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# Just Recognition and Biocultural Rights

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As a response to prevalent apocalyptic imaginings in the Anthropocene spurred by unprecedented biodiversity loss and climate change, Kyle Whyte (2018) suggests that settler anxieties about “crises” wrongly discount historical and current colonial destabilizations of Indigenous Peoples and their worlds. Whyte (2018) upholds that ongoing territorial, ontological, and epistemic violence persists for Indigenous Peoples, who remain embedded in governance regimes based on Westphalian notions of sovereignty instead of Indigenous notions of relationality and self-determination (see Gálvez et al. 2022). Similarly, Glen Coulthard (2014) argues that current Indigenous Peoples’ efforts at sovereignty within a nation-to-nation framework, while sometimes offering provisions for soft and hard rights (see Lightfoot 2016), continues to sustain normative forms of governance that support the “politics of recognition” but little transformative justice.<sup>1</sup> Together, Coulthard (2014) and Whyte (2018) suggest that dystopian discourses in the Anthropocene and state-led efforts at recognition often fall short and tend to reinforce racialized forms of power rather than transcend them.

Coulthard and Whyte’s insights are especially relevant in unpacking the current juro-legal, political, environmental, and recognitional conditions—and discriminatory obstacles—that Indigenous Peoples, Traditional Peoples, and Local Communities (IPLCs) face in Brazil, despite legal and constitutional provisions that seem to suggest otherwise. Section 3 of the report “Traditional Peoples and Biodiversity in Brazil” coordinated by Manuela Carneiro da Cunha, Sônia Barbosa Magalhães, and Cristina Adams, and authored by Marés et al. (2021), painstakingly details the historical and current constitutional rights guaranteed to IPLCs in Brazil, and how these rights are being circumvented and reduced across different public, private, and governmental sectors. In short, Marés et al. (2021) describe discursive, material, political, and territorial trends in Brazil that mirror Whyte and Coulthard’s findings.

Brazilian contemporary politics particularly concern Marés et al. (2021), as it has produced waves of anti-environmental and anti-IPLC sentiment. In this polarized landscape, authoritarianism, neodevelopmentalism, and populism are on the uptick, shifting focus from earlier platforms that prioritized tense coexistence of sustainability and development programs to ones that privilege national security in the energy, agricultural, mining, and other sectors. In this way, Brazil’s current necropolitical landscape is oriented around extractivist logics, rural and evangelical lobbying, and dehumanizing discourses that thrive in a system organized around “dispossession by accumulation” (Harvey 2003; see also Russo Lopes and Lima 2022; Santos et al. 2020). Such petrocultural-intensive public and private sector investments can also undermine policies and practices that secure the stewardship of biocultural and linguistic diversity (Josse et al. 2021; Mondardo 2022).

Concurrently, a strong and growing Indigenous and Afro-Brazilian political presence exists, built upon centuries of activism and resistance (Marés et al. 2021). For example, based on IPLC efforts, international recognition of heterogeneous and gendered IPLC knowledges, rights, and justice efforts have been on the rise across various physical and digital sites of global governance (e.g., United Nations Framework Convention on Climate Change, Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, Convention

1. Coulthard (2014:3) employs the expression “politics of recognition” to signify “the expansive range of recognition-based models of liberal pluralism that seek to ‘reconcile’ Indigenous assertions of nationhood with settler-state sovereignty via the accommodation of indigenous Identity claims....”

on Biological Diversity) and IPLC declarations (e.g., 2007 United Nations Declaration on the Rights of Indigenous Peoples - UNDRIP, 2013 Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples, 2018 Declaration of Belém) (Marés et al. 2021; Marion Suiseeya, Zanotti, and Haapala 2021). Nationally, Joenia Wapichana's (Wapixana) election to Brazil's Congress in 2018, Sonia Guajajara's (Guajajara) leadership of the Articulation of Indigenous Peoples of Brazil (APIB), and countless other IPLC associations and their allies, such as the Socio-Environmental Institute (ISA), have sought to uphold guaranteed IPLC rights, hold governments accountable, serve as watchdog organizations, increase the political power of IPLCs, as well as make visible IPLCs' political demands.

Marés et al. (2021) underscore that the 1988 Brazilian Constitution is a crucial site for such battles. The Constitution ushered in a new democratic turn in the country and is a landmark document that at the time embraced long-awaited forms of environmental protections, multicultural pluralism, and territorial rights for ILPCs. Notably, the constitution acknowledged originary rights (*direito originário*) of Indigenous Peoples: first, to be recognized as Peoples and, as such, to have primary rights to their lands, cultures, and heritages. The constitution also established land tenure and other rights of Afro-Brazilian *quilombola* communities (Marés et al. 2021). However, along with these rights, the constitution also created a cumbersome bureaucratic architecture to govern the demarcation of IPLC lands and their associated "assets" or "services". As Marés et al. (2021:13) accurately observe, this complex demarcation procedure has created an overly judicialized process that makes such territorial rights "difficult to execute".

In their opening paragraph, Marés et al. (2021) powerfully note that Indigenous rights and recognition of their lands have a "long legal tradition" and disabuse readers of the notion that it is the bureaucratic architecture or the official demarcation procedure which creates these rights. For some politicians, demarcation procedures have been interpreted as the process of recognizing the right of Peoples to be Peoples, instead of a primary right. Marés et al. (2021:17) further clarify that "recognition of a people has never clearly been explained, making it seem, as the official discourse insinuates, that it is the demarcation that recognizes the existence of a people, which is false." They (ibid.) also explain that this partly elucidates why, even though the collective rights of ILPCs are constitutionally recognized, the bureaucracy accompanying such rights makes them difficult to express. Furthermore, they argue, embedding territorial rights in a techno-bureaucratic process *de facto* sets up systems of information asymmetry and organizational power in which IPLCs are required to operate according to a highly specialized governance process that does not align with IPLC forms of governance, expressions of personhood, and relations to the land.

While the established demarcation process poses several hurdles, these issues pale in comparison to current decrees and amendments on the slate—too many to detail here<sup>2</sup>—which alarmingly chip away at the 1988 Constitution and pose some of the greatest threats to the integrity of ILPC livelihoods and the process of Free, Prior, and Informed Consent (FPIC). For example, the Proposed Constitutional Amendment (PEC) 215 would displace the Executive Branch's power to ratify ILPC territories (including *quilombola* territories) and stall the expansion of any currently demarcated territory (Marés et al. 2021). As Marés et al. (2021: 20) spell out, as a signatory of International Labour Organization (ILO) Convention No. 169 and UNDRIP, Brazil must minimally engage FPIC with IPLCs when enacting "legislative and administrative acts" that may curtail rights. Marés et al. (2021) detail how, in their opinion, FPIC has not been carried out sufficiently or at all in many cases. They conclude by emphasizing the alarming nature of these threats to originary rights in the Constitution for IPLCs and the reverberating impact the proposed dismantling of territorial demarcations and environmental legislation will have on IPLC lifeworlds.

2. Additional pieces of legislation up for discussion include PEC 187/2016, which would allow mechanized and commercialized agriculture and forestry in Indigenous Lands. Bill 490/2007 also known as "Marco Temporal" (time frame limit) seeks to establish that IPLC rights to territories can be recognized only if they were "inhabited on a permanent basis; being used for their productive activities; essential for the preservation of environmental resources necessary for their well-being; and necessary for their physical and cultural reproduction, according to their uses, customs and traditions" (Verdun 2021:17, see Marés et al. 2021: 19). PEC 187 also would create Article 20 that authorizes the National Congress to develop energy, mineral, and water on Indigenous Lands (Verdun 2021:17). Importantly, this Article 20 also states "that Indigenous usufruct should not overlap with the 'interests of national defense and sovereignty', which opens up lands to such development programs listed above if Congress declares it relevant to the security of the nation" (Verdun 2021:18). Bill 191/2020 further seeks to authorize agroindustrial and extractivist activities on Indigenous Lands and remove FPIC. Additional bills such as 2395/2015, 3729/2004, 510/2021, 2633/2020 are proposals to allow commercializing, deforestation, and land grabbing, in Indigenous Lands and also *quilombola* territories. A proposal to withdraw from ILO 169 (177/2021) is on the slate. The already approved Provisional measure 870/2019 placed Indigenous and Afro-Brazilian land issues under the scope of the Ministry of Agriculture, Livestock and Supply rather than the National Indian Foundation (FUNAI) and National Institute of Colonization and Agrarian Reform (INCRA), respectively (Verdun 2021:16-20; see also

The discussion of such changes within this chapter's broader framework of biodiversity loss is noteworthy. The biodiversity framing also is reflective of the normative state of current environmental governance regimes, both international and state-based, which have historically emerged from EuroWestern conservationist efforts that seek to manage natural resources and protect national patrimony (Escobar 1998; Gavin et al. 2015). Even if they are posed as human-centered, dominant environmentalist approaches often fail to address the systemic injustices experienced by ILPCs and continue to frame landscapes in ways that invisibilize their racialized constructions and the politically charged contexts of their present (Sze 2020). Such conservationist rhetoric historically has criminalized anthropogenic landscapes in a way that makes it seem that biocultural and linguistic diversity are not co-linked but antagonistic to one another, thus prioritizing instrumental values rather than Indigenous or Afro-Brazilian rights.

While some of the provisions in the 1988 Constitution have been an exception to the rule, for example, in recognizing Local Communities (e.g., rubber tappers) and Traditional Peoples (*quilombola* communities), they are often subsumed in and compete with dominant approaches to sustainable land use. In international spheres, top-down approaches have been changing with new moves for human and rights-centered forms of conservation, including inclusive conservation. Still, these too often fall short of justice demands (Marion Suiseeya, Zanotti, and Haapala 2021). Nevertheless, Section 3 is a much-needed history of the complicated processes of IPLC demarcation and rights-based approaches in diverse Brazilian governance regimes and their interplay with environmental governance. As pandemic conditions, climate change, forest fires, and illegal extraction intensify, coupled with legislative changes, this situation produces precarious tipping points across Brazil and the potential for unjust displacement-in-place (Mollet 2014).

Still, Section 3 powerfully reinforces that territorial rights are fundamental to IPLC's well-being and their stewardship of biocultural diversity—and that these rights are under threat. As IPLC rights are linked to healthy ecosystem functioning, such a threat suggests a danger to the integrity of intangible and tangible socio-cultural and ecological heritage. While secure land tenure is critical to retain, it is insufficient if it is not accompanied by governance processes that recognize IPLC lifeworlds, as evidenced powerfully by Davi Kopenawa's statement included in the report (Kopenawa in Marés et al. 2021:39). As Whyte and Coulthard indicate, epistemic change and possibilities for self-determination also need to remain at the forefront of dialogues to meet Indigenous and Afro-Brazilian justice demands.

In conclusion, I want to draw attention to the 2021 March of Indigenous Women, whose weighty words and theme of "Reforest our Minds" are a powerful reminder of the work ahead. At the height of COVID-19, women from across Brazil risked their lives and worlds to participate in this event to elevate their concerns. Under the banner slogan of "Reforest our Minds," women protested against several pieces of legislation that sought to erode IPLC rights and threaten their self-determination. They declared:

"We need to build together a path of life and reconstruction, which is based on the encounter between peoples, the care for our Earth, and the positive interaction of different knowledge. This is what we propose with *"Reflorestamento."* It is possible to live and coexist in another way, with other epistemes, based on ancestral cosmologies..."

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