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Traditional Peoples and Biodiversity in Brazil: Editors' Reply to Discussants

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The plan for our admittedly ambitious project consists of seventeen sections or volumes, organized into six parts. The core theme, though, is simple. We aim to convey the contribution of indigenous peoples, quilombolas, and other traditional peoples, to biodiversity in Brazil, followed by the difficulties in its realization due to public policies. Section 3 describes the pitiful fulfillment of legally recognized territorial rights and the comments provided by discussants in the journal *Tipiti* have substantially enriched the debate. We are grateful for those comments and would like to discuss here some of the topics they raise.

Regarding indigenous lands, what seems paradoxical about the constitutional duty imposed upon the State to demarcate them is that, from a legal perspective, they do not need to be demarcated. They already have legal deed prior to any state recognition or demarcation. That deed is, precisely, the *Indigenato*, the most basic of all rights to land, as João Mendes Jr. recalled in 1912. That is why indigenous peoples' right to land they traditionally occupy are, as the Constitution states, originary rights, which the State recognizes but does not grant, as they precede the very existence of the State. The State's task is to demarcate them because it is its constitutional duty to protect them, and demarcation should give them some protection from invasion. Bolsonaro's government eased mechanisms for land grabbing (*grilagem*), including registering deeds. Among other strategies, the government removed lands that had not yet been demarcated from the *Sistema de Gerenciamento Fundiário do Brasil* - SIGEF (Land Management System of Brazil) allowing it to validate land grabbing actions.

The destructuring of institutional arrangements that protect traditional peoples in Amazonia sponsored by the Bolsonaro's government is partially explained by the traditional opinion of large sectors of the military, as Maria Rosário de Carvalho discusses. These social sectors preach that indigenous peoples' territorial rights are a threat to Brazilian sovereignty, and they lay their suspicions on the vast concentration of indigenous lands in Amazonia, purposefully ignoring the history of each region: until a half-century ago, those lands were simply not coveted.

We ascertain that there was a short period of less than ten years after the 1988 Constitution during which the process of regularizing indigenous lands advanced quite rapidly. However, resistance to that state of affairs was brewing, creating obstacles to the demarcation of indigenous lands. The five years deadline for completing demarcations of indigenous territories, established in the Constitution's Provisional Measures, was already a renewal of a 1973 law called *Estatuto do Índio* (Indian Statute). Just like the first time, the deadline was not

honored and thirty-four years later, as Jeremy Campbell reminds us, there are still territories awaiting demarcation. However, for around two decades after the 1998 Constitution and its new rights established for indigenous peoples and *quilombolas*, some declarations and demarcations were achieved. The Yanomami Indigenous Land, the largest in the country, and lobbied for by a prior extended civil society campaign, was brought into effect in 1992 to celebrate president Collor's hosting the Earth Summit. It was a time of high hopes: Francisco de Assis Araújo, a Xukuru indigenous leader known as Xicão, was working as a bricklayer in São Paulo. He took the Constitution's words to heart and returned to Pernambuco a year after the new Constitution, and for several years until his assassination, he led a campaign for the regularization of Xukuru land. A ministerial declaration was obtained in three years and the land was subsequently physically demarcated in 1995, totalling 27,500 hectares. It was only confirmed by the president of the country six years later, in 2001. During those six years, attempts to block similar initiatives had been put in place, with the presidential decree 1775 in 1996, ensuing from the initiative of Justice Minister, Nelson Jobim. As Samara Pataxó shows, from then on the amount of legislative bills hostile to any demarcation also grew. Bounded by the executive branch and attacked by the legislative branch, indigenous peoples' rights to the demarcation of their lands would also suffer in the Supreme Court with the so-called theory of "time frame limit" (*marco temporal*) that tried to limit land rights solely to those native peoples who were living on their land at the time of the Constitution. Violent deportation and expulsion were thus to be disregarded. Supreme Court's verdict on the issue has been repeatedly postponed—I am writing in August 2022. The outcome—as shown by Samara Pataxó—is a halting of demarcations via the judicialization of indigenous lands, even those that were already demarcated and confirmed. As Artionka Capiberibe reminds us in her comments, there was clearly a growing regression of the State regarding the fulfillment of constitutional rights confirmed in the 1988 Constitution. Regarding the executive branch, Jair Bolsonaro (2019-2022) will finish his term with levels of violence, invasions and territorial plundering unheard of until then. However, the anti-indigenous reaction of the executive branch had emerged earlier, with the rise of the political and economical power of agribusiness. Whether as deliberate policy or by submitting to political pressure, the previous governments also sacrificed, to a greater or lesser extent, the fulfillment of indigenous peoples' rights to demarcation and land protection. Yet, until the Bolsonaro government, none of the presidents had declared themselves anti-indigenous. Neither had any of the other presidents attempted to condemn the important Convention 169 of the International Labor Organization.

Marcela Coelho de Souza highlights the difficulty of translating indigenous concepts of relations with their territory into Brazilian positive law categories of property and possession. The legal concept of inalienable possession was first included in the 1934 Brazilian Constitution and remained in every single Constitution ever since. The 1967 Constitution established that indigenous lands were property of the Union and indigenous peoples retained exclusive usufruct rights. Undoubtedly, it was a makeshift solution. As Justice Vitor Nunes Leal explained decades ago, indigenous possession cannot be conflated with civil possession. The crux of this difficult legal translation derives from distinct relations with the land. All beings that live on such lands - humans, but also animals, plants, rivers, topographic elements, spirits, and so on - have their own rights of existence and usufruct. Humans must take care of land, as much as they may enjoy and make use of it. Perhaps this is why Yanomami don't have a stand-alone word for "land". The term *urihi* is always translated as "forest-land". In our legal system, the concept of "land" is separable from everything that may live on it. A wasted land is still land and still marketable real estate, as if everything were fungible.

That notion—that land rights coexist with the rights of other beings—is likely the source of the renowned efficacy of the protection of the forest and its biodiversity in indigenous lands in Brazil. The value given to diversity also applies to agrobiodiversity and the striking care

that is taken to favor, cultivate, and maintain, the largest variety of each agricultural species. That condition of simultaneously being caretakers and users of a land in which all beings have rights is, according to Marcela Coelho de Souza, what identifies “peoples of the land” (*povos da terra*). These include many traditional peoples, not just native Brazilians, but also quilombolas, caiçaras, castanheiros, rubber tappers, pantaneiros, and many others in Brazil.

Even though it may be argued, as Laura Zanotti does, that the legal-institutional concept of demarcation and protection of indigenous territories derives from a colonialist perspective of guaranteeing rights while ignoring the systemic injustices suffered by First Nations, and which currently includes biodiversity as an additional value, Amazonian archeology has shown that current and past management techniques produce and produced anthropogenic landscapes that reveal the cultural and linguistic diversity of ancestral peoples and which are valued right into the present by indigenous and traditional peoples, as well as small-scale farmers. Over the past 14,000 years, those peoples and their ancestors, have developed strategies to use and manage the natural environment which are consistently based on agrobiological diversity, thus transforming Amazonia into an important focus of plant domestication and management of undomesticated plants. For this reason, the Amazon region has a unique history regarding co-evolution and the production of (agro)biodiversity, different from the conventional model based on the domestication of cereals and the domestication and semi-domestication of biodiversity and landscapes. The tight intertwining of the components of biodiversity, territorial space, individual and group, and local concepts and practices of material and immaterial wellbeing, is illustrated by the different integrated systems of biodiversity management that develop as a process of the construction of a lived space, sometimes negotiated with other beings, owners of the plants, animals, forest spaces or rivers, and rocky areas. Despite agreeing with Zanotti about the political use of dystopian discourses in the Anthropocene to reinforce racialized forms of power, the local effects of global climate change are already being felt by traditional peoples, such as the unprecedented flooding of the Ayari river in 2021, which altered the Baniwa horticultural plantation cycle, the reproduction of the *daracubi* worm used as fishing bait, and the annual *piracema*, which never happened.

Lastly, the comments by Fabio Ribeiro, Miguel Aparicio, and Beatriz de Almeida Matos, who are all part of the *Observatório dos Direitos Humanos dos Povos Indígenas Isolados e de Recente Contato* - OPI (Human Rights Watchdog Organization for Isolated and Recently Contacted Indigenous Peoples), summarized with precision the attacks suffered by isolated peoples. That topic was not included in section 3, but had an important presence in section 1, as well as section 4, where norms specifically pertinent to isolated peoples are expressed in the barely enforceable fragile ordinances of FUNAI.

Their comments also raise another problem with our publication that is worth considering. Even though we dealt with this topic in two other sections, they did not attest the worsening of territorial problems due to politicians’ reluctance to maintain and prolong the barring of isolated peoples’ territories, as with the cases of Ituna-Itatá and the Piripikura. They also did not include gains in the judicial branch mostly promoted by the *Articulação dos Povos Indígenas do Brasil* - APIB (Articulation of Indigenous Peoples of Brazil), nor the most recent tragedies, such as the murder of Bruno Pereira and Dom Philips on June 5, 2022, in the Javari region.

This shows just how important it is to remain updated regarding public policies and their transformations, things that can change at any time in a country’s history. Thus, we alert readers that some of the published sections have a long-term usefulness, such as those that discuss traditional peoples’ practices and values that contribute to biodiversity. Other sections attempt to portray contemporary policies that are liable to frequent modifications. Even though they will be useful to historians and researchers interested in the development of

policies, they would require regular updating. These problems stem from a conscious choice we made. Right from the start we wanted to direct our diagnosis to the decision-makers here and now.

For these reasons, we applaud the updates provided in this book forum and hope that future generations will continue to provide them, whether in this or another format.