RCMOS – Revista Científica Multidisciplinar O Saber. ISSN: 2675-9128. São Paulo - SP.
Ano VII, v.1 2026 | submissão: 11/10/2026 | aceito: 18/10/2026 | publicação: 23/10/2026

Human rights and funeral rituals in Candomblé: legal protection of the deceased and the família de santo

Direitos humanos e rituais fúnebres no Candomblé: a proteção jurídica do de cujus e da família de santo

Derechos humanos y rituales fúnebres en el Candomblé: la protección jurídica del de cujus y de la família de santo

Mayara Ferreira Soares – Dofona de Oyá, initiated into Candomblé on November 1, 2017, at Ilê Axé Aramadara, in the Oxumarê nation. History graduate of the Federal University of Espírito Santo (2016); undergraduate law student at the Law School of Cachoeiro de Itapemirim. Lattes iD: http://lattes.cnpq.br/1007559156997561. Email: mayaraferrari403@gmail.com.
Wagner Eduardo Vasconcellos – Master's and doctoral qualifications in Law and Fundamental Guarantees at the Vitória Law School. Public prosecutor with the Public Prosecutor's Office of the State of Espírito Santo, working in defense of the environment (natural, urban, and cultural).

Abstract:
This study analyzes the legal protection of funeral rites in African-derived religions— with an emphasis on Candomblé—considering their historical role as spaces of cultural resistance against structural racism and state persecution. The central issue concerns how the Brazilian legal system can ensure post-mortem protection and guarantee the legitimacy of the "religious family" (família de santo) in conducting these rituals, particularly in conflicts with the biological family. The discussion centers on the 2018 legal case involving the priestess Mãe Stella de Oxóssi, which featured a dispute over custody of her remains between her biological family and her religious family (Sociedade Cruz Santa do Axé Opô Afonjá). It is argued that the 1988 Federal Constitution—by guaranteeing freedom of worship (Art. 5, VI) and the protection of cultural heritage (Arts. 215 and 216)—provides the legal basis for terreiro communities to carry out the deceased adherent's final religious wishes. The study addresses the centrality of the axexê funeral rite within the Afro-Brazilian worldview, in which death is understood as a transition to the spiritual realm—a process essential for the continuity of ancestry and communal balance. The findings demonstrate that restricting these rites constitutes epistemic violence and an affront to human dignity; thus, applying constitutional principles of religious freedom and self-determination is necessary to uphold the deceased's wishes. The work highlights the importance of understanding human rights as processes of struggle for dignity, challenging both the legal formalism that ignores the axé worldview and the state "necropolitics" that affects the Black population. In this context, Critical Human Rights Theory provides a foundation for protecting final religious wishes, ensuring that the self-determination of the individual prevails over institutional prejudices.

Keywords: Candomblé, religious freedom, post-mortem protection, religious racism, human rights.

Resumo:
O presente trabalho analisa a proteção jurídica dos ritos fúnebres nas religiões de matriz africana, com ênfase no Candomblé, considerando seu papel histórico como espaço de resistência cultural diante do racismo estrutural e da perseguição estatal. A problemática centra-se em como o ordenamento jurídico brasileiro pode assegurar a tutela post mortem e garantir a legitimidade da família de santo na realização dos rituais, especialmente em conflitos com a família consanguínea. A discussão toma como eixo central o caso judicial da sacerdotisa Mãe Stella de Oxóssi, ocorrido em 2018, no qual se travou uma disputa pela guarda do corpo entre

a família consanguínea e a família de santo (Sociedade Cruz Santa do Axé Opô Afonjá). Argumenta-se que a Constituição Federal de 1988, ao garantir a liberdade de culto (Art. 5º, VI) e a proteção ao patrimônio cultural (Arts. 215 e 216), fundamenta a legitimidade das comunidades de terreiro para efetivar a última vontade religiosa do fiel. Discute-se a centralidade do rito fúnebre do axexê na cosmovisão afro-brasileira, na qual a morte é entendida como transição ao plano espiritual, sendo essencial para a continuidade da ancestralidade e do equilíbrio comunitário. Os resultados evidenciam que a restrição desses ritos configura violência epistêmica e afronta à dignidade humana, sendo necessária a aplicação dos princípios constitucionais da liberdade religiosa e da autodeterminação para garantir a vontade do falecido. Ressaltando a importância de compreender os direitos humanos como processos de luta pela dignidade, rompendo com o formalismo jurídico que ignora a cosmovisão de axé e a necropolítica estatal que atinge a população negra. Nesse sentido a Teoria Crítica dos Direitos Humanos oferece fundamento para a proteção da última vontade religiosa, garantindo que a autodeterminação da personalidade prevaleça sobre preconceitos institucionais.

Palavras-chave: Candomblé, liberdade religiosa, tutela post mortem, racismo religioso, direitos humanos.

Resumen:
El presente trabajo analiza la protección jurídica de los ritos fúnebres en las religiones de matriz africana, con énfasis en el Candomblé, considerando su papel histórico como espacio de resistencia cultural frente al racismo estructural y la persecución estatal. La problemática se centra en cómo el ordenamiento jurídico brasileño puede asegurar la tutela post mortem y garantizar la legitimidad de la família de santo para realizar los rituales, especialmente en conflictos con la familia consanguínea. La discusión toma como eje central el caso judicial de la sacerdotisa Mãe Stella de Oxóssi, ocurrido en 2018, en el que se produjo una disputa por la custodia del cuerpo entre la familia consanguínea y la família de santo (Sociedade Cruz Santa do Axé Opô Afonjá). Se argumenta que la Constitución Federal de 1988, al garantizar la libertad de culto (art. 5, VI) y la protección del patrimonio cultural (arts. 215 y 216), fundamenta la legitimidad de las comunidades de terreiro para hacer efectiva la última voluntad religiosa del fiel. Se discute la centralidad del rito fúnebre del axexê en la cosmovisión afrobrasileña, en la que la muerte se entiende como transición al plano espiritual, esencial para la continuidad de la ancestralidad y del equilibrio comunitario. Los resultados evidencian que restringir estos ritos configura violencia epistémica y una afrenta a la dignidad humana, por lo que es necesario aplicar los principios constitucionales de libertad religiosa y autodeterminación para garantizar la voluntad del fallecido. Se destaca la importancia de comprender los derechos humanos como procesos de lucha por la dignidad, rompiendo con el formalismo jurídico que ignora la cosmovisión de axé y la necropolítica estatal que afecta a la población negra. En este sentido, la Teoría Crítica de los Derechos Humanos ofrece un fundamento para proteger la última voluntad religiosa, garantizando que la autodeterminación de la personalidad prevalezca sobre los prejuicios institucionales.

Palabras clave: Candomblé, libertad religiosa, tutela post mortem, racismo religioso, derechos humanos.

1. Introduction

Candomblé is a Brazilian religion of African origin, structured around knowledge and practices reorganized in the context of forced diaspora. Throughout history, terreiros have

consolidated their role as spaces of cultural, political, and symbolic resistance, preserving elements of identity systematically attacked by colonialism and structural racism. Despite the constitutional guarantee of religious freedom, these communities continue to face marginalization, intolerance, and violence (Sampaio, 2023).

Unlike Christian religions, death assumes a central meaning in religions of African origin, being understood as continuity of existence on the spiritual plane rather than an ending. Funeral rites, such as axexê, play an essential role in maintaining the balance between the material and spiritual worlds, ensuring the individual's reintegration into ancestry. The literature indicates that interrupting these rituals compromises both the deceased's spiritual destiny and community cohesion and the transmission of cultural values, constituting a form of epistemic violence that directly affects these populations' dignity (Oliveira, 2021).

It is therefore essential to analyze the role of law in guaranteeing religious freedom and human dignity, particularly regarding post-mortem protection. Emblematic cases reveal conflicts between the biological family and the família de santo, or religious family, exposing gaps in legislation and legal interpretation concerning the recognition of emotional and spiritual bonds. Protecting funeral rites of African origin thus forms part of a broader debate on legal pluralism, cultural rights, and confronting institutional racism (Sampaio, 2023).

The discussion of rights over the deceased's body and the protection of personality after death challenges the limits of traditional civil law. Although the Civil Code establishes that a person's existence ends with death, contemporary legal scholarship maintains that an individual's body, image, and memory endure in legal relationships and deserve autonomous protection. The deceased's body cannot be treated as a "null thing," because it remains connected to the personality it once embodied (Oliveira, 2021).

In Brazil, legal protection of religious practices related to death proves particularly complex because of religious pluralism and the historical marks left by the State's colonial formation. For a long period, Christian frameworks predominantly influenced legal and social structures, contributing to the marginalization and invisibility of cultural and religious practices of African origin. In this context, for terreiro peoples, rights violations may arise at the very moment of death, particularly when conflicts emerge between the deceased's biological family, potentially belonging to another religious tradition, and their religious family. Disputes over custody and the destination of the body may, in these cases, prevent essential funeral rites (Oliveira, 2021). Given this reality, it is relevant to investigate the role law should play in ensuring that freedom of conscience and belief and the free exercise of religious worship,

guaranteed by Article 5, VI, of the Federal Constitution, are interpreted to encompass religious manifestations connected with the period after death as well.

This study focuses on analyzing the legal protection of the deceased's body in religions of African origin, with an emphasis on Candomblé, investigating the tension between the deceased's wishes and the interests of the biological family. In light of the 1988 Federal Constitution and critical human rights theory, the research examines mechanisms for recognizing the legitimacy of the família de santo in performing funeral rites, using the case of Mãe Stella de Oxóssi as its analytical focus to assess the prevalence of personal self-determination and religious freedom in the contemporary legal landscape (Flores, 2009).

2. African diaspora, religiosity, and death

The historical process of the African diaspora, marked by the abduction and enslavement of more than 15 million people brought to Brazil, created a violent rupture that separated these individuals from their territorial and blood ties and original symbols. Faced with this absolute domination and social death, the Black population gave new meaning to their memories and cultural heritage in the new land, using spirituality as a fundamental tool for maintaining unity between ethics and politics. This reorganization took place primarily through the structure of the terreiro, which became the country's first space of political organization and collective survival. By establishing spiritual and communal kinship structured around Axé, the povo de santo forged a renewed sense of belonging and re-existence against colonial extermination, transforming the Black community into a space of resistance and collective remembrance (Sampaio, 2023).

Within this religiosity of African origin, death is not conceived as extinction, annihilation, or a boundary marking human finitude. Distancing themselves from Christian universalism and its operation of "semiocide," which radically separates body and spirit to dehumanize the Other, terreiro worldviews follow the principle of circularity, in which death represents a change of state and a continuous passage between the material plane (Àiyé) and the spiritual plane (Òrun) (Sampaio, 2023).

2.1 Candomblé, a religion of African origin

The genesis of Candomblé in Brazil is inseparable from the enslavement and forced diaspora of diverse African ethnocultural groups between the sixteenth and nineteenth centuries. Far from being a mere transplantation of African cults, Candomblé constitutes a

distinctly Brazilian religion, reformulated to suit and adapt to the new environmental and social conditions of colonial territory (Kileuy, 2009).

The liturgical constitution of Candomblé rests on the heritage of three major linguistic and civilizational branches. The Bantu, originating from regions such as Angola and the Congo, were the first to arrive (c. 1559–1560). Their interaction with local Indigenous peoples was fundamental to the emergence of expressions such as Umbanda. The Fon (Jeje), from former Dahomey (present-day Benin), brought the worship of Voduns. Historically, they settled in more closed and preserved communities and became known as the "nation of secrecy." The Yoruba (Nagô/Ketu), from present-day Nigeria, brought the worship of Orixás and ancestry (Kileuy, 2009).

In Brazil, these ethnic groups, often rivals on African soil, had to unite against a common oppressor, creating their own religious system that preserved ancestral foundations without losing the capacity for innovation (Kileuy, 2009).

In the new territory, faced with the fragmentation of their original clans, the terreiro emerged as a nucleus of organization and solidarity, where the família de santo reconstructed kinship ties on a spiritual basis. In this setting of resistance to persecution and cultural erasure, death was never seen as an endpoint, but as a fundamental link in a circular existence (Sampaio, 2023).

For the povo de santo, life and death are facets of the same vital force, Axé, which must constantly be exchanged and preserved. A person's birth into Candomblé begins with rituals such as Bori and "feitura," which connect the individual with their deity and community. However, this spiritual alliance must formally be undone at the moment of physical departure so that the spirit can return to Òrun (the spiritual world) and become an ancestor. This is where funeral rites enter: known as Axexê in the Ketu nation, Sirrun in Jeje, and Mukundu or Vumbi in Angola (Sampaio, 2023).

In the diaspora, Catholicism forced Africans to use liturgical subterfuges to safeguard their deities. Religious syncretism emerged as camouflage, with elements of the Orixás concealed in oratories alongside images of Catholic saints. Although vital to the continuity of faith in the past, the contemporary movement within terreiros seeks anti-syncretism, claiming recognition of Candomblé as an autonomous, monotheistic religion (under Olorum/Olodumaré) with its own body of doctrine (Kileuy, 2009).

Historically, Candomblé suffered severe police and religious repression, being pejoratively classified as a "demonic sect" by the Catholic Church to justify compulsory

catechization. The religion's preservation is owed to the tenacity of ancestors and religious authorities (babalorixás and iyalorixás) who fought for the right to free will (Kileuy, 2009).

Today, Candomblé's legitimacy is supported by the Brazilian Federal Constitution, guaranteeing adherents the right to perform their religious observances in sacred natural spaces, such as forests and seas, without having to conceal them (Brasil, 1988).

Unlike Abrahamic religions, Candomblé is not based on a dichotomy between heaven and hell. Its primordial foundation is Mother Nature, understood as the core of the mystery of life and reproduction. Existence is governed by Axé, the vital and invisible force that permeates the universe and must constantly be set in motion through rites, songs, and offerings (Kileuy, 2009).

In this system, mortuary rites (Axexê, Sirrun, or Mukundu) close the initiate's vital and religious cycle, ensuring that their energy returns to the "mother-mass" and that the spirit (Egun) is properly guided to Òrun (the spiritual plane), allowing its future elevation to the status of a deified ancestor (Kileuy, 2009).

The history of Candomblé in Brazil began with the forced crossing of millions of Africans from various ethnic groups, such as the Bantu, Yoruba, and Fon, who brought not only their labor but also their worldviews and understandings of nature and the sacred. In the new territory, faced with the fragmentation of their original clans, the terreiro emerged as a nucleus of organization and solidarity, where the família de santo reconstructed kinship ties on a spiritual basis (Kileuy, 2009).

In this setting of resistance to persecution and cultural erasure, death was never seen as an endpoint, but as a fundamental link in a circular existence. Candomblé in Brazil therefore represents an invaluable cultural heritage, a system of knowledge that struggled to be understood and that, through written and oral tradition, continues to provide meaning and resistance for the Afro-Brazilian population (Kileuy, 2009).

2.2 Axexê: death and finitude in the Candomblé worldview

Axexê constitutes the quintessential funeral ceremony in Candomblé's Ketu nation, corresponding directly to the Sirrum (or Zerim) rite in the Jeje nation and Mukundu (or Ntambi) in the Angola nation. Far from representing finitude or the absolute annihilation of existence, death in the African-derived worldview is conceived as an ontological crossing and a change of state, marking departure from the material plane, Àiyé, toward the spiritual and supernatural plane, Òrun. In this cosmological context, Axexê operates as a complex process of de-initiation

and severance intended to guide the recently deceased, called ará-orum (or vúmbi), so that they are released from earthly bonds and reintegrated into their generic existence, ascending to ancestral status in the condition of Egun (Sampaio, 2023).

Performing this rite is vital both for the deceased's spirit, which would otherwise face obstacles and delays on its spiritual journey, and for the terreiro community itself, since it ensures the renewal and circulation of the vital force, Axé, which must be gathered and returned to the "mother-mass" so that it can continue generating and nourishing new lives (Kileuy, 2009).

From a mythological perspective, the origins of Axexê are intrinsically linked to the Orixá Oxóssi (Odé), patron of hunters. The itãns (historical narrative mythology) reveal that the first rite of passage from life to death was performed in the forest for a hunter and led by Oyá, becoming historically established beneath the shade of a sacred Iroco tree. The etymology of axexê (aṣèṣè) itself points to a probable corruption of ajejê (àjèjé), the name given to the cloth bundle containing the dead hunter's hunting tools and favorite foods, offered in the heart of the forest during a vigil rite. This profound liturgical connection is reflected in the use of sacred insignia during the funeral, such as the icodidé (the parrot's red feather), which acts as an emblem of life capable of warding off physical death (Iku), and the mocã (a necklace of braided raffia), a circular symbol connecting the initiate to orum and accompanying them until the funeral rite (Kileuy, 2009).

The practical performance of Axexê requires deep liturgical rigor and the leadership of experienced priests, whose steps and decisions are continuously guided by determinations obtained through cowrie-shell divination. Unlike public festivities (Xirê), Axexê's musical instrumentation excludes drums (atabaques). Instead, farewell laments and songs are accompanied by two large gourds cut horizontally, placed upside down on the floor and struck with aguidaví sticks, together with a large clay vessel played with braided straw fans, producing a muffled, respectful sound. A circle is drawn in the center of the ceremonial hall with sand, efun, or the three primordial colors, and earthenware bowls, small ritual water vessels, and beverages favored by the Egum are placed within it—in Candomblé, Egun designates the soul or spirit of a deceased person. During the dances and laments, those present symbolically offer the ará-orum coins placed in an earthenware bowl, later deposited in nature. Integrated into this ritual dynamic is Ipadê, a ceremony for appeasing Exu and the ancestors, performed at night and completed at dawn on the final day (Kileuy, 2009).

The duration of Axexê varies according to the deceased's seniority and importance in the terreiro hierarchy, lasting three days for lower-ranking members and seven, twelve, fourteen, or twenty-one days for the most senior and distinguished priests. The ceremony's

penultimate day brings the moment of greatest emotional and liturgical impact: dismantling and breaking the deceased's individualized religious belongings, including severing spiritual bonds consolidated with members of the terreiro. Personal and intimate sacred assemblages, such as the igbá orí and the deceased's Orixá and Bára assemblages—the Bára being each person's individualized Exu, representing their physical matter and energetic skeleton—cannot be inherited by anyone and must be dismantled or ritually disposed of. Finally, the ritual elements and offerings of sacrificed animals are gathered into a large sacred bundle, the Carrego (or Eru), carried out of the terreiro by ogãs and delivered to nature at a location previously indicated by the oracle. The departure of the Carrego seals the complete liberation of the deceased's spirit from earthly bonds, allowing the terreiro to perform the Arremate, a ritual that reopens the house and calls the Orixás back so that life and Axé return in full vigor, consolidating the complete and inseparable cycle of beginning, middle, and end that governs Candomblé (Kileuy, 2009).

2.3 The case of Mãe Stella de Oxóssi – a pioneer in life and death

Maria Stella de Azevedo Santos, widely recognized as Mãe Stella de Oxóssi or by her liturgical initiation name Odé Kayodê ("The Hunter who brings joy"), was born in Salvador, Bahia, on May 2, 1925. The fourth daughter of Esmeraldo Antigno dos Santos and Thomázia de Azevedo Santos, she began her spiritual journey early: at fourteen, on September 12, 1939, she was initiated into Ketu Candomblé by Mãe Senhora, the celebrated Iyalorixá of Terreiro Ilê Axé Opô Afonjá. Alongside her religious dedication, Maria Stella pursued an important secular professional career, graduating from the School of Nursing and Public Health and working as a public health visitor for over thirty years until retirement (Oliveira, 2021). On March 19, 1976, one year after her mentor's death, she was chosen through the divination conducted by Professor Agenor Miranda to become the fifth Iyalorixá of Ilê Axé Opô Afonjá, consolidating a leadership that would redefine the role of religions of African origin on the national stage (Ahualli, 2019).

As a pioneer in life, Mãe Stella de Oxóssi crossed the terreiro's geographical and social boundaries to establish herself as an organic intellectual and activist defending human rights, environmental preservation, and racial equality. In the 1980s, she traveled to Africa and participated in international conferences, where she was received with honors reserved for heads of state and major religious authorities. Under her leadership, Ilê Axé Opô Afonjá was listed as national cultural heritage by the National Institute of Historic and Artistic Heritage

(IPHAN) in the 1990s. In education, she demonstrated absolute pioneering leadership by founding Escola Ana Eugênia dos Santos within the terreiro grounds, establishing the country's first educational institution to incorporate Yoruba language and culture into its curricular guidelines. She also conceived a "library bus" project to democratize access to literature in Salvador's peripheral communities and, for many years, wrote opinion articles for major local newspapers. In recognition of her civilizational legacy, she received honorary doctorates from the Federal University of Bahia in 2005 and the State University of Bahia in 2009. In 2013, her literary and intellectual contribution was historically crowned by her unanimous election to Chair 33 of the Bahia Academy of Letters, whose patron is the poet Castro Alves, making her the first Candomblé liturgical authority to hold a seat in that academic institution (Ahualli, 2019).

Mãe Stella's pioneering role, however, extended irreversibly and paradigmatically to the moment of her physical death. In the African-derived worldview, death represents neither existential annihilation nor an absolute ending, but an ontological crossing through which the spirit (egun) passes from the material world (Àiyé) to the spiritual world (Òrun). The physical body is theologically understood as the very "dwelling of the orixá," a sacred receptacle requiring specific ritual handling to release the vital forces that guided it in life. The funeral ritual, called Axexê, constitutes an ancient seven-day process of "de-initiation" and liturgical severance, indispensable for the initiate's spirit to detach itself from the earthly plane and ascend to the status of the community's protective ancestor. Without properly fulfilling these liturgical obligations within the walls of the terreiro where the adherent was consecrated, the soul's transition is impaired and the religious group's vital energy (Axé) is severely compromised in its renewal (Sampaio, 2023).

After moving her residence to Nazaré das Farinhas (Bahia) in late 2017 with her partner Graziela Domini Peixoto, Mãe Stella died on December 27, 2018, from cardiac and respiratory complications, triggering an immediate and intense dispute over custody of her body. On one side, her surviving partner and civil guardian intended to bury her in a secular manner in the judicial district of Nazaré, disregarding initiatory precepts. On the other, Sociedade Cruz Santa do Axé Opô Afonjá, the civil association responsible for the terreiro, together with the iyalorixá's biological nephew, Adriano de Azevedo Santos Filho, brought an action seeking performance of an obligation combined with urgent relief, requesting that burial in Nazaré be prevented and the body immediately transferred to Salvador to enable the traditional Ketu Axexê rite. On December 28, 2018, duty judge Caroline Rosa de Almeida Velame Vieira issued

an unprecedented preliminary injunction ordering the body's transfer to the sacred terreiro space in Salvador (Ahualli, 2019).

The favorable decision in proceedings nos. 8000796-64.2018.8.05.0176 and 8000797-49.2018.8.05.0176 before the Bahia Court of Justice represented a historic precedent for secularism and citizenship. The court recognized periculum in mora on the premise that failure to perform Axexê, a funeral rite essential for transition to ancestral status and renewal of the terreiro's cosmic and identity continuity, would constitute irreversible harm resulting from secular burial. Based on the guarantee of freedom of conscience, belief, and liturgy under Article 5 of the Federal Constitution, the judicial ruling asserted that human dignity does not end with physical death and that the individual's historical personality and image must be preserved before their community (TJ-BA, 2018). Thus, Iyá Stella de Oxóssi's case transcended the individual sphere to become a collective guarantee against religious racism and erasure perpetrated by relatives of other faiths (frequently neo-Pentecostal), demonstrating the judiciary's emancipatory role in dignifying the identities and traditions of terreiro peoples (Ahualli, 2019).

> "Anthropologist Lévi-Strauss suggests that the first point to consider regarding death is its power to disrupt the everyday lives of people and the world, and that religion seeks to integrate death into the ordering of meaning in human existence. Religion would therefore, through its practices and beliefs, be responsible for legitimizing death and allowing the individual to continue living in society after losing loved ones. According to Lévi-Strauss, 'mortuary rituals are concrete measures for maintaining reality in the face of death.' The author further emphasizes the importance of rituals for those confronting death as a way to 'resume/restart their realities while sustaining social dialogue.'" (Barbosa, 2006 apud Poder Judiciário do Estado da Bahia, 2018).

The legal reasoning developed by the judge brought about an innovative fusion between legal science and anthropology. The decision drew on Claude Lévi-Strauss's teachings to emphasize that mortuary rituals constitute concrete and vital measures for maintaining social reality amid grief and the disruption caused by loss. From a constitutional standpoint, the judgment weighed the conflicting legal interests. Although civil law granted the surviving partner a personality right to manage the destination of the deceased's remains, the decision limited this private discretion in favor of a higher collective and social interest. Based on Article 5, item VI, of the 1988 Constitution, which declares freedom of conscience and belief inviolable and guarantees protection for liturgies and places of worship, the judge asserted that the priestess's final religious wishes should prevail. Moreover, the decision invoked Articles 215 and 216 of the Federal Constitution to give precedence to preserving Candomblé's intangible and historical cultural heritage, represented by Mãe Stella's biography and leadership, whose collective identity would be irreversibly violated if her tradition's funeral honors were denied (Ahualli, 2019).

The case thus became a jurisprudential turning point by affirming that human dignity and personality rights extend beyond the end of biological life, preventing the deceased's body from being reduced to a "null thing" devoid of historical and emotional identity. The decision not only ensured delivery of the body to the religious family so that Odé Kayodê's Axexê could be performed under Xangô's spiritual justice, but also granted the família de santo and terreiro civil entities standing to seek protection of their members' bodies against biological relatives hostile to traditional liturgy. Finally, by revealing the limits of a monist legal system when faced with faiths based essentially on orality, Mãe Stella's legacy in death prompted much-needed awareness of the protective formalization of religious worship (Ahualli, 2019).

Thus, both in the physical space of Àiyé and in her departure for Òrun, Mãe Stella de Oxóssi broke silences and rewrote history. In life, she educated, wrote, and occupied spaces of power; in death, her memory and the strength of her tradition demanded that the Brazilian judicial system defer to the plurality and dignity of religions of African origin, establishing an enduring jurisprudence of respect for the sacred.

3. Death, ancestry, and human rights: legal protection of funeral rites in Candomblé

Candomblé is a Brazilian religion grounded in African traditions reorganized on national soil during the violent process of forced diaspora. Historically, these terreiro communities served as centers of political and cultural resistance, preserving ancestral memories that the colonial system attempted to erase. Worship of African origin becomes a Brazilian religion that differs from predominant Christianity and proposes its own ways of experiencing life and death. In this process, according to Oliveira (2021), this religious manifestation suffered structural racism and state persecution, frequently being criminalized or marginalized from the colonial period through the Republic.

In contemporary times, this population faces the impact of state necropolitics, in which skin color is a determining factor in lethality, claiming the life of a young Black person every 23 minutes in the country. Against this backdrop of extermination and silencing, death for the povo de santo shifts from a status of longevity to a technology of biopower exercised by the State (Sampaio, 2023).

According to Lopes and Simas in their book Filosofias Africanas: Uma Introdução (2020), Achille Mbembe, through the concept of necropolitics, expands the idea of biopower by describing the exercise of sovereign power through the creation of zones and social structures where death becomes the ultimate exercise of domination.

RCMOS – Revista Científica Multidisciplinar O
Saber. ISSN: 2675-9128. São Paulo - SP.
Ano VII, v.1 2026 | submissão: 11/10/2026 | aceito: 18/10/2026 | publicação: 23/10/2026

> For Mbembe, the concept of biopower, developed by Michel Foucault, is now an insufficient starting point for interpreting contemporary mechanisms of domination. According to him, we can add the concept of necropolitics to the idea of biopower. Analyzing the cases of Africa, Palestine, and Kosovo, Mbembe proposes that we view the exercise of power through the creation of zones where death becomes the ultimate exercise of domination and the principal form of resistance (Lopes; Simas, 2020).

From this perspective, racism acts as the central technology regulating the distribution of death, making the State's exterminatory functions possible and generating veritable "death-worlds" directed toward destroying historically marginalized populations. In the reality of the Afro-Brazilian diaspora, necropolitics translates into a policy of extermination that not only physically cuts Black lives short but also effects cultural erasure by prohibiting traditional terreiro funeral rites, transforming death from a sacred status of longevity and ancestry into a technology of state control (Mbembe, 2016 apud Sampaio, 2023).

For adherents of religions of African origin, death is not seen as annihilation or an absolute ending, but as a change of existential plane and a return to ancestry in the spiritual world (Òrun). Funeral rites, named axexê, mukundu, or sirrun according to the nation, are vital liturgical processes for guiding the soul (egun) and allowing its energy to return to the cycle of life. The physical body is understood as a sacred instrument, the "dwelling of the orixá," and ritual handling is indispensable for releasing forces connected to earthly life. Without properly performing these rites, it is believed that the existential continuity of the community and the individual is severely compromised (Beltrão, 2015).

According to Sampaio's reflections (2023), suspending traditional mortuary rites severely affects the structure of spiritual kinship and the preservation of Black communities' memories. Preventing these liturgies is characterized as a form of epistemic violence that denies the possibility of constructing a sacred eldership through which philosophical and political values can be transmitted. Without Axexê, the recently deceased's spirit faces obstacles in its transition to the spiritual world, compromising renewal of the group's vital energy. The body is understood as the dwelling of the orixá and requires specific care to ensure release from material forces (Sampaio, 2023).

The legal protection of these practices can be grounded in Critical Human Rights Theory, which defines these rights as processes of struggle for dignity in contexts of oppression. From this perspective, human rights are not ahistorical dogmas, but cultural products arising from indignation at the intolerable and the search for spaces of freedom (Flores, 2009).

In Brazil, although Article 5, VI, of the 1988 Constitution guarantees the inviolability of freedom of conscience and belief, religions of African origin still suffer religious racism and epistemicide. The legal system frequently ignores the complexity of social relationships in

terreiros, addressing these peoples' demands through dominant Eurocentric and Christian standards. Struggling to preserve the rites of axé is therefore a political act against the necropolitical and genocidal order that still permeates the contemporary legal system (Sampaio, 2023).

The 2018 case of priestess Mãe Stella de Oxóssi became a jurisprudential landmark by discussing custody of the deceased's body for religious purposes in the context of Brazilian pluralism. For Sampaio (2023), the religious family, commonly called família de santo, is a network of "mythical" and spiritual kinship underpinning the social and liturgical organization of religions of African origin, such as Candomblé. The dispute between this religious family and the biological family exposed the legal system's weakness in recognizing the legitimacy of emotional and spiritual bonds after death. The judicial decision guaranteeing the terreiro community's right to perform funeral rites demonstrated that human dignity does not cease with death and that the deceased's wishes must be preserved, even when conflicting with the biological family's claims (Oliveira, 2021).

In his book Teoria Crítica dos Direitos Humanos (2009), Joaquín Herrera Flores proposes a materialist and cultural view of human rights, understanding them as tools for empowerment and resistance against exclusionary hegemonies. Flores argues that human dignity resides in the capacity to "do" and to construct spaces of struggle, which in the terreiro context translates into the right to perform rites guaranteeing the group's spiritual life.

The intersection between Critical Human Rights Theory and the legal category of spiritual damage reveals a powerful avenue for protecting funeral rituals of African origin in Brazil, overcoming legal formalism that frequently ignores terreiro peoples' cultural particularities. From Joaquín Herrera Flores's perspective, human rights cease to be metaphysical dogmas and are understood as cultural products and processes of struggle intended to guarantee spaces of material dignity. This dignity does not end with biological death, but requires the "power to do"—the ability to complete the vital and spiritual cycle connecting individuals to their ancestry. In Candomblé, this continuity is guaranteed by Axexê, an indispensable ritual severing the physical body's ties with the Orixá's energy, allowing the soul (egun) to pass from Àiyé (the material world) to Òrun (the spiritual world) (Sampaio, 2023). Denial of this rite, frequently perpetrated by relatives of different faiths in contexts of religious pluralism, constitutes what Judge Antônio Augusto Cançado Trindade calls spiritual damage.

Spiritual damage, as developed in the separate opinion in the case of the Moiwana Community v. Suriname, is an extreme moral injury affecting intimate spirituality and the

emotional relationship between the living and their dead. Judge Cançado Trindade argues that human dignity encompasses not only a "life project" but also an "afterlife project," in which the peace of the deceased is inseparable from the well-being of survivors. In cultures of African origin, where death is social and collective, preventing traditional funerals creates a liturgical interruption that condemns the soul to wandering and the community to persistent spiritual distress (Montarroyos, 2019). This violation is a facet of necropolitics, a mechanism through which the State and social hegemony regulate the distribution of death and effect the erasure of Black memory. Epistemicide manifests when the legal system disregards the família de santo's mythical kinship, privileging biological ties that often seek to impose rites alien to the deceased's wishes (Nogueira et al., 2013 apud Lopes, 2020).

The Brazilian judicial response to Mãe Stella de Oxóssi's case represented a landmark of resistance against this logic of symbolic extermination. By ordering the body's transfer to Ilê Axé Opô Afonjá, the Bahia judiciary (2018) recognized that religious freedom, protected by Article 5, item VI, of the Constitution, has post-mortem effect and that liturgy forms part of the intangible heritage inseparable from the priestess's dignity. The decision demonstrated that the deceased's body is not a "null thing," but the embodiment of an image and a will that must be protected against religious racism and dogmatic exclusivism (TJ-BA, 2018). Reparation for this type of damage, as suggested by the doctrine of spiritual damage, cannot be merely monetary; it requires restoring sacred balance by delivering the body to the religious family for performance of the funeral honors of its nation. In sum, protecting Axexê materializes a "law found at the crossroads," breaking with theoretical common sense to embrace otherness and ensure that the return to the ancestors' home is an act of sovereignty and dignity (Sampaio, 2023).

In the African worldview, the human person is a composite of elements such as Ori (master of destiny/head), Emi (vital breath), and Ara (physical body). In this system, death is merely a change of plane between Àiyé (the material world) and Òrun (the spiritual world), and the body, as a bearer of the sacred, requires posthumous ritual handling to reintegrate vital energy into ancestry (Parizi, 2020).

In this sense, legal protection of personality after death, supported by Silvio Beltrão (2015), maintains that bodily self-determination does not cease with death. The deceased's body therefore remains connected to the individual's image and dignity, and the legal system must protect the deceased's final wishes and recognize the família de santo's legitimacy to fulfill them before the State. The Brazilian legal system is thus challenged to recognize that the terreiro's spiritual family has legitimate standing before the State to claim custody of its members' bodies,

ensuring fulfillment of the initiation/de-initiation cycle and safeguarding the return of the subject of axé to ancestry as a sovereign act of faith and human dignity (Beltrão, 2015 apud Oliveira, 2021).

4. Final considerations

In sum, post-mortem protection of personality and the guarantee of rights over the deceased's body for performing funeral rituals of African origin, particularly Axexê, reveal that human rights must be understood, through the lens of Joaquín Herrera Flores's Critical Theory, as cultural and dynamic products resulting from historical processes of concrete struggles for human dignity, opposing the abstract formalism that has historically perpetrated epistemicide and "cultural indigence" against Black populations.

Article 5, VI, of the 1988 Federal Constitution offers a robust normative framework through the inviolability of freedom of conscience, belief, and liturgy and the State's duty to safeguard intangible cultural heritage under Articles 215 and 216, protecting the image and memory of adherents of axé against arbitrary interference by relatives of differing faiths. Preventing traditional liturgies of spiritual severance thus constitutes a manifestation of necropolitics aimed at symbolically erasing the Black subject, violating their right to complete the vital-religious cycle and sovereignly transition toward ancestral status.

Consolidation of this liturgical protection finds doctrinal support in the legal category of spiritual damage, developed in Judge Antônio Augusto Cançado Trindade's separate opinion at the Inter-American Court of Human Rights (2005), extending human dignity to preservation of an "afterlife project" sustained by inseparable bonds of solidarity between the living and the dead. For terreiro peoples, among whom the living and the deceased coexist in a cyclical temporality, deprivation of Axexê causes profound suffering to the família de santo and seriously disrupts renewal of the community's vital force. The paradigmatic case of Mãe Stella de Oxóssi historically materialized this necessary hermeneutics of otherness. The Bahia judicial decision, granting transfer of the iyalorixá's body to Salvador on the basis of Claude Lévi-Strauss's anthropological reasoning, asserted that the leader's historical-cultural heritage and the emotional legitimacy of the terreiro's mythical kinship take precedence over blood-based exclusivism, establishing a turning point against religious racism in the country.

The dignified return of the povo de santo to Òrun thereby ensures the very democratic integrity and pluralism of existences promised by Brazil's secular State. Furthermore, this understanding of axexê contributes to combating and overcoming the epistemicide and cultural

erasure affecting religions of African origin in Brazil, which prevent practitioners from exercising full citizenship at death and afterward. Denial of the right to memory and traditional ritual practice represents a continuation of colonial violence that strips Black subjects of their human and ancestral condition. Guaranteeing fulfillment of the deceased's wishes is essential to consolidating the secular State and the ethical-legal pluralism envisaged by the 1988 Constitution.

References

AHUALLI, Iyaromi Feitosa; ALMEIDA, Silvana Gorete Estevam de. A mulher que é história: uma análise da sentença que perpetuou a memória de Iya Stella de Oxossi. In: VI ENADIR - Encontro Nacional de Antropologia do Direito, 2019. [The woman who is history: an analysis of the judgment that perpetuated the memory of Iya Stella de Oxossi. In: VI ENADIR – National Meeting on the Anthropology of Law, 2019.]

BAHIA. Tribunal de Justiça. Comarca de Nazaré. Juízo de Direito Plantonista. Decisão em Tutela de Urgência. Processos nº 8000796-64.2018.8.05.0176 e 8000797-49.2018.8.05.0176. Relatora: Caroline Rosa de Almeida Velame Vieira. 28 de dezembro de 2018. [Court of Justice. Judicial District of Nazaré. Duty Court. Urgent relief decision. Proceedings nos. 8000796-64.2018.8.05.0176 and 8000797-49.2018.8.05.0176. Reporting judge: Caroline Rosa de Almeida Velame Vieira. December 28, 2018.]

BAHIA. Tribunal de Justiça. Juízo de Direito Plantonista da Comarca de Nazaré. Processos nº 8000796-64.2018.8.05.0176 e nº 8000797-49.2018.8.05.0176. Nazaré, BA, 2018. [Court of Justice. Duty Court of the Judicial District of Nazaré. Proceedings nos. 8000796-64.2018.8.05.0176 and 8000797-49.2018.8.05.0176. Nazaré, Bahia, 2018.]

BELTRÃO, Silvio Romero. Tutela jurídica da personalidade humana após a morte: conflitos em face da legitimidade ativa. Revista de Processo, vol. 247, 2015. [Legal protection of human personality after death: conflicts concerning standing to sue. Revista de Processo, vol. 247, 2015.]

BRASIL. Constituição (1988). Constituição da República Federativa do Brasil de 1988. Brasília, DF: Senado Federal, 1988. [Constitution (1988). Constitution of the Federative Republic of Brazil of 1988. Brasília, Federal District: Federal Senate, 1988.]

BRASIL. Lei nº 10.406, de 10 de janeiro de 2002. Institui o Código Civil. Brasília, DF: Presidência da República, 2002. [Law no. 10,406 of January 10, 2002. Establishes the Civil Code. Brasília, Federal District: Presidency of the Republic, 2002.]

COELHO, Beatriz. Metodologia científica: aprenda como delimitar na sua pesquisa, 2020. Disponível em: https://blog.mettzer.com/metodologia-cientifica. Acesso em: 15 março de 2026. [Scientific methodology: learn how to delimit your research, 2020. Available at: https://blog.mettzer.com/metodologia-cientifica. Accessed: March 15, 2026.]

CORTE INTERAMERICANA DE DIREITOS HUMANOS. Comunidade Moiwana vs. Suriname. Voto razonado del juez A. A. Cançado Trindade. Sentença de 15 de junho de 2005. San José, Costa Rica: Corte Interamericana de Direitos Humanos, 2005. [INTER-

AMERICAN COURT OF HUMAN RIGHTS. Moiwana Community v. Suriname. Separate opinion of Judge A. A. Cançado Trindade. Judgment of June 15, 2005. San José, Costa Rica: Inter-American Court of Human Rights, 2005.]

FLORES, Joaquín Herrera. Teoria Crítica dos Direitos Humanos: os direitos humanos como produtos culturais. Tradução de Luciana Caplan et al. Rio de Janeiro: Lumen Juris, 2009. [Critical Human Rights Theory: human rights as cultural products. Translated by Luciana Caplan et al. Rio de Janeiro: Lumen Juris, 2009.]

GOMES, Edlaine de Campos. Morte em família: ritos funerários em tempo de pluralismo religioso. Revista de Antropologia, USP, v. 49, n. 2, 2006. [Death in the family: funeral rites in times of religious pluralism. Revista de Antropologia, USP, v. 49, no. 2, 2006.]

HEIM, Bruno Barbosa; ARAÚJO, Maurício Azevedo de; HOSHINO, Thiago de Azevedo Pinheiro (Orgs.). Direitos dos povos de terreiro. Salvador: EDUNEB, 2018. [Rights of terreiro peoples. Salvador: EDUNEB, 2018.]

JAGUN, Luiz de. Preparação para o outro lado da vida: axexé (funeral). Rio de Janeiro: Renes., 1982. [Preparation for the other side of life: axexé (funeral). Rio de Janeiro: Renes., 1982.]

KILEUY, Odé; OXAGUIÃ, Vera de. O candomblé bem explicado (Nações Bantu, Iorubá e Fon). Organizado por Marcelo Barros. Rio de Janeiro: Pallas, 2009. [Candomblé explained (Bantu, Yoruba, and Fon nations). Organized by Marcelo Barros. Rio de Janeiro: Pallas, 2009.]

LOPES, Nei; SIMAS, Luiz Antonio. Filosofias africanas: uma introdução. 1ª ed. Rio de Janeiro: Civilização Brasileira, 2020. [African philosophies: an introduction. 1st ed. Rio de Janeiro: Civilização Brasileira, 2020.]

MATTOS, Sandra Maria de. Conversando sobre metodologia de pesquisa científica. Porto alegre, RS: Editora Fi, 2020. [Discussing scientific research methodology. Porto Alegre, Rio Grande do Sul: Editora Fi, 2020.]

MONTARROYOS, Heraldo Elias. Dano espiritual na Corte Interamericana de Direitos Humanos: a lógica de argumentação jurídica do juiz Cançado Trindade no processo Moiwana versus Suriname. Revista Latinoamericana de Derecho y Religión, v. 5, n. 1, 2019. [Spiritual damage at the Inter-American Court of Human Rights: the logic of Judge Cançado Trindade's legal reasoning in the Moiwana versus Suriname proceedings. Revista Latinoamericana de Derecho y Religión, v. 5, no. 1, 2019.]

OLIVEIRA, Danilo Reis de Matos. Entre o sagrado e o legal: tutela post mortem e direito ao cadáver para rituais fúnebres nos terreiros de candomblé. 2021. 45 f. Trabalho de Conclusão de Curso (Bacharelado em Direito) – Universidade do Estado da Bahia, Itaberaba, 2021. [Between the sacred and the legal: post-mortem protection and rights over the deceased's body for funeral rituals in Candomblé terreiros. 2021. 45 leaves. Undergraduate dissertation (Bachelor of Laws) – State University of Bahia, Itaberaba, 2021.]

OMINARÊ, Babalorixá. Candomblé de Keto (Alaketo). 5ª ed. Rio de Janeiro: Pallas, 1996. [Keto Candomblé (Alaketo). 5th ed. Rio de Janeiro: Pallas, 1996.]

PARIZI, Vicente Galvão. O livro dos Orixás: África e Brasil. Porto Alegre: Editora Fi, 2020. [The book of Orixás: Africa and Brazil. Porto Alegre: Editora Fi, 2020.]

PARIZI, Vicente Galvão. O livro dos Orixás: África e Brasil. Porto Alegre: Editora Fi, 2020. [The book of Orixás: Africa and Brazil. Porto Alegre: Editora Fi, 2020.]

SAMPAIO, Yasmin Estrela. Os Ritos Mortuários no Candomblé e a (Re)Construção da Ancestralidade Negra no Contexto Necropolítico. Mediações, Londrina, v. 28, n. 2, p. 1-17, 2023. [Mortuary rites in Candomblé and the (re)construction of Black ancestry in the necropolitical context. Mediações, Londrina, v. 28, no. 2, pp. 1–17, 2023.]

SCHREIBER, Anderson. O Caso da Criogenia: Direito ao Cadáver e Tutela Post Mortem da Autodeterminação Corporal. 2018. Disponível em: https://genjuridico.jusbrasil.com.br/artigos/698743930/o-caso-da-criogenia-direito-ao-cadaver-e-tutela-post-mortem-da-autodeterminacao-corporal. Acesso em: 20/03/2026. [The cryonics case: rights over the deceased's body and post-mortem protection of bodily self-determination. 2018. Available at: https://genjuridico.jusbrasil.com.br/artigos/698743930/o-caso-da-criogenia-direito-ao-cadaver-e-tutela-post-mortem-da-autodeterminacao-corporal. Accessed: March 20, 2026.]

WILLIAMS, Rodney. Apropriação cultural. (Coleção Feminismos Plurais). São Paulo: Pólen, 2019. [Cultural appropriation. (Plural Feminisms Collection). São Paulo: Pólen, 2019.]