



Indigenous peoples boxed in by Brazil's political crisis

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After two decades of military dictatorship, a new Constitution proclaimed in 1988 gave pride of place to human rights and the protection of the environment. Nicknamed the Citizen Constitution, it expressed hope for a regime of justice and democracy. Thirty years on, it has suffered from all sorts of distortions: its terms have been violated, as occurs so often with such documents, and, even more seriously, constitutional amendments and decrees have attempted to disfigure it.

Land conflicts are endemic

A great many conflicts involve land and its use. Land outside of the real estate market is particularly coveted. Such land includes territory recognized to indigenous peoples and to the descendants of maroon communities (the *quilombolas*),² along with plots redistributed through the national agrarian reform program. All of these are now the targets of new policy proposals.

Across Amazonia, different actors sneak onto protected lands: the *grileiros*, who illegally take over territory by making use of documents forged out of whole cloth; the illicit lumberjacks, pillagers of valuable woods, who range the region with more and more sophisticated methods; the gold miners and other mining interests. Agribusiness, soy and cattle raising at its forefront, is claiming more and more space for its activities. These already occupy the majority of another precious ecosystem – the *Cerrado*³ – and impinge powerfully on eastern Amazonia, especially in the state of Pará.

In other areas, conflicts also spring from older territorial evictions. Such is the case with the central-west region of the country, which includes Mato Grosso do Sul state and the western part of Paraná. This territory was “colonized” with government encouragement during the 1940s. Guarani people were violently

¹ Translated from the French by Gregory Duff Morton, Bard College.

² Translator's note: Quilombola communities, in Brazil, are rural communities composed of descendants of enslaved people who maintain a strong historical link with the past. Quilombola communities enjoy land rights under the 1988 Constitution.

³ Translator's note: the Cerrado is a tropical savannah ecoregion that occupies a large portion of central Brazil's landmass.

dislodged and shoved into small reservations. They have for decades sought to recover their traditional lands. Current occupants, backed by private militias, are fighting them. As a result, a string of assassinations ensues. This tragedy is well documented in Vincent Carelli's recent film "Martyr."

Such conflicts are endemic, not simply the work of those who have recently begun invading public land. During the debates over the 1988 Constitution, indigenous peoples' rights were already opposed by the mining industry and actors who were interested (for various reasons) in infrastructure construction. It is not difficult to spot the very profitable bribes involved in dam building, and thus the links are revealed that connect political parties to the promoters of that which, in Brazil, is still referred to as "development."

Infringing more and more on indigenous peoples' territories, the policy of dam-building in Brazil stretches back to the 1970s and the period of military dictatorship. This policy has particular importance for the mining industry and agribusiness. It was revived near the end of President Lula's second term, with the Belo Monte Dam on the Xingu River and two dams on the Madeira River, which, once again, impacted several indigenous societies and riverine dwellers, the *ribeirinhos*. The current economic crisis has put on hold a plan for five large dams in the Tapajós basin, which would directly affect the Munduruku people.

A number of constitutional amendment proposals – referred to by the Portuguese-language acronym PEC – have been held in suspended animation for years, even decades, waiting for the right moment to be placed on the agenda of the House of Deputies. PEC 215, one of the worst menaces currently afflicting indigenous territories, is originally from 2000. Decisions about when and how to demarcate land have always been made by the executive branch, but this amendment would grant that power to the legislative branch, where agribusiness – in open opposition to indigenous peoples' interests – is strongly represented. The amendment would even require that Congress go through the process of ratifying indigenous lands that have already been recognized. Rejected when it originally passed through the Constitutional Committee, this amendment proposal was resurrected fifteen years later by the president of the House of Deputies – currently in prison under corruption accusations – and sent again to the Constitutional Committee. It was no surprise that it was approved this time around. So PEC 215 could now be placed on the congressional agenda and voted on when the moment is right. And the right moment could well be right now.

A new level of violence.

To understand the rising strength of a new level of violence in rural Brazil, one must begin by considering its context: a political crisis without precedent. This crisis has ravaged numerous domains of Brazilian life, and traditional populations and the environment are especially affected.

To a growing extent over the past several legislative sessions, the House of Deputies and the Senate have been dominated by a number of representatives and senators who – regardless of their political party affiliation – vote as a bloc on certain legislative proposals. These elected officials make up what in Brazil is called the "*ruralista* front." They express the interests of the great landowners, involved principally in extensive cattle ranching and large-scale farming of soy, corn, and sugarcane, who are the public face for the totality of Brazilian agribusiness,

which includes Cargill, Bunge, Syngenta and others. Under the Agriculture and Ranching Confederation of Brazil, landowners present themselves as key economic actors bringing in foreign currency in a period characterized by recession and massive unemployment which, for the first time, has exceeded 13%. Their economic power translates into political power, especially in the legislature. Their platform includes the end of new demarcations of indigenous land, the abolition of the National Indian Foundation (FUNAI),⁴ a reduction in the size of areas set aside for environmental conservation, and the loosening of environmental regulations.

Over the last ten years, as the *ruralista* front has increased in power -- both economic and parliamentary, traditional populations and the environment have been subjected to more and more muscular attacks. Environmental and indigenous groups have also suffered notable defeats, such as the 2012 adoption of a new Forest Code and the granting of amnesty for previous violations of environmental rules. If one compares the acreage of indigenous lands that were registered over the past six presidential terms -- from Fernando Henrique Cardoso (1995-1999, 1999-2003) to Lula (2003-2007, 2007-2011) to Dilma Rouseff (2011-2014, 2015- May 2016) -- one immediately notes the inverse relationship to the rise of the *ruralista* front in the legislature. Fernando Henrique broke records for the scale of indigenous land demarcation, benefitting from financial support from the German government for this purpose. Lula, during his first term, increased the number of conservation units. He also helped resolve a thirty-year-old dispute, with the result that the invaders of Macuxi indigenous land, in the state of Roraima, were expelled. But the government of Dilma Rouseff gave few indications of favoring the environment, agrarian reform, or the rights of indigenous people and *quilombolas*.

Thus, the current situation is not new. What has changed the game is the impeachment of Dilma Rouseff and the rise to power of her vice-president, Michel Temer. Suffering from extremely low popular approval ratings, subject to corruption accusations, he continues -- as of the present moment -- to be held in office by the financial and industrial sectors. Not needing to worry about his popularity (since he has never had any), and known for his skill at handling agreements inside Congress, President Temer presents himself as being capable of pushing through changes that are widely unpopular, particularly a reform of labor legislation and changes in government-guaranteed retirement pensions.

Of the 513 members of the House of Deputies, the *ruralista* front claims to command at present 228. Moreover, they have two powerful allies: pentecostal deputies and the group that advocates the right to bear arms. United, the three make up what is known in Brazil as the BBB Front, that is, the front of Beef, the Bible, and the Bullet. President Temer seeks support in the House of Deputies and the Senate by distributing ministerial posts to allied parties and, in particular, by granting concessions to the *ruralistas* front. Following a practice used by Dilma Rouseff, he has become well-known (and even created an uproar) for issuing Provisional Measures, presidential decrees that must be subsequently approved by

⁴ Translator's note: FUNAI is a Brazilian government agency that carries out policy related to indigenous peoples.

Congress and return to the president for sanctioning.⁵ These decrees cover a variety of subjects, but their common characteristic is eliminating protections and weakening regulations. For example, banks were exempted from the requirement of verifying that the projects they plan to finance have respected environmental rules.

One decree in particular (MP 756) aimed at amputating the National Park and the National Forest of Jamanxim in Eastern Amazonia. More than half of the National Forest of Jamanxim was involved, along with a part of the National Park of the same name – around six hundred thousand hectares in all. This case speaks eloquently: it means the dismemberment of the mosaic of conservation units that link the Xingu and Tapajós basins.

This is a mosaic with a very specific history. It was created in 2006 to reassure those who protested against a road, BR 163 that allowed for soy production from Mato Grosso to flow to the grain port of Santarém, on the Amazon River. One could have predicted that this road – which was in the process of being covered in tarmac – would serve, like all of the Amazonian highways, to spearhead a new onslaught on the forest. The government promised that, this time, a barrier would be erected against the damage created by the project, and for this reason eight conservation units were created to serve as protection. The initiative was named “sustainable BR 163.” In the part of the mosaic closest to the road, an invasion of *grileiros* settled in. While at the time deforestation was slowing down in Amazonia as a whole, this region saw a strong increase.

At present, the core of precious trees has been exhausted, and the area is dominated by mining activity and the sale of illegally-obtained lands. Instead of restricting these violations, the decree simply intend to legalize ill-gotten possession. Previous attacks on Conservation Units were meant to allow for dams envisioned in the Growth Acceleration Plan (PAC) designed by Lula and Dilma Rousseff. Now, the new goal is simply to accommodate invaders.

Six former Environment Ministers and around 70 NGOs objected to the proposal in strong terms. President Temer ultimately vetoed MP 756, which he himself had initiated, and he cited the appeal addressed to him by the famous model Gisele Bündchen. But the government has since reintroduced a bill to the very same effect.

The parliamentary investigation.

On May 30, 2017, a Commission of Parliamentary Inquiry approved a 3400-page report that attempts to weaken and if possible eliminate the National Foundation of the Indian (FUNAI). The report also takes aim at INCRA (the National Institute for Colonization and Agrarian Reform), the body that recognizes lands to maroon communities and also landless peasants occupations carried out by landless movements on properties considered to be unproductive.⁶ The report’s

⁵ Translator’s note: In Brazilian law, a president can issue Provisional Measures that have the force of law for 60 days, after which point they have to be renewed until they are ultimately approved or repealed by Congress.

⁶ Translator’s note: Brazil’s landless movements, the largest of which is the Movement of Landless Rural Workers (MST), often carry out occupations of large plantations that are not productive. These occupations, which respond to the needs of small farmers in poverty, are

author is none other than the president of the ruralist front himself; in an earlier version, he suggested the dissolution of FUNAI and the creation of a different institution. The opposition, which drew up a parallel report, has not had a single amendment approved, as the parliamentary commission has a majority of “*ruralistas*.” A first draft of the report demanded that the Public Ministry investigate 100 people, including prosecutors from the Public Ministry itself and two deceased individuals. Having wisely excluded the dead and the prosecutors, the report’s revisers arrived at the final number of 67 people—anthropologists, missionaries, indigenous people, staff of FUNAI and INCRA, an NGO, and even a former Minister of Justice under Dilma Rousseff (a very timid one at that). The ex-president herself, who had always refrained from favoring the demands of indigenous people, *quilombolas*, and landless farmers social movements, had hurried to change position on the eve of her impeachment in May 2016. The report demanded the cancellation of the last-minute measures that she implemented in this spirit.

The report’s accusations focus in particular on the procedures for demarcating indigenous territories. It alleges that the anthropologists charged with providing evidence for this purpose were not objective, but acted like activists supporting the indigenous cause. Their data, it was argued, were biased.

At this point, FUNAI and the INCRA are both already seriously underfunded and their capacity eroded. FUNAI no longer has a budget to manage complex situations, like first or new contacts with indigenous societies referred to as “isolated,” which seem to be abundant in southwest Amazonia. Victoria Tauli-Corpuz, the UN High Commissioner for indigenous rights, has just declared that FUNAI is so weakened that indigenous peoples no longer have any protection.

An increase in rural conflicts and deforestation in Amazonia.

This is exactly what their enemies seem to be sensing. The “*ruralistas*” are celebrating a “new moment” in Brazil. They sense they now have free rein.

That means an increase in rural conflicts. According to the Pastoral Land Commission (CPT) of the National Conference of Bishops of Brazil (CNBB), 1079 conflicts over land have been sparked in 2016, a record number since the beginning of the statistical series in 1985. This is an average of three conflicts per day. The number of assassinations, which declined between 2004 and 2014, has rebounded: 61 people were assassinated in 2016, and from January to May 2017, 37 rural assassinations have already been recorded. Over the course of 35 days, from April 20, 2017 to May 24, 2017, three attacks took place, with a resulting tally of 22 deaths.

On April 20th, at Colniza, in Mato Grosso, nine peasant farmers were tortured and killed, and their leader was decapitated. The police were directly implicated in the third massacre, on May 24th, which led to ten deaths, including that of a woman, in the south of Pará state. It took place the day after a protest in Brasília that drew attention to the rising tide of violence against peasant farmers, activists, judges, and priests.

guided by the provisions in the 1988 Constitution that allow for the government to expropriate large unproductive properties, indemnify the owners, and redistribute the land.

Indigenous people, to be sure, are among the victims. On April 30th, the Gamela people from the state of Maranhão were subjected to an attack that wounded 22 of them. Two Gamela men had their hands cut off with machetes.

Amnesty International, the UN High Commissioner for Human Rights, and the Inter-American Commission on Human Rights all condemn the increase in violence and the impunity of the aggressors. The United Nation Human Rights Council, in a report issued to the public in May 2017, declared that indigenous peoples are being subjected to risks unprecedented since the promulgation of the 1988 Constitution.

The same report recommends that Constitutional Amendment Proposal 215 be turned down. This amendment is, as noted above, a proposal from the *ruralistas* to take the power to demarcate indigenous lands away from the executive branch and grant it to the legislature. Such a measure, as everyone realizes, would be the end of any land demarcation.

The statistics on rural conflict are, roughly parallel to those on deforestation. After an increase between 2000 and 2004, the rate of deforestation dropped (with several relatively modest fluctuations) until 2012, but climbed again starting in 2013. According to data from the National Institute for Space Research (INPE), based on satellite imagery, 8000 square kilometers of forest disappeared in 2016, a jump of 29% compared to the previous year. As a result, Norway has decided to cut in half its support to the Amazon Fund for the year. Germany will probably follow suit.

The judicial branch: The invention of a time limit or “*marco temporal*”

The 1988 Constitution defined what counts as indigenous land: it is the territory necessary for the physical and cultural reproduction of the society in question. It is hardly surprising that the report of the Parliamentary Commission of Inquiry on FUNAI and INCRA would take up again a theory supported by one part of Brazil’s Supreme Court, known by the name “*marco temporal*,” which might be translated as “time limit.”

The rights of indigenous peoples to their lands have been enshrined in every Brazilian constitutional text since 1934, and they were declared even in colonial times. The 1988 Constitution asserts that indigenous rights are “originary” i.e. they are deemed to exist, like the different Swiss “cantons”, prior to the State itself. The role of the State is not to grant indigenous peoples land rights but to recognize and demarcate them. Yet this new doctrine, the “time limit” interpretation, holds that the only indigenous peoples who can benefit from the recognition of their right to land are those who were occupying their territory on the day when the 1988 Constitution was promulgated.

There were immediate objections to this “time limit” interpretation. For one, it could not hold for indigenous peoples that had forcibly been expelled from their land. The theory’s advocates responded by posing a condition: these peoples would need to prove that they had not ceased to resist, either by arms or by legal means. Given the reality of the facts, this condition is absurd. The targets of this aberrant interpretation of the Constitution prominently are the Guarani of the Center-West of Brazil, expelled from their lands since the 1940s. Crammed into

small reservations they were not, at the time, legally entitled to launch a lawsuit. Their capacity to do so was not recognized until the 1988 Constitution.

Eminent juridical scholars have disputed the “time limit” theory, and a gathering of luminaries at the University of São Paulo Law School in November 2015 became the stage for a major declaration of solidarity. The struggle against that theory is permanent as its holders endeavor to turn it into consolidated jurisprudence. Given that there have been different decisions by the two sections of the Supreme Court, a ruling by the Supreme Court plenary is being expected with great anticipation. It might come on August 16, 2017, and

As one government has succeeded another, many indigenous territories have been at one point fragmented and reduced and at another point readjusted and enlarged. According to the “*marco temporal*” argument, any decision to increase land after October 5th, 1988 would be vulnerable to cancellation. This is what one section of the Supreme Court has already decided in the case of three indigenous territories, two of which are situated in the center-west of the country, where the Terena and the Guarani-Kaiowá live.

Indigenous people, boxed in by the three powers.

It is striking, even angering, to witness the rapidity of a process that, in several months, has disfigured the human rights and environmental legislation enshrined since 1988.

As for indigenous peoples, they are organizing and protesting. According to the Articulation of Indian Peoples of Brazil (APIB), no fewer than 4000 indigenous people from some 200 ethnicities flocked to Brasília between April 24 and 28, 2017, a record number. Each year, on the occasion of the National Day of the Indian on April 19th, in a sign of protest, indigenous peoples camp for several days on the monumental esplanade of the Ministries laid out by the great urbanist Lúcio Costa. This year, the symbolism of this space was even stronger than usual. In front of the indigenous activists, the Chamber of Deputies and the Senate; on their left, the presidential palace; on their right, the Ministry of Justice. Undeniably, visibly, they are boxed in by these three powers.