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The Right to Exist

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Brazil

The rights of indigenous peoples and quilombolas can be viewed from two stances. On the one hand there are the rights accepted and granted in national and international legal documents, produced by the State or international organizations in response to the influence, pressure, or request of those peoples. On the other hand, these peoples have the right to exist and resist, regardless of recognized and granted rights. The right to exist and to resist has foundations in the Law of Nations (*jus gentium*), theorized and recognized since the School of Salamanca in the 16th century, by Francisco de Vitoria and Bartolomé de las Casas. Though existing and theorized, the rights of peoples were not recognized by the colonial powers in their laws. On the contrary, they were unceremoniously violated. The colonial powers usurped the peoples' lands and dismantled their societies with their craving to use individuals as labor for colonized production. Not even the emancipated countries recognized their rights. They continued to usurp land and labor. Though violated or usurped, rights did not cease to exist, and for this reason resistance has been permanent.

National and international legal documents have only recognized some of these rights since the second half of the 20th century, when a new chapter began in the struggles of indigenous peoples and quilombolas: the fulfillment of recognized rights. These recognized rights are to exist as a people and as a collectivity, and to live according to one's social and cultural organization in a specific territory as both consequence and enduring permanence of such existence. The protection of these rights is guaranteed by the requirement to consult these peoples about any measures that may alter or affect their existence or territoriality.

The commentaries written by Samara Pataxó, Maria Rosário de Carvalho, Jeremy M. Campbell, Artionka Capiberibe, Marcela Coelho de Souza, and Laura Zanotti, render explicit the discrepancy between the recognition of rights and their fulfillment. That discrepancy is visible not only in the way that the legislative, executive, and judicial branches of government interpret national and international laws, but also in the concrete actions of state agents and private sectors interested in indigenous lands and quilombolas.

Their commentaries show, with greater or lesser intensity, how public policies are able to systematically violate approved norms and how they reproduce the prevalent discourse of the colonial and emancipation eras, under which lands should be privatized and peoples individualized as labor. The right of indigenous peoples—a primary and self-sustaining right—to exist as a people and to enjoy rights as a people, although recognized by state norms, suffers a variety of obstacles. These range from the definition of collective right—something elusive and diffuse—to the attainment of land rights denied by demarcation. The legal hallmarks of modernity—individualization of rights and viewing land as merchandise—veil the understanding of collective rights over goods and land. That denial, in itself, is a violence; though many more are also committed, stemming from it or not.

The commentaries provide important information, such as Artionka Capiberibe's, which presents data on physical violence against indigenous peoples. Such violence is part of a greater movement that goes beyond the denial of recognized rights and reaches into an aspect of the structural racism of Brazilian society. Evidently, whilst racism supports the denial of rights,

it simultaneously intensifies the violence ensuing from that denial. In that sense, it nurtures the integrationist perspective that the 1988 Constitution eschewed, as Samara Pataxó quite clearly shows in her commentary. This means that, despite explicitly recognizing rights in national and international legislation, the ideology that guides practice is integrationist and emancipatory, in the inverted sense of those two words, as Artionka Capiberibe notes.

The analysts comment on contemporary policies of the Jair Bolsonaro administration, which has given signs of ignoring recognized rights and trying to fracture them by denying their validity, or even trying to repeal them, as with the attempt to reject ILO Convention 169. Yet, it is not only the administration, for both Congress and the courts also ignore recognized rights and behave as if the Constitution and ILO Convention 169 do not say what they say. However, that denial is not unanimous and there are clear divergences, as in the widely commented discussion regarding the time frame limit (*marco temporal*) in the Federal Supreme Court, as noted by Jeremy M. Campbell. Precisely because it is not unanimous, the conflict continues, and indigenous peoples' resistance makes itself heard.

The commentaries regarding isolated peoples by Fabio Ribeiro, Miguel Aparicio, and Beatriz de Almeida Matos uphold the portrayal of discrepancy and conflict. Public policies act in ways that ignore the existence and the rights of these peoples, starting from the denial of the right to be isolated, as can be seen in the five modes of violence that the authors describe. In fact, as the comments show, that is not the explicit intention of internal and international norms, and what they establish. None of the norms allow for differences among populations. Peoples in isolation, whether voluntary or not, have the right to exist, and internal and international norms recognize that right; and if that right is recognized, then the same goes for the territorial areas necessary for their existence. As the commentaries demonstrate, the state's refusal to protect their existence and territory violates established norms.

The 1988 Constitution and ILO Convention 169 were innovative, emerging from a hefty national and international indigenous social movement. That movement has continued to extend concepts and struggles. The good news at this time is that the populations count on clear voices that participate in the discussion. During the court process regarding the time frame limit (*marco temporal*) dispute, the lawyers defending the peoples' rights were largely highly qualified indigenous professionals, such as Samara Pataxó, who authored one of the commentaries. This changes the quality of the discussion and nurtures hope that the rights may be fulfilled.