

Presentation via Teleconference

Manuela Carneiro da Cunha¹

Debate “Policy Setbacks and Rights Reversals faced by Indigenous Brazilians under Bolsonaro and how to Fight Back”, organized by Clarice Cohn (U. Federal de São Carlos, Brazil) and William H. Fisher (College of William and Mary, USA). SALSA XII Sesquiannual Conference 2019, Friday 28 June 2019

Not only are indigenous rights at stake in Brazil’s current administration, environmental rights are also threatened and both are inextricably linked.

One of the first actions taken by Jair Bolsonaro was to issue an executive order undermining FUNAI’s authority in demarcating indigenous land. The Ministry of Agriculture, where agribusiness rules, would take charge of the job. Happily, two months later, Congress defeated the attempt.

The Brazilian Anthropological Association was heavily involved, together with several partners and a then incipient indigenous social movement, in the recognition of indigenous rights in Brazil’s 1988 Constitution. In article 231, indigenous rights are now described as being originary rights, that is, such rights are deemed to exist prior to the very establishment of any Brazilian state. As they preexist the State, the latter is merely supposed to recognize and implement such land rights. While dominion of land is bestowed to the Brazilian state, exclusive usufruct rights go to the indigenous peoples of these areas.

In the Constitution, the executive branch is in charge of demarcating Indigenous land. The first threat towards indigenous land came from the Brazil’s legislative branch proposing an amendment to transfer to the Brazilian Congress the administration of indigenous territories, ending in effect all demarcation. This is a legislature that is heavily represented by Brazil’s rural caucus (*Bancada Ruralista*), a powerful lobbying group tied to the agribusiness sector. This proposed legislation has been on the backburner since 2000.

During the administration of former President Michel Temer concessions were given to this rural caucus.

During President Dilma Rousseff’s administration, she caved to pressure from Brazil’s ruralist caucus and refrained from homologating Indian land; only in a few instances did she recognize their land as she was exiting.

Currently, a sizeable portion of indigenous land has been demarcated and homologated but the Bolsonaro administration is trying to annul this through a petty review of the process that led to such demarcation. We also need to be mindful of the fact that during the presidential campaign of 2018 Bolsonaro said he would target Indian land and this set the tone of the current invasion in their land areas and stepped up deforestation.

¹ Universidade de São Paulo. English translation by Louis Forline.

Meanwhile, in March 2019, Brazil's Minister of Mines and Energy, Admiral Bento Albuquerque, told a group of mining executives at a meeting in Canada that mining would be allowed on indigenous land areas. Indigenous peoples would be given a voice but no veto power in the matter. As it happens, since the Brazilian Constitution of 1988 was established mining interests have always expressed an interest in accessing indigenous land and its resources.

Geologists had fought during the Constitutional Assembly that resulted in the 1988 Constitution, to ban mining in indigenous territories. They pointed out that we do, indeed, need mineral reserves since there is no second crop when it comes to mining.

Since he came into office, Jair Bolsonaro wanted to partition FUNAI, Brazil's agency charged with administering indigenous affairs, ceding part of it to the Ministry of Agriculture for purposes of administering demarcation procedures. This was done by establishing Provisional Measure (*Medida Provisória*) 870 so that Brazil's Agribusiness Sector could take over this task. This is a clear affront to indigenous rights and Bolsonaro also plans to have the other part of FUNAI administered by the newly established Ministry of Women, Family and Human Rights, led by Damares Alves.

On the positive side of this situation, we now have a newly elected indigenous Congresswoman, Joênia Wapichana (from the state of Roraima), who is very effective and, as a lawyer, quite savvy about indigenous rights.

Also, following Bolsonaro's issuance of Provisional Measure 870 the Brazilian Congress rejected this proposed action, forcing him to reedit and resubmit this executive action (now PM 886). So far, the Brazilian Senate has refused to review this newer version.

Meanwhile, the three branches of government (Executive, Legislative and Judicial) are struggling to come to a workable solution and in view of this ILO Convention 169 should weigh considerably in their decision.

Another situation that indigenous peoples have to square with is a governmental decision to draw electrical energy to the state of Roraima from the Tucuruí hydroelectric dam. Currently the state of Roraima receives its energy from Venezuela and the Brazilian administration wants to free the state from this dependency. Energy transmission would go through Waimiri Atroari indigenous territory without consulting the indigenous peoples themselves, as prescribed by Convention ILO 169. It is worth noting that almost 90% of the Waimiri Atroari died during their first days of contact with Brazilian mainstream society in the late 1970s.

To engage with these matters we have to be mindful of the fact that Brazil is a signatory of ILO Convention 169, issued in 1989, with this country ratifying it in 2004. As for its impact, ILO 169 is below the Brazilian Constitution but above ordinary law.

To close, I would like to point out that there have been some positive advances in terms of indigenous mobilizations. As mentioned earlier an indigenous woman, Joênia Wapichana, was elected to Congress in 2018. APIB (Associação dos Povos Indígenas no Brasil) and COIAB (Coordenação das Organizações Indígenas da Amazônia Brasileira) have garnered strength and support and have played a key role in advocating for indigenous rights. Indigenous players have

also gained much awareness about their plight in recent years and play a stepped-up and active role in clamoring for their rights.

The importance of indigenous peoples in conserving and fostering biodiversity was stressed by the Report on Global Biodiversity issued by IPBES, the Inter-governmental Platform for Biodiversity and Ecosystem Services in May 2019. IPBES reports target decision-makers to formulate adequate public policies. A similar detailed report of the contribution to biodiversity by indigenous and traditional communities in Brazil is being prepared and scheduled for publication in May 2020, under the Brazilian Society for the Advancement of Science. Contributions are welcome.