
Brazil and land rights: A historical struggle that continues and intensifies

Interview to Roberto Liebgott, coordinator of “Regional Sul do Conselho Indigenista Missionário” – CIMI (The South Regional from the Indigenous Missionary Council) in Brazil.

WRM: Brazil's recognition of indigenous rights in the law has been an example for other countries in the world, and has served as inspiration for indigenous peoples and their struggles in other countries. What would you highlight about this?

In 1537, Portugal needed the Church to take a position on the possibility of subjecting "discovered" individuals to slavery. Pope Paul III issued the bula *Sublimus Dei*, in which he recognized that the "Indians" were people capable of receiving the Catholic faith.

I dare refer to this document from the sixteenth century to show how the "Indian issue" was already on the table from the beginning of the European invasion. The Pope's response confirms that the Church was anxious to convert them into "Christians," and at the same time affirms the need to ensure their freedom and ownership of their property. The three central concerns expressed by the Church/State (converted souls, freedom and property) clash with the colonial expectations over the centuries, which were mainly characterized by enslavement, exploitation, conquest, dominance and extermination. Those processes are linked to the domination of native peoples and their lands. Territorial disputes have been ongoing for more than five centuries, through different means and strategies, with devastating effects on communities and indigenous peoples.

At the turn of the twentieth century we see how the indigenist policy was based on identifying "indigenous groups" to promote their displacement and confinement into reservations created by the State. The objective of this displacement policy was twofold: to integrate the Indians into the national society, and to use their lands for economic expansion projects—to build roads, railways and hydroelectric dams, to install mining and timber companies, and to promote agriculture and livestock production. It was noted that "said Indians," per Pope Paul III's words in 1537, had not been extinguished, and that by remaining on their lands, they presented an obstacle to exploitation of these lands.

The 1988 Federal Constitution overturned this assimilationist policy. The rights guaranteed in Chapter VIII and articles 231 and 232 were victories for indigenous peoples, and they were the result of mobilizations that preceded that period, even while the National Constituent Assembly was working.

Chapter VIII of the Constitution, entitled "About the Indians," explicitly recognizes the specific and differentiated cultural identity of indigenous peoples in articles 231 and 232. It also recognizes their native rights to the lands they traditionally occupy, making the State responsible for demarcating them. Note that, even though these rights do not appear as fundamental rights and guarantees, they are understood as such, and therefore should be applied immediately. Therefore, **the current Federal Constitution redefines the State's relationship to indigenous peoples: from being wards of the state, they become subjects with individual and collective rights. The**

Constitution also recognizes ethnic and cultural pluralism and ensures the Indians native rights over the lands they traditionally occupy, with the State being responsible for demarcating them.

However, it should be noted that despite the constitutional improvements, in recent decades governments have ignored and negotiated with indigenous rights. The current policy is rooted in genocidal concepts and conceptions.

Among the anti-indigenous strategies that the current Brazilian government has adopted is the time frame from the 1988 Constitution, which aims to demand that peoples and communities be in possession of their land by October 5, 1988, or else, be legally demanding or physically competing for it. The peoples that do not comply with these conditions would lose the right to demarcate the area they claim.

This leads to at least two questions. First: How could some indigenous peoples be on their lands in 1988, when they had been expelled from them some time before—with the consent, participation or oversight of the State? Furthermore, these peoples never lost their relationship with their traditional lands, and if they did not recover them before, it was because they were unable to do so. Second: How could indigenous peoples be litigating their lands in 1988, if until then they were still considered to be wards of the state, and not subjects with rights?

We trust that, in the case of judgments on actions related to the demarcation of indigenous lands, the Federal Supreme Court will adopt—as its interpretative axis—the constitutional precepts and not political and economic interests. But if the thesis of the temporal framework were eventually to be consolidated, the rights of indigenous and quilombola peoples would be annihilated (1); and as a result, the lands—even those that have been demarcated over the last decades—could suffer setbacks due to economic interests, and therefore be subject to review.

Thus, the government seeks to impose the will and interests of exploiters over the rights of indigenous and quilombola peoples, which in practice means a step backwards in the law. This is the strategy. Worse yet, it negotiates benefits and favors with administrative public officials, placing rights in a vulnerable condition. Such favors apply only to those who hold positions, or who are selected or embraced by hegemonic economic interests, transforming rights into a privilege. It is as if we were living in a regime of exceptions. Unfortunately, this is what seems to be happening in the current political and legal context in Brazil.

WRM: What does Brazilian legislation say about other rights, for example the rights of companies and large landowners who are interested in indigenous lands in order to develop mining activities, large dams, monocultures, etc.—rights which are often imposed over indigenous rights?

The text of the Constitution establishes that the Brazilian State must promote the demarcation of lands, recognizing the Indians' native and inalienable rights to the permanent possession and exclusive usufruct of the existing natural riches in the soil, rivers and lakes of traditionally occupied areas. Furthermore, the Union (State) is required to protect, oversee and make sure that all assets are respected, including intangible ones such as the cultures, beliefs, and traditions of each people.

I also refer to Article 20, section XI of the Constitution, which establishes that traditional indigenous lands are property of the Union, and therefore not indigenous property. This norm protects not only the physical occupation of the land but also the right to traditional occupation. It follows from this

content, combined with Article 231, that land use is not restricted to economic and social aspects, because these aspects inherently imply a future wherein peoples are able to express themselves in their different ethnicities (socially, politically and economically). And it is the State's obligation to ensure the protection of environmental areas, sacred spaces and those of a symbolic nature, using the peoples' future as a reference.

The right to own property is specified as an native right, and therefore does not depend on titling, and precedes all other rights (Article 231, first paragraph). That is why paragraph 6 of this Article expressly states that titles that affect an indigenous land are declared null and void, without any legal effect.

Paragraph 2 of Article 231 establishes that the lands traditionally occupied by the Indians are designated for their permanent possession, and to the exclusive usufruct of the riches that are not found in the subsoil. Meanwhile, it should be noted that the possibility of exploiting natural resources will only be allowed if the Union has a relevant public interest; and this will depend on a complementary law (which was not approved yet). With regard to good-faith occupations of land, the same article states that the Union must compensate for any improvements occupants have built—for example buildings or perennial plantations—but no compensation for the land is provided.

WRM: The Brazilian constitution established a period of five years (from its enactment in 1988) to demarcate indigenous lands throughout the country. However, that did not happen, but rather the opposite. How many indigenous lands are still awaiting demarcation, and what are the main forces and strategies that have prevented fulfillment of this point of the Constitution?

Regarding the consolidation of land rights—that is, their possession and usufruct—the Transitory Constitutional Dispositions Act (Article 67) established that the Brazilian State would have a five-year timeframe to complete the demarcations of indigenous lands, a timeframe which would have expired on October 5, 1993. According to data from the Indigenous Missionary Council (CIMI, by its Portuguese acronym), today there are still 1296 lands in Brazil, 640 of which have been legalized. The remaining lands are in stalled processes, or perhaps the demarcation procedures were not yet initiated by the relevant indigenous organization.

I believe that the failure to comply with the Federal Constitution in the demarcations is due to economic interests, in particular to agribusiness, mining, energy and timber companies. At the heart of these disputes are three arguments that try to convince the population, politicians, legislators and justice officials to oppose the demarcations.

The first argument is that there might be some kind of foreign plot against the nation involved in movements to defend demarcations of indigenous lands. It is important to remember that indigenous lands are property of the Union, which must be protected and safeguarded for the exclusive use of indigenous peoples. This legal device is sufficient to demonstrate that if there are foreign interests in Brazilian lands, indigenous areas would certainly be the least susceptible, as any investment in them that does not have the National Congress's authorization would be considered illegal.

The second argument is based on the idea that "it is a lot of land for a few Indians," which is linked to the concept that lands are resources that are necessary for national development, and should therefore be productive. In this vein, the idea that the Indians want "so much land" is probed; this triggers a racist logic by which all peoples' and cultures' lifestyles and livelihoods are evaluated using western criteria and a neoliberal rationale considered to be universal. According to this racist

perspective, only those who effectively "produce" from the land are working and taking advantage of their potential. Meanwhile, those who develop a more respectful relationship with the ecosystem—as well as an attitude aimed at preservation—are seen as subjects who do not work, who do not have ambition, or who do not know how to give (economic) value to the land.

The third argument is the popular idea that, under the pretext of demarcating lands for the Indians, injustices could be committed against the farmers who produce food for the population. To understand this matter, it is necessary to reopen some historical aspects that have led us to the current situation, in which Indians and farmers are litigating for the same lands.

In the first decades of the twentieth century, governments promoted the territorial occupation and colonization of spaces considered to be "empty." There are records from that time period of innumerable "ethnic cleansing" practices, by which entire villages were exterminated. Hundreds of other communities were expelled; these forced removals throughout history gave rise to contemporary conflicts. It is those lands—lotted and sold by governments in previous decades—which are now in litigation for demarcation. In indigenous and quilombola villages, as well as farming communities currently residing on these lands, there are many men and women who lived through that period and relate the events. They say there is material evidence of indigenous and quilombola presence—such as cemeteries, ruins of old houses, remains of artefacts used for hunting, among others—in the lands in dispute for demarcation today.

WRM: Today, about 11 per cent of the national territory is demarcated indigenous land. Aside from their rights enshrined in the Constitution, what was really crucial in this victory for indigenous peoples?

In my opinion, the coordination of indigenous peoples that began with the large Peoples Assemblies put up resistance to the frontiers of economic expansion in the late 1960s. They denounced the reality of genocide and promoted the discussion on the need for specific legislation for the peoples—which later became Chapter VIII of the Federal Constitution. Added to this was the strong participation of entities and organizations in Brazil and abroad, which worked for the indigenous cause. Some of these include CIMI, Operation Native Amazon (OPAN, by its Portuguese acronym), the National Association of Indigenous Action (ANAI, by its Portuguese acronym), and international cooperation agencies and entities. Later in 1985, there were indigenous organizations, the national and regional UNI (Union of Indigenous Nations), indigenous student movements, indigenous women's movements and many other movements that were also, in my opinion, the result of coordination and mobilizations previously initiated by the large assemblies. And so the road was made in the 1990s and after 2000, when there was already a defined legal structure through the Federal Constitution. And the peoples started appropriating and realizing their rights, although never without challenges, and never without the State's failure, and constantly having to remind governments that indigenous peoples are subjects with rights.

WRM: The indigenous struggle in Brazil is currently facing one of its most difficult moments, with a big threat of setbacks, including related to rights guaranteed in the Constitution. What are the main attacks on indigenous rights and who instigates them? How do indigenous peoples and their allies resist them?

Undeniably, we are living in a period of restriction and denial of rights. The Federal Constitution is being circumscribed, through interpretations and alterations favouring economic and political sectors. The highest law is systematically ignored as it relates to indigenous peoples, and especially the scope of their right to land, which is now restricted by the logic of private property. In dubious

interpretations of the law, the native right to land that peoples traditionally occupy is being contested, as well as the effects of constitutional devices that define these rights as inalienable, unassailable, and—in the case of the right to lands—indefeasible.

In analysing the current situation, we must refer to the policies established at the beginning of the twentieth century, which promoted the identification of "indigenous groups" with the intention of displacing them to reservations where populations of different peoples were lumped together. I refer to this because, apparently, this policy is being resumed. Today, using the argument of creating reservations instead of demarcation, there are efforts to once again displace indigenous peoples from their lands, which are being contested for the implementation of development projects and the expansion of agribusiness.

That said, the removal of the indigenous population from their lands, or the negligence around demarcation, are proof that economic interests are eyeing indigenous rights and seek to incorporate them as resources.

We are already seeing brutality in these processes. In the state of Maranhão, loggers are actually promoting hunting down indigenous people who oppose deforestation and logging, which intensified this year with the invasion of indigenous lands. Eight Guajajara people were killed. The murderers tore off and exposed body parts of some of the victims (2). In Bahia, Tupinambá leaders are criminalized, assaulted, threatened and killed (3). A similar situation occurs against the Xakriabá People in Minas Gerais. In Río Grande del Sur, Santa Catarina and Paraná, attacks on indigenous rights are added to the persecution, criminalization and imprisonment of leaders who fight for land. In Mato Grosso del Sur, there have been recurring attacks against the Guarani-Kaiowá and Terena Peoples, but in 2016 especially, federal judges ruled an interdiction on territorial rights in areas that were already demarcated, or in others whose processes were underway but ended up being obstructed. Concomitantly, they evict communities through the use of police forces.

WRM: What would you say to indigenous peoples and indigenous organizations from other countries that seek to follow Brazil's example? What is really essential to guarantee the protagonism and autonomy of indigenous peoples within their territories, and what is the role of the struggle for rights? And how to deal with the pressure of Big Capital, which seeks to impose its rights over indigenous rights?

We cannot make suggestions about indigenous matters if we are not inserted in them, even indirectly. The specificities of struggles, of peoples and cultures and the way of being and living, in general, provide direction and meaning to the political, legal and legislative battles. Each people ends up making their path in the struggle against the injustices to which they are subjected. However, what seems to be common amongst all the different peoples and cultures, is the need to think of ways to identify what brings people closer together, as well as what distinguishes them from each other. By identifying what unites them, they can establish joint mechanisms, mobilizations and struggles. Oppressors generally design their joint strategies considering the exploitation of other peoples, their lands and their resources. In regards to indigenous peoples and other exploited and criminalized social groups, we must fight by joining and combining hopes, interests, expectations and spiritual forces.

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CIMI, <http://www.cimi.org.br/>

(1) Quilombolas: communities formed by people subjected to slavery who managed to escape captivity

(2) See: <http://www.cimi.org.br/site/pt-br/?system=publicacoes&cid=30>

(3) See:
<http://wrm.org.uy/articles-from-the-wrm-bulletin/section1/brazil-the-struggle-of-the-tupinamba-indigenous-people-to-protect-their-territory-and-the-conservation-of-forests/>