viveiros de Castro's (1998, 25–29) explanation of how the corporate-state discourse frames the land of Indigenous peoples as "idle" or "underutilised" reveals the ideological process whereby the informal sector maintains itself through the logic of terra nullius[36]. The same ideology that was employed by colonial law now operates through the rhetoric of development and national interest.

[35] For the politics of constitutional implementation and the continuing role of struggle in determining the spatial content of constitutional rights, see Pacheco de Oliveira (2011, 38–49).

[36] On the ideological construction of Indigenous land as economically "idle," see also Gudynas (2011, 38).

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In either case, we argue that the production of the informal sector is a conscious process, rather than an incidental one. This happens with communities left in the realm of juridical suspension precisely because such suspension benefits extractive capital. While legal recognition of the territories of the Indigenous peoples in the Amazon would place limits on mining and agricultural businesses, legal enforcement of the environmental legislation in the Niger's Delta would limit the activities of oil companies. Silence in these contexts become profitable and its perpetuation involves not only the functioning of state power, but also the non-functioning of the law.

6.3 COLONIAL GEOGRAPHIES REPRODUCED AND CONTESTED

From the foregoing discussion, both Nigeria and Brazil illustrate the marks of colonial legal-spatial regimes, which have been repeated in the postcolonial context, rather than being broken up. Particularly, Falola and Heaton (2008, 64–68) associate Nigeria with how the regime of "indirect rule" established a regime of land expropriation based on legal fictions of state ownership and resource sovereignty, still applicable in Nigeria's post-colonial legal order[37]. For this purpose, the Land Use Act of 1978 was not a postcolonial reform but rather a repetition of colonial proprietary doctrine (Okonta and Douglas 2001, 34–46).

In Brazil, by contrast, colonial and imperial regimes defined the Indigenous populations as the wards of the state, depriving them of their territorial autonomy through doctrines of incapacity and assimilation. However, the 1988 Constitution marked a formal rupture with this history, recognising Indigenous land rights as original and inalienable (Garfield 2001, 188, 212). Yet, as João Pacheco de Oliveira's (2011, 41–44) critical history of colonial tutelage argues, extractivist development continues to reproduce colonial logics of exploitation under the cover of constitutional deference. Thus, the enduring nature of these colonial geographies reveals the paradox of legal silence. It is one that operates not only as intentional contemporary political tool but as a sedimented structure, passed from century to century and repeatedly activated whenever postcolonial governance prefers the interests of capital to the rights of communities (Césaire 2000, 1–32).

Consequently, it becomes possible, through our comparison, to synthesise a cross-case insight, which can be stated as follows: both Nigeria and Brazil show us the double aspect of law in the zone of informality. On the one hand, legal silence in Nigeria entrenches the reinforcement of violence and exclusion of communities from the juridical map (Osaghae 1998, 225–248). On the

[37] For the relationship between colonial indirect rule and postcolonial land law in Nigeria, see Benda-Beckmann, Benda-Beckmann, and Griffiths (2009, 112–118).

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other hand, constitutional recognition in Brazil allows for resistance, yet this resistance is permanently under threat of closure through interpretation, administrative deferral, and legislative challenge (Mendes 2013, 1–15). In other words, both cases reveal how colonial legal-spatial logics are reproduced, yet also how communities mobilise law to resist dispossession. The same legal silence that sustains violence in one context may, when contested through sustained struggle, become the condition for resistance in another. Saro-Wiwa's (1995) words, invoking counter-cartography, an inscription of the community claim, echo across the Atlantic in Sonia Guajajara's (2023) vision of planetary struggle, both articulating counter-legal imaginaries that refuse the state's monopoly on spatial justice.

7 CONCLUSION: TOWARDS AN ARCHITECTURE OF TEMPORAL JUSTICE

In this article we have traced the persistent entanglement of legal silence and spatial violence across two extractive peripheries in the Global South. From the oil-saturated creeks of Nigeria's Niger Delta to the contested forest territories of Brazil's Indigenous nations, we have argued that silence is not the failure of law but its mode of operation in zones of informality. It is a strategic, productive withholding that renders communities juridically invisible, holds their land claims in suspension, and authorises harms that the law formally prohibits.

Our comparative analysis has produced three findings. First, legal silence is productive for sustaining dispossession as it keeps communities in zones of informality where their claims are neither recognised nor finally denied, and available to capital precisely because they are unavailable to law. Second, spatial violence occurs not only materially in the form of oil spills, flooded territories, and criminalised subsistence economies but symbolically in the form of cartographies of law itself and in the erasure and recognition of certain populations by such cartographies. Third, both of our cases show that duality is characteristic of law, the law that silences, is also contestable, re-directable, and transformable through community organising. To this extent, the architecture of dispossession is never complete, and its incompleteness is where justice finds its footholds.

7.1 THEORETICAL IMPLICATIONS

For CLG, our findings confirm and extend the field's core commitments. Legal silences are spatial operations, not merely regulatory gaps. They produce and reproduce colonial geographies in modern extractive economies (Blomley, Delaney, and Ford 2001, 1–8). It follows, therefore, that

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CLG must not only examine what law says but also the political economy of its silences. It also asks, who gains from non-enforcement? What spatialities are preserved by juridical invisibility? And whose survival is criminalised when law does not recognise the conditions of its production?

For decolonial legal theory, the cases demonstrate that the "post" in postcolonial refers to a historical periodisation, not to a completed transformation of colonial legal structures. Here, we use "postcolonial" in the sense of what follows formal independence, a period in which colonial institutions are neither simply preserved nor simply overthrown but reproduced in adapted forms through the pressures of global capitalism and domestic elite interest. Colonial doctrines survive in the interpretive moves of contemporary courts and legislatures, and decolonising law requires not only new statutes but new epistemologies. Legal frameworks must take seriously the territorial ontologies of the communities they are meant to protect, reading constitutional rights through the lens of the dispossession those rights were meant to remedy. Thus, Boaventura de Sousa Santos's (2002, 61) insistence that global social justice is impossible without global cognitive justice[38] remains the normative horizon here.

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7.2 POLICY DIRECTIONS

The findings suggest three directions for legal reform. First, the recognition of community tenure in zones of informality requires moving beyond the binary of formal title and informality toward legal frameworks that affirm lived tenure systems as valid forms of legal order. In this case, we engage with Hernando de Soto's (2000) argument for formalising informal property systems with necessary critical distance[39]. de Soto's property-rights absolutism has rightly been challenged for facilitating gentrification and individualising communal claims, as critics including Mike Davis (2006, 79–84) have argued[40]. However, the basic idea, that law should take into account the social practice of spatial organisation of communities rather than impose alien categorisations on them, still remains relevant. This is because it is not enough to formalise what already exists; it is necessary to reform the formal system to make it capable of accommodating these practices.

Second, the structural accountability gap that enables companies to externalise harm in the

[38] See also Santos and Rodríguez-Garavito (2005, 1–26).

[39] For the critique of de Soto's property-formalisation thesis, see Davis (2006, 79–84). The critique is well taken and our engagement with de Soto is selective: we reject the assumption that formal individual property rights are the appropriate vehicle for recognising communal Indigenous tenure, while accepting that legal engagement with existing tenure practices is necessary for genuine legal reform.

[40] As noted above, Davis's critique of de Soto's property-formalisation thesis is well taken and our engagement with de Soto is selective.

zones of legal silence requires a binding rather than voluntary transnational framework. While the UN (2011) Guiding Principles on Business and Human Rights provide a useful framework[41], their voluntary character is inadequate to the systemic character of the harms our cases document. The cross-jurisdictional litigation against Shell in Dutch courts thus demonstrates that binding transnational liability frameworks are legally feasible and practically important, albeit they must be designed to reduce rather than increase the barriers to community access.

Third, the weaponisation of legal time against communities, documented in both the Marco Temporal doctrine and the decades of procedural delay in Delta litigation, demands a reimagining of legal temporality. For this, Valverde's (2015, 87–96) analysis of how law's temporal configuration's structure access and disadvantage is directly relevant. Law must be responsive to the urgent ecological and social temporalities of communities under pressure, not calibrated to the deferral strategies available to well-resourced states and corporations. Temporal justice is a component of spatial justice.

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[41] For the argument for binding rather than voluntary frameworks, see Ruggie (2013, 157–178).

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