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Brazilian Indigenous Peoples: Territories, Legal Rights and The Obstacles of Structural and Institutional Racism

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The book “Traditional Peoples and Biodiversity in Brazil: Contributions of Indigenous Peoples, Quilombolas and traditional communities to biodiversity, policies and threats”, organised by Manuela Carneiro da Cunha, Sônia Barbosa Magalhães and Cristina Adams, is an ambitious project—composed of six parts—that is especially relevant. In this text our attention is focused on section 3 “Difficulties in the Enforcement of Territorial Rights” of Part I “Territories and Rights of Indigenous Peoples, Quilombolas and traditional communities”.

In a precise and concise way, the authors clearly specify the State’s duty concerning the constitutionally recognized territorial rights of indigenous peoples and quilombola communities, and the fulfillment of these rights. A number of obstacles hinder their fulfillment and complementation and have become increasingly complex over the years. The increasing recognition of collective rights correlates with the escalation of obstacles, and the need to overcome them. Even though “it is not demarcation that creates the right”, the absence of demarcation leaves peoples and their lands exposed.

International charters, such as the International Labor Organization (ILO) Convention 169 (1989), the United Nations Declaration on the Rights of Indigenous Peoples (2007), and of the OAS (2016) (p. 16) stem from—it is never superfluous to remember—the self-recognition of First Nations and traditional peoples, and the recognition of their collective rights. As these rights have gained recognition—and contrary to expectations—securing them has become more difficult, especially the demarcation of indigenous territories, the essential basis for biological and sociocultural reproduction (p.17).

My aim here, in this brief commentary, is to expound a few points about, firstly, the interference of the military frame of mind as well as that of the Brazilian dominant elite, namely the corporate social media, in the enforcement of indigenous territorial rights and, secondly, the enforcement of these rights in the ethnographic context of Northeastern and Eastern Brazil.

In the now distant 1980s, when David Maybury-Lewis noticed that the Brazilian military governments displayed “repugnance for any kind of pluralism, including ethnic pluralism” (Maybury-Lewis 1984: 107), he also drew attention to the fact that the frequent allegations of ethnic divisions and separatism were used many times “as cover-ups to hide exploitation, authoritarianism, and hegemonic privilege” (Maybury-Lewis 1984: 109).

Nearly four decades later, the author’s sharp perception remains sound. A few days ago I came across an interview with a former deputy of the Federal Congress who also served several times as cabinet minister—including as Minister of Defense—during two Workers Party (PT) governments. He was interviewed by Brasil Paralelo Entretenimento e Educação S/A, which is a video, documentary and film company, founded in 2016, and which presents itself as independent, non-partisan and neutral. Queried by the interviewer about his criticism

of the “identitarian left”, the interviewee explained that it is a “negation of the centrality of the national question”, done by substituting it with questions of race, gender, sexual orientation, and others that refer to individual rights, hence dispersing “the most important forces of the nation”.¹ When I viewed the video on June 8, 2022, it had been seen 113.329 times and had many comments, which I do not think is a negligible repercussion.

Previously, the same person, Rebelo, a self-declared communist, in the book “Raposa Serra do Sol, the Indian and the national question” (*Raposa Serra do Sol, o índio e a questão nacional*), had already argued against what is named a demarcation of a “continuous territory”, which the Federal Supreme Court’s (STF) was sustaining. This argument against a “continuous territory” was in line with the position of neoliberal political parties highly interested in the free appropriation of very valuable indigenous resources. The proposition was to demarcate instead small, illegal and insufficient “islands” (literally *ilhas*), repeating the old and erroneous arguments of the threat to Brazilian sovereignty that resulted from the influence of international organizations and being located in a border region².

According to political analysts, Rebelo is voicing the military frame of mind and also that of agribusiness, sustained in a geopolitical perspective. This perspective supposes that foreign countries— so called “external enemies”— aim at taking hold of the Amazonia region. By the same token, they presuppose that Indigenous peoples —so called “internal enemies”— pursue separatism. There is no event in history nor any reference that could sustain these assumptions. They consider indigenous peoples not only as ethnic enclaves but as “ethnic cysts”, almost as if they are the principal “internal enemy”, who supposedly are prone to separatist and independentist adventures. According to well-known journalist Jânio de Freitas, the military’s lack of interest regarding environmental and indigenous concerns derives from the first assumption, “predominating among them the notion of a territory protected by occupation through cattle ranching, extensive agriculture, and mining [...]”³

As is well known, article 30 of the United Nations Declaration on the Rights of Indigenous Peoples attempts to safeguard these peoples from military influences over their territories and modes of life—something prevalent in the history of several countries:

“Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities” (UN 2007, p. 22).

The Brazilian military reacted negatively to Brazil’s approval of the Declaration. In 2011, four years after the approval, they were still showing their displeasure. The retired army general Luiz Gonzaga Schroeder Lessa, former president of the Military Club, upon the appointment of Celso Amorim as Minister of Defense attempted to discredit him as a diplomat. When he was Minister of Foreign Affairs, Celso Amorin signed the Declaration in 1993 and ratified it in September 2007. The retired army general accused him of committing a crime against the homeland “that affronts Brazilian sovereignty”.⁴

More recently, the topic again resurfaced. The army general Marcelo Gonçalves Villela, then an adviser at the Doctrine for Joint Operations Institute (*Instituto de Doutrina de Operações Conjuntas*), of the War College (*Escola Superior de Guerra*), published an article in the journal *Revista Cadernos de Estudos Estratégicos*, associated with the Brazilian army, in which he asserted that:

“The international travels of indigenous leaders and national meetings of Indians, environmentalists, religious people, and NGOs abound in our country. With support from foreign personages, the environmental-

1. Available at: <https://www.youtube.com/watch?v=of-8CevF1BEY> (retrieved 17/05/2022)

2. *Câmara Hoje*, text updated 25/02/2010. Available at: <https://www.camara.leg.br/tv/200752-rebelo-critica-demarcacao-continua-em-raposa-serra-do-sol/>.

3. A Amazônia Saindo do Brasil. *Folha de S. Paulo*, 21/05/2022.

4. *General diz que Celso Amorim é história negra da diplomacia brasileira*. 18/08/2011. Available at: <https://sacoemaca.blogspot.com/2011/08/general-diz-que-celso-amorim-e-historia.html?m=0>. Retrieved 27/09/2022

-indigenist movement preaches the defense of the Amazonian Forest and indigenous peoples, and opposes any national development and regional integration project.

5. *O Globo*, 26/08/2008, Opinião, p. 7

Whether due to ideological motives or adhesion to ‘political correctness’, or because of a submissive acquiescence to the pressures and proposals of foreign personages or international organizations, a segment of the political class, the academic sector, and the national media, have contributed to the narrative of the internationalization of Amazonia, through their support for the implementation of countless and immense Indigenous reserves and conservation units. One can realize that the creation of countless reservations adjacent to similar reservations in neighbouring countries represents an obvious vulnerability. Some scholars have even suggested that, in the future, the already accepted self-determination of the indigenous peoples may be claimed, and their emancipation or internationalization under the protection and administration of some international or transnational organization be demanded. Yet, such vulnerability did not emerge by chance” (GONÇALVES VILLELA, 2020, p. 7, In: MOREIRA, 2021, p. 199-200).

In a recent book, General Eduardo Villas Boas (2021), also complained that the military were not consulted regarding the UN Declaration of the Rights of Indigenous Peoples and the adherence to the Convention 169 of the ILO.

Yet we must not presume that this issue involved only the military. The generals’ expressions were preceded by big Capital, represented by the president of the FIESP Board of Foreign Trade, Rubens Barbosa, according to whom national interest, the defense of territorial integrity, and nationality, urged “a firm attitude” on the part of the government regarding the delimitation of indigenous areas⁵. The targets were the Raposa Serra do Sol reserve and future demarcations.

I assume that these previous examples support the notion that the enforcement of indigenous territorial rights remains in the sights of the armed forces, the dominant strata of civil society, and corporate media, who arrogate to themselves the permanent right to supervise the political decisions of organized civil society (Rouquié 1984: 45). Regarding the armed forces, there seems to be a consensus among scholars that the military exercised a “colonialist influence upon Brazilian indigenism”, acting as a transmission belt towards the rest of society (Marques 2015: 210-211). I believe it necessary to examine, even if briefly, the effects of this colonialist influence.

Cecilia McCallum, in a paper presented at the 29th Brazilian Anthropology Meeting (2014: 2), expressed her unease with the fact that antiracist movements and discourses in Brazil do not recognise anti-indigenous racism. To her “the prejudices towards Amerindians are not identified as ‘racism’, a category widely spread by the media and in social and political forums [...]”. Afterwards, together with Edwin Reesink and Eduardo Restrepo (2017: 1), she emphasized that the Brazilian concept of race, “raciality in more theoretical terms”, receives only very little attention “in relation to the ethnicity of indigenous peoples”.

I share these authors’ unease and I assume that the failure to recognize anti-indigenous racism is an inaccuracy ensuing from a prevailing sort of partition between the concepts of race and ethnicity, which should be overcome. The core idea of Silvio Almeida (2019: 27)—the Brazilian author who has most theorized this issue—is that racism is always structural, in the sense that it is integral to the economic and political organization of society, and that the main proposal of those who assert the existence of institutional racism is that racial conflicts are also part of institutions. “Thus, racial inequality is a characteristic of society not merely due to the isolated actions of racist groups or individuals, but fundamentally because institutions are hegemonized by certain racial groups that use institutional mechanisms to impose their political and economic interests.”

I suppose that institutional racism against indigenous peoples thrives, notably, due to the rhetoric broadcast by the military frame of mind, in conjunction with the dominant strata, and corporate media; and that it is spread, to a greater or lesser extent, through the other social strata, with the local powers (notably, lower court judges, entrepreneurs, and conservative

religious groups, among others) at the front-line. This rhetoric adds to institutionally racist behaviours that aim to devalue ethnically different peoples and traditional communities by appealing to features that actually should be valued as assets (their languages, unique social and political organizations, environmentally well-preserved territories, etc.).⁶

I will mention two examples I consider significant. According to Luís Gustavo Guerreiro Moreira (2021: 170), the representation of the indigenous in Brazilian society as “relatively or totally incapable, displays a spectrum that becomes especially concrete in state institutions, and in all branches of government (executive, legislative and judiciary) [...]” (Moreira 2021: 123). Similarly, Gustavo Hamilton de Sousa Menezes (2019: 170), based upon his “experience as an anthropologist in the Special Federal Attorney department of the FUNAI”, where he was responsible for producing anthropological expert reports in situations concerning Indigenous individuals accused of a crime, asserts “that the prejudice in relation to the Indigenous and the ignorance of the indigenist legislation crosses social borders and reaches all the personnel of the Judiciary, such as judges, police, and constables, who usually take decisions guided by their personal inclinations” (Menezes 2021: 170).

I will shift attention on to the indigenous territories in the ethnographic contexts of Eastern and Northeastern Brazil, invariably small and disputed under adverse circumstances, in which the indigenous people are often labelled as invaders by those who occupied, and in many cases continue to occupy, their lands—the true invaders—and by the local judges, frequently large-scale landowners, and politicians from the enduring regional oligarchies. Delayed administrative measures combined with the criminalization of indigenous leaders have strong impacts on the affected peoples.

A survey conducted by the National Association of Indigenist Action (*Associação Nacional de Ação Indigenista* - ANAI) using georeferenced maps in 2021 identified 224 Indigenous Lands (*Terras Indígenas* - TI) for these two regions, about which there is no information for 129 of them, but it is possible to assume that they are “Lands” created as a result of internal disputes caused by the unfavorable environmental and social conditions that lead to divisions and migrations. Those 224 TIs cover an area of 757,158.4314 hectares, which averages 9,962.61 hectares for each TI. Yet, it is necessary to point out that some of these “Lands” are only 36 hectares—a donation given to a Kamakã group that lives in the metropolitan area of Belo Horizonte—and 62 hectares—an area acquired by FUNAI in order to settle Kiriri families coming from the Kiriri TI in the mid-region of northeastern Bahia.

It is remarkable that after four decades of being displaced due to the construction of the Itaparica hydroelectric dam there still is not enough land for the Tuxá, who currently live dispersed across several localities in Bahia and one in Minas Gerais. Also, there is a large number of Pataxó villages distributed along disjointed strips of land down the southern coastline of Bahia—more than five hundred—, in Minas Gerais, and one village in Rio de Janeiro/Paraty, near the Serra da Bocaina national park.

Estevão Palitot and Kelly Oliveira (2020: 164) coined the term “state regressions” to describe obstacles to the enforcement of indigenous territorial rights in Northeastern Brazil that are “sometimes due to complex orchestrations of private interests and the public administration itself”. They studied the demarcations of Potiguara lands in Paraíba (Potiguara, demarcated in 1984; Jacaré de São Domingos, in 1992; and Potiguara de Monte Mor, in 2004) and of the Xukuru in Pernambuco. These are the two most numerous groups demographically in the northeast, and their Indigenous Lands comprise, respectively, 33,757 and 27,555 hectares.

In the case of Potiguara, conflicts with the sugarcane mills and with the municipal governments, which sought to exclude the Indigenous Lands from municipal responsibility, involved many different agents and agencies, such as the army, causing an impact that undermined the biological and social reproduction of several villages not included in the demarcation.

6. Mapping conducted by MapsBiomias using satellite images and artificial intelligence shows that between 1985 and 2020 the most preserved areas of Brazil were the indigenous lands—both demarcated and awaiting demarcation. Source: *Terras indígenas são as áreas mais preservadas do Brasil nos últimos 35 anos, mostra levantamento*. <https://g1.globo.com/natureza/noticia/2021/08/27/terras-indigenas-sao-as-areas-mais-preservedas-do-brasil-nos-ultimos-35-anos-mostra-levantamento.ghtml> (27/08/2021).

In the case of the Xukuru, the factors mentioned above, especially the criminalization of leaders and the debts of the administration, motivated the Xukuru to file legal action against the Brazilian State in 2002 before the Inter-American Court of Human Rights (IACHR). The sentence, delivered after sixteen long years, i.e., in 2018, concluded that the Brazilian State was responsible for violating judicial guarantees, rights of judicial protection, and rights of collective property, contained in the American Convention on Human Rights.

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