



## **Brazilian anti-indigenous politics: tracking changes on indigenous rights regulation during Bolsonaro's government**

*A política anti-indígena brasileira: mudanças nos direitos dos povos indígenas durante o governo Bolsonaro*

**Veronica Korber Gonçalves<sup>1</sup>**

<sup>1</sup> Universidade Federal do Rio Grande do Sul, Porto Alegre, Rio Grande do Sul, Brasil. E-mail: [veronica.goncalves@ufrgs.br](mailto:veronica.goncalves@ufrgs.br). ORCID: <https://orcid.org/0000-0001-7144-4707>.

**Marcelo Eibs Cafrune<sup>2</sup>**

<sup>2</sup> Universidade Federal do Rio Grande, Rio Grande, Rio Grande do Sul, Brasil. E-mail: [marcelocafrune@furg.br](mailto:marcelocafrune@furg.br). ORCID: <https://orcid.org/0000-0001-8283-4209>.

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### Abstract

Between 2019 and 2022, the Bolsonaro's government propagated a strong anti-environmental and anti-indigenous rhetoric that devalued how indigenous peoples live and occupy these territories. In this paper, we are interested in understanding the total repercussions of Bolsonaro's anti-environmentalism, focusing on the legal norm propositions involving indigenous peoples and indigenous lands. We argue that the Law is one crucial instrument to maintain or change social relations and by tracing normative changes, we can comprehend important aspects of power disputes in specific contexts. In this sense, we examine the production of legal norms by the federal government and by the National Congress that flexibilize, sometimes indirectly, the territorial rights of indigenous peoples and how this process is publicly defended by the contestation of indigenous history, culture, and rights.

**Keywords:** Indigenous peoples; Brazil; Territorial rights; Mining; Indigenous rights; Anti-environmental policies; Anti-indigenous policies; Bolsonaro.

### Resumo

Entre 2019 e 2022, o governo Bolsonaro propagou uma forte retórica antiambiental e antiindígena que desvalorizou a forma como os povos indígenas vivem e ocupam esses territórios. Neste trabalho, nos interessa compreender a repercussão total do antiambientalismo de Bolsonaro, com foco nas proposições de norma jurídica envolvendo povos indígenas e terras indígenas. Argumentamos que o Direito é um instrumento crucial para manter ou alterar as relações sociais e, ao traçar mudanças normativas, podemos compreender aspectos importantes das disputas de poder em contextos específicos. Nesse sentido, examinamos a produção de normas legais pelo governo federal e pelo Congresso Nacional que flexibilizam, por vezes de forma indireta, os direitos territoriais dos povos indígenas e como esse processo é defendido publicamente pela contestação da história, cultura e direitos indígenas .

**Palavras-chave:** Povos indígenas; Brasil; Direitos territoriais; Mineração; Políticas antiambientais; Políticas anti-Indígenas; Bolsonaro.



## 1. Introduction

On January 1<sup>st</sup> of 2023, President Luiz Inácio Lula da Silva climbed the presidential ramp beside eight representatives of social groups reflecting the country's diversity, including the Indigenous leader Raoni Metuktire. During the first week of the mandate, Lula created the Ministry for the Indigenous Peoples, led by the indigenous leader Sonia Guajajara, and nominated another indigenous woman, Joenia Wapichana, to be the head of the National Indigenous Foundation (FUNAI). These moves contrasted sharply with those of the preceding government body under the leadership of Jair Bolsonaro. Between 2019 and 2022, the Bolsonaro's government propagated a strong anti-environmental and anti-indigenous rhetoric that devalued how indigenous peoples live and occupy these territories. This rhetoric is summarized in the president's statement that "it is much land for a few Indians" (Iglesias & Said, 2019).

Most protected forests in Brazil are in public areas, with a significant portion being in indigenous lands (indigenous reserves, traditionally occupied indigenous lands, proprietary, and interdicted lands). Brazilian indigenous peoples are historically among those who resist - in a collective, organized, and persistent way - different political and economic pressures, maintaining a symbiotic, total relationship with the land (and the environment) they live in. Indigenous peoples' struggle for territorial rights is also a struggle for environmental justice: the way these and other forest peoples live are obstacles to the expansion of economic exploitation by the State (Acselrad, 2020; APIB & Amazon Watch, 2021).

In this paper, we are interested in understanding the total repercussions of Bolsonaro's anti-environmentalism, focusing on the legal norm propositions involving indigenous peoples and indigenous lands. We argue that the Law is one crucial instrument to maintain or change social relations and by tracing normative changes, we can comprehend important aspects of power disputes in specific contexts. In this sense, we examine the production of legal norms by the federal government and by the National Congress that flexibilize, sometimes indirectly, the territorial rights of indigenous peoples and how this process is publicly defended by the contestation of indigenous history, culture, and rights.

The current research dialogues with the literature on environmental justice in the Global South and indigenous peoples, with particular focus on studies that reflect on



the central role of the State (by action or omission) in regulating the exploitation of nature and the relocation of indigenous communities due to the expansion of large-scale economic activities (Carruthers, 2008; Escobar, 2001; E. C. de A. Silva, 2018). We also explore studies that frame the struggles for environmental justice as struggles to denounce and combat racism (L. H. P. e Silva, 2012; Temper et al., 2018). Those fighting for environmental justice in Latin America (Agyeman et al., 2016; Martinez-Alier et al., 2016) share the explicit objective of connecting the ecological debate with social justice encompassing class issues, gender, and race.

This article is the result of a 4-year research project that followed and collected public manifestations from the federal government – especially the Presidency – and legal norms involving indigenous people. The connection between speeches and norms allows us to approach how the anti-environmentalism and anti-indigenism of the Bolsonaro government work as a double rhetoric of devaluation of the standing forest and also of forest peoples.

We begin this paper by briefly contextualizing the changes in Brazilian environmental policy during the Bolsonaro government (anti-environmentalism) and anti-indigenous discursive resurgence concerning indigenous peoples and indigenous lands. The data used to contextualize the period includes statements by the head of the executive branch issued between 2018 and 2020 and recent literature dealing with changes in environmental policy in the Bolsonaro period. Next, we will report on findings of a qualitative analysis of the proposed or approved norms at the Brazilian federal level, as well as discuss their origin and scope. The data analyzed includes federal normative acts (laws, provisional measures, decrees, resolutions, and normative instructions) published between 2019 and 2022 and legislative proposals that deal with the subject. Lastly, we interpret the normative changes based on the disputes for defining materially and symbolically the use of territory, and racism concerning indigenous peoples.

## **2. Bolsonaro's anti-environmentalism**

The context of threats to the territorial rights of indigenous peoples involves at least two central aspects: the Bolsonaro government's anti-environmentalism and its anti-



indigenism<sup>1</sup>. The government's anti-environmentalism is linked to the movement of expansion and strengthening of the neo-extractive model in Brazil – and Latin America – since the beginning of the 21st century, one of the consequences of which is the intensification of land conflicts and land grabbing. In the Bolsonaro government, this process intensified due to the weakening of the tools and institutions that limited the strength of extractive interests. In this sense, “land-grabbers” laws have stimulated small and large actors’ illegal invasion of government land.

The “bolsonarism,” which encompasses the figure of the president and his supporters in the National Congress (in particular the Congressional Coalition for Agriculture and Livestock (FPA), business sectors, etc.), has been promoting the dismantling of the environmental legal framework (Barbosa et al., 2021). In this sense, the government has promoted the large-scale deinstitutionalization of environmental policy governance, the modification of non-statutory rules, and the cutting of budgetary resources. These actions can be characterized as a calculated and ideological form of inaction and systematic dismantling of national environmental protections. Ultimately, the choice they are making is to not have an environmental policy (Araújo, 2020).

The anti-environmentalism of the Bolsonaro government is reflected in: **a)** the weakening of environmental legislation to favor the interests of agribusiness; **b)** the reduction of human and material resources for the implementation and inspection of the environmental policy; and **c)** the limitation of spaces for popular participation in councils and committees related to the environmental area, which explains the authoritarian dimension of the government's environmental governance (Menezes & Barbosa, 2021). The weakening of the national environmental policy has a specific impact on indigenous populations, who resist and denounce the ecological degradation caused and its impacts (from heavy metal pollution in rivers due to the exploitation of minerals to food insecurity caused by the transformation of the environment, the loss of biodiversity, and the interdiction of traditional ways of planting, etc.).

Since 2019, conflicts in indigenous lands have intensified, with an increase of allegations of illegal mineral exploitation, land grabbing (Instituto Socioambiental et al., 2020; Miotto, 2019), as well as deforestation rates, especially in the Amazon region (Azevedo et al., 2019; INPE, 2020). The increase in territorial conflicts is related to the

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<sup>1</sup> This expression has been used by different actors to describe Bolsonaro’s Government. The best example is the report intitled “Anti-indigenous Foundation”, published by INA and INESC: [https://www.inesc.org.br/wp-content/uploads/2022/07/Fundacao-anti-indigena\\_Inesc\\_INA.pdf](https://www.inesc.org.br/wp-content/uploads/2022/07/Fundacao-anti-indigena_Inesc_INA.pdf)



weakening of the territorial rights of indigenous peoples promoted by a set of federal normative acts that, directly or indirectly, recognize the rights of squatters and land-grabbers in indigenous territories, as well as the weakening of government structures of protection and inspection responsible for issuing notices of irregular use practices of territories (such as, for example, mining or expansion of agro-industrial activities in indigenous territories).

### 3. **Bolsonaro's anti-indigenism**

Anti-indigenism is linked to anti-environmentalism, but it has essential specificities that can be highlighted from the speeches of representatives of the Bolsonaro government. From the extensive but not exhaustive collection of the president's Twitter statements and his speeches in newspaper articles and interviews between 2018-2020, we identified two main narratives related to the weakening of indigenous land rights. The first is summarized in the phrase "many lands for a few Indians," and the second is about the "need to integrate the Indians (sic) into Brazilian society." Combined, these discourses collaborate to sustain normative flexibility and promote non-compliance with norms guaranteeing indigenous territorial rights.

Regarding the phrase of "many lands for a few Indians", which questions the amount of land destined for indigenous peoples, the speech of the then-candidate Bolsonaro stands out: "Here in Rondônia<sup>2</sup>, there are 53 conservation units and 25 indigenous lands. It is absurd what is done in Brazil using the environmental name... This has inhibited the progress of those who want to invest in agribusiness and even in family farming. Let us find an inflection point in this." (Maisonave & Almeida, 2020a). The speech contrasts Conservation Units (UCs) and Indigenous Lands (TIs) with the idea of progress, synthesized in agribusiness and "even" in family farming.

Both during the campaign and after being elected, Bolsonaro stated: "As far as it depends on me, there is no more demarcation of indigenous land" (Resende, 2018). The notion that "there is much land for a few Indians" – as wasted land not exploited for development – supports the criticism of demarcating new lands. It reminded the rural sector, especially in the Amazon region, that Federal land inhabited by indigenous peoples

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<sup>2</sup> Brazil's federative state of Rondonia.



with an ongoing demarcation process would not be formally recognized<sup>3</sup>. In Brazilian reality, it is an indication (invitation) for these territories to be occupied by actors interested in economic exploitation. In a tweet made on January 2, 2019, Bolsonaro stated that there would be much land destined for indigenous peoples and *quilombolas*<sup>4</sup>, that there are few people in these areas, and that these communities are not there because of self-determination, but because of the absence of an integration effort, being victims of exploration and manipulation<sup>5</sup>. Bolsonaro accused international actors that criticized his actions against the Amazon forest and indigenous people of attempting to violate Brazilian sovereignty, as land demarcation would mean constraints to economic exploitation and development<sup>6</sup>.

Criticism of the land demarcation process and the limits of land exploration are combined with a defense of the need for "integration" of indigenous peoples into "Brazilian society" - in indigenous land, people would be separated, needing to be rescued from an earlier stage of "evolution." It is part of the strategy of detaching people from the land – hence also the devaluation of the standing forest. In this sense, Bolsonaro's speech on January 23, 2020, is illustrative, alongside Tarcísio Freitas' (then Minister of Infrastructure), when he stated, "The 'Indian' has changed, he is evolving, the 'Indian' is increasingly becoming a human equal to us. So, to make the 'Indian' more and more integrated into society and truly own his indigenous land, that is what we want."<sup>7</sup> The Articulation of Indigenous Peoples of Brazil, an advocating group representing Indigenous peoples' rights in Brazil, filed a lawsuit for the crime of racism against Bolsonaro because of this speech.

<sup>3</sup> @jairbolsonaro – "More than 15% of the national territory is demarcated as indigenous land and quilombolas. Less than a million people live in these truly isolated places in Brazil, exploited and manipulated by NGOs. Let us together integrate these citizens and value all Brazilians."

12:19 PM · Jan 2 · 2019. Available at: <https://twitter.com/jairbolsonaro/status/1080468589298229253>

<sup>4</sup> People that usually don't have ownership of the land where they live in communities of escaped enslaved ancestors

<sup>5</sup> @jairbolsonaro – "Reintegrate the Indians into society, leading to these conditions so that they can feel Brazilian and not just be treated as a mass of maneuver and division of the people to contemplate plans of power. We have the most 'mixed' people in the world, and we are all the same! Feb 16, 2019, Available at: <https://twitter.com/jairbolsonaro/status/1096768434518544386>

<sup>6</sup> @jairbolsonaro – "After the G-20, if I had demarcated a few more dozen Indigenous Areas and imposed heavy fines on rural producers, the world would not be falsely accusing me of destroying the Amazon. The sovereignty of the region and its wealth is truly at stake."

Aug. 15, 2019. Available in: <https://twitter.com/jairbolsonaro/status/1161972492421992448>

<sup>7</sup> <https://noticias.uol.com.br/politica/ultimas-noticias/2020/01/23/indio-ta-evoluindo-cada-vez-mais-e-ser-humano-igual-a-nos-diz-bolsonaro.htm>



According to the narrative explored *ad nauseam* by Bolsonaro, only “inserting indigenous people into society” would remove them from the condition of mass maneuver<sup>8</sup> of indeterminate subjects, but linked to NGOs, politicians, and FUNAI - the government bureaucracy responsible for indigenous land demarcation and indigenous cultural maintenance. Bolsonaro referred to FUNAI as a “rats’ nest”<sup>9</sup> In order to reinforce the idea that “it is necessary to integrate indigenous peoples” and release indigenous lands for exploration, Bolsonaro has repeated throughout his term the need to change legislation that imposes restrictions, i.e., on mineral exploration<sup>10</sup>. The removal of such restrictions to exploitation would be in the interest of Brazil and the indigenous peoples who, displaced from their territory and “integrated” into Brazilian society, could achieve their goals<sup>11</sup>.

Although not all will have direct effects, Jair Bolsonaro's statements and posts have the potential to create conflicts and ambiguities in the field of public policy implementation, eventually demobilizing and constraining public agents responsible, for example, for inspection (Faleiros & Nascimento, 2019; Fonseca & Oliveira, 2020), and to inspire the occupation and exploitation of indigenous territories by various actors in the region. Thus, such speeches access, build, and reinforce symbolic systems, constituting instruments of legitimation and demonstration of strength by political actors involved in territorial disputes<sup>12</sup>. In addition to the heated speeches, in these first two years of its

<sup>8</sup> @jairbolsonaro “Embrapa, in partnership with Funai and other government agencies, participates in the indigenous social insertion, and the entire community benefits from it. No more treating our brothers like zoo animals or like a mass of political maneuver. Let's go ahead”. Apr. 13, 2019, Available at: <https://twitter.com/jairbolsonaro/status/1117021839123988482>

<sup>9</sup> @jairbolsonaro: “FUNAI, as a rule, “took care” of everything, except the Indian. Every rat's nest I light on fire, the more enemies I collect. I believe in Brazil because I trust you, good citizen. - with @DamaresAlves” Available at: <https://twitter.com/jairbolsonaro/status/1148217392973123584>

<sup>10</sup> @jairbolsonaro: The Minister of Mines and Energy received the ambassador of Belgium and presented him with some reasons why the Jair Bolsonaro Government intends to regulate mining in Indigenous Land:

1- There are almost 600 indigenous communities in Brazil, and many of them want mining [...].

9- Mineral wealth is not where we want it, but where nature has placed it: in Northern Brazil where, “curiously,” previous governments demarcated huge indigenous areas.

10- An area more extensive than the Southeast region (SP/MG/RJ/ES) is already demarcated in Brazil as IL (Indigenous Land). Under these areas, a complete “Periodic Table.” The Minister will make presentations to other ambassadors to show them how good IL mining will be for the Indians, Brazil, and the world. Available at <https://mobile.twitter.com/jairbolsonaro/status/1212096013890179072>

<sup>11</sup> Indigenous people “want their lands to be used for “agriculture, livestock, mineral exploration, water resources”, which would not be “easy”, but it is possible. The president said that indigenous people need to pressure the deputies to approve the bill to do so (Angelo, 2021).

<sup>12</sup> In this sense, an article produced by Folha de São Paulo and Climate Home News stands out, which addresses the context and implications of the entry and occupation of people in the Apyterewa Indigenous Land (IL), belonging to the Parakanã people. Among the people heard, there is the speech of an occupant, a pastor, who indicates that many people have arrived at Vila Renascer, built within the IL, with the expectation that the possession will be regularized with the intervention of the President: ‘The people here believe in this speech of the president’, he said, in a conversation on the porch of the shack erected in the lot. “We are





mandate, Bolsonaro's government produced normative acts inspired by the rhetoric presented, which significantly impacted indigenous territorial rights. The absence of an agrarian reform policy, combined with discourse that encouraged the occupation of traditional territories for economic exploitation, especially by economic actors linked to agribusiness and mining, resulted in a significant increase in land conflicts in indigenous and quilombola lands (Comissão Pastoral da Terra, 2021).

#### 4. The legal form of recent threats to Indigenous land rights

The territorial rights of indigenous peoples in Brazil are a political-judicial achievement inscribed in the 1988's Constitution of the Republic, a result of the re-democratization process that the country went through after overcoming the authoritarian regime directed by the military between 1964 and 1985. The 1987-1988 constituent process resulted in a relative overcoming of the integrationist paradigm, and "for the first time, the original right of indigenous peoples to their lands and the legitimacy of indigenous peoples and their organizations to take legal action was inscribed in the constitutional text." (Santana & Cardoso, 2020, p. 110). Despite the expansion of recognition of the territorial rights of indigenous peoples (summarized by the approval of Convention 169 of the International Labor Organization - ILO in 2002, and by the demarcation of more than 400 areas, over almost 30 years), there is a set of issues that have never received due attention, so it is possible to affirm that the Brazilian State relation to indigenous peoples is at least ambiguous when not overtly silent or violent.

Next, we discuss the findings of our analysis of normative changes mapped from the 2018 presidential election to 2022, seeking to trace the process of weakening the territorial rights of indigenous peoples. We mapped documents with normative content (laws, provisional measures, decrees, resolutions, legislative proposals) at the federal level produced by federal legislative and executive bodies on the demarcation of indigenous lands, recognition of territorial rights, and management of indigenous territories. The research cataloged a series of normative instruments representing

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waiting for this moment to happen. (...) Everyone hopes that Bolsonaro will fulfil what he always promises the people, which will reduce the land of the Indians', he said. 'The hope is that he reduces these Indian lands, so they know how much a packet of rice costs, so they do not go to people's houses and invade everything.' (Maisonave & Almeida, 2020b).



setbacks in recognition of territories, from which we highlighted the following organized by nine themes:

*i) Encouraging private appropriation of public lands (“Land Grabbing”)*

In December 2019, the Provisional Presidential Decree<sup>13</sup> n. 910 to amend Law 11,952/2009 was published. The Provisional Measure scope refers to the regularization of occupations of lands in areas that belong to the Union. It aims to facilitate the appropriation of public land owned by the Union and provide amnesty for illegalities committed. Indigenous Lands still in the process of legal recognition (approximately 237) may dovetail as these areas are subject to private appropriation. Considering the public negative reaction to the initiative and its potential results, Congress has not confirmed the provisional measure<sup>14</sup>.

The Normative Instruction 9/2020, emitted by FUNAI, revoked the Normative Instruction 03/2012 and enabled FUNAI to emit a document entitled ‘Declaration of Recognition of Limits’ to recognize property rights and possession rights to individuals. This measure impacts indigenous land rights by reducing guarantees of individual recognition and abolishing the Administrative Attestations (AAs) – a document that registered the status of third-party properties concerning indigenous lands<sup>15</sup>.

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<sup>13</sup> According to the glossary of legislative terms of the National Congress, the Provisional Presidential Decree is a “Normative instrument of exclusive initiative of the President of the Republic, with force of law, used in case of urgency and relevance, effective since its publication. Its conversion into law depends on examination by the National Congress. If the National Congress does not examine the provisional presidential decree within the prescribed period, it loses its effects. The juridical relations established during its validity will be regulated by a Legislative Decree or, in its absence, will continue to be regulated by the provisional presidential decree.” 2019, pp. 71. Available at: <https://www2.senado.leg.br/bdsf/handle/id/581602>

<sup>14</sup> The subject of the Provisional Measure is now being debated in two different Bills: 2633/2020 (started in the House) and 510/2021 (started in the Senate). Such initiatives threaten forests and public lands, including indigenous lands rights recognition.

<sup>15</sup> Considering the reactions to IN 9/2020, we highlight the recommendation of the Federal Public Ministry to the President of FUNAI of the annulment of the normative instruction, as well as to the other institutions (National Institute of Colonization and Agrarian Reform and Brazilian Forestry Service) to refrain from complying with its determinations for being contrary to the law, the Constitution, and International Law. (MINISTÉRIO PÚBLICO FEDERAL, 2020).



### *ii) Entrepreneurship in Indigenous Lands (or “scam for leasing”)*

In February 2021, IBAMA<sup>16</sup> and FUNAI (both linked to the federal government structure) published the Joint Normative Instruction n. 01 under the pretext of regulating the “environmental licensing process for projects or activities located or developed within Indigenous Lands.” The norm facilitates the use of indigenous lands for economic activities such as agriculture, livestock, etc., without further consideration for the way of life of indigenous peoples, either on the preservation of forests or native vegetation. Furthermore, the norm allows for the economic exploitation of lands by non-indigenous people by providing for licensing by “associations, organizations of mixed composition of indigenous and non-indigenous people, cooperatives or directly via the indigenous community.”

In the same direction, it is important to highlight the Constitutional Amendment Bill (PEC) 187/2016, which seeks to expand the list of agricultural activities allowed on indigenous lands. In August 2019, the Chamber's Constitution and Justice Commission (CCJ) approved its constitutionality, adding a paragraph to article 231 of the Constitution. The matter is still awaiting deliberation.

Related to land use, after losing the presidential elections in October 2022, Bolsonaro Government edited a new rule (Joint Normative Instruction 12/2022 – IBAMA and FUNAI<sup>17</sup>) that authorizes the exploration of native forests in indigenous lands without any environmental license.

### *iii) Recognition and Indigenous identity*

In January 2021, FUNAI published Resolution n. 04, to “Art. 1<sup>st</sup>, Define new criteria for hetero-identification that will be observed by FUNAI, aiming to improve the protection of indigenous peoples and individuals for the execution of public policies”. Resolution n. 04, attributed to the State the prerogative of defining who is and who is not indigenous, which would have the practical effect of eliminating the right of self-

<sup>16</sup> Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis - Ibama /Brazilian Institute of Environment and Renewable Natural Resources

<sup>17</sup> <https://www.in.gov.br/en/web/dou/-/instrucao-normativa-n-12-de-31-de-outubro-de-2022-451033679>



recognition and self-declaration of indigenous persons, groups, and peoples<sup>18</sup>. Faced with this resolution, the Association of Indigenous Peoples of Brazil (APIB) and six political parties filed an accusation of breach of fundamental precept (ADPF) 709 at the Federal Supreme Court (STF), leading to the suspension of the Resolution in March 2021 for violating the 1988 Constitution, the ILO Convention 169, as well as a previous STF decision.

In April 2021, a Bill of Legislative Decree (PDL n. 177/2021) was presented by a deputy from Bolsonaro's government base that intends to authorize the President of the Republic to denounce Convention 169 of the International Labor Organization.

#### *iv) Demarcation of Indigenous Lands*

The Constitutional Amendment Bill n. 215 aims to modify the 1988 Constitution to include the exclusive power of Congress "to approve the demarcation of lands traditionally occupied by indigenous peoples and to ratify the already approved demarcations."

The Constitutional Amendment Bill, approved in May 2021 by the Committee for the Constitution of Justice of the Chamber of Deputies<sup>19</sup>, establishes the concept of indigenous lands in a restrictive way and imposes its use for "productive activities" as a requirement for recognition. Additionally, it determines that "the absence of the indigenous community in the intended area on October 5, 1988, de-characterizes" the character of permanent occupation, reaffirming the negative consequences of a broad application of the time-frame thesis. These initiatives seek to hinder or prevent the demarcation of indigenous lands and impose on them a logic of economic exploitation consistent with the values of Brazilian agribusiness.

#### *v) Mining*

Initiated by the Executive Branch, Bill of Law n. 191 was submitted to the National Congress on February 6, 2020, and intends to release mining activities within

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<sup>18</sup> According to the CIMI Technical Note, it was about "employing specific regulations, people who are indigenous in Brazil, with evident intentions of leaving at least half of the self-declared indigenous population homeless - that is, more than 400 (four hundred) thousand people - from public policies such as the right to demarcate traditionally occupied lands and priority vaccination against the coronavirus". (CIMI, 2021).

<sup>19</sup> It replaces the Bill 490/2007.



indigenous lands by regulating activities of “research and extraction of mineral and hydrocarbon resources and for the use of water resources to generate electricity in indigenous lands.” In February 2021, after many months under analysis in Congress, President Jair Bolsonaro asked for priority in the approval of the Bill of Law n. 191 to the newly elected President of the Chamber of Deputies, Arthur Lira.

In line with this, the Bill of Law 1610 of 1996 is also currently under analysis. The Bill encompasses the possibility of exploration of mineral resources in indigenous lands, aiming to regulate “the special regime for research and extraction activities of mineral resources in indigenous lands and the regime of indigenous mineral extraction.” Over the years, eight other Bills were added to the original Bills dealing with the same issue. In September 2020, a special commission was created to inform an opinion on the Bill, which is still under consideration.

Along with the general acceptance of illegal mining spreading around governmental offices, two regulations were edited in February 2022 – Decree no. 10,965 and Decree n. 10,966 – which reinforces the governmental choice for mining exploration, including in indigenous areas, without any environmental studies or free and informed consent (Angelo, 2022).

#### ***vi) Administrative structure change***

On January 1, 2019, the first day of the Bolsonaro Government, the Provisional Presidential Decree 870/2019 was published, which aimed to define the administrative structure of the new government. Among the changes was the transfer of competence to demarcate indigenous lands, traditionally linked to FUNAI and the Ministry of Justice, to the Ministry of Agriculture, Livestock, and Supply. The National Council for Indigenous Policy and FUNAI would be transferred to the Ministry of Women, Family, and Human Rights, headed by Mrs. Damares Alves. The change provoked significant opposition and was rejected by the National Congress<sup>20</sup>. After this, the Provisional Presidential Decree n. 886 defined that competence for the recognition and demarcation of indigenous lands would be the responsibility of the Ministry of Agriculture, Livestock, and Supply – whose Minister is known for its fidelity to the agriculture sector. On this occasion, the National Council for Indigenous Policy was already included in the administrative structure of the

<sup>20</sup> The Provisional Measure was converted into Federal Law 13.844 on June 18, 2019.



Ministry of Justice. Again, the National Congress rejected the attribution of competence to demarcate indigenous lands to the Ministry of Agriculture, establishing among the competencies of the Ministry of Justice and Public Security the competence related to "indigenous rights, including the monitoring of health actions developed in favor of indigenous communities" (Law 13.844/2019, art. 37, XXIV). Consequently, the National Foundation for the Indigenous (FUNAI) returned to the Ministry of Justice with all its powers, including demarcating land for indigenous peoples, which ended up happening through Decree No. 10.073 of October 18, 2019.

### **vii) Extinction of social participation forum**

On April 11, 2019, Executive Decree 9,759 (subsequently amended by Executive Decree 9,812 on May 30, 2019) was published. The Decree generically determined the extinction of several social participation forums linked to the federal public administration. In this context, the National Council for Indigenous Policy (CNPI), the National Indigenous School Education Commission (CNEEI), and the National Commission for the Sustainable Development of Traditional Peoples and Communities (CNPCT) were extinct. Subsequently, Decree 9,784/2019, of May 7, 2019, extinguished several other collegiate bodies, including the Integrated Management Committee for Health Care and Food Safety Actions for the Indigenous Population.

### **viii) Militarization**

During Bolsonaro's mandate, the federal government published Executive Decrees to authorized the use of the Armed Forces in the Guarantee of Law and Order (GLO) operations in the Amazon (Operations Verde Brasil 1 in 2019 and Verde Brasil 2 in 2020 and 2021). The legal instruments defined the mandate of the Armed Forces to *guarantee law and order* in the Legal Amazon, involving subsidiary actions in border areas, in Indigenous Lands, in federal environmental conservation units, and other federal areas in the nine states of the Legal Amazon (with an area of 5,217,423 km<sup>2</sup>, equivalent to 61% of the national territory). Initially planned to last for one month (between May 11 and June 10, 2020), the measure was successively extended by Decrees n. 10.394/2020,



10.421/2020, and 10.539/2021, which extended the possibility of military operations until the end of April 2020.

Under the pretext of combating deforestation and the practice of environmental crimes, the measure also subordinated competent federal agencies (such as FUNAI and IBAMA) directly to the military in operation.

### *ix) The 'timeframe' thesis*

The administrative procedure of indigenous land demarcation processes followed the parameters of Legal Opinion No. GMF-05 (Opinion No. 001/2017/GAB/CGU/AGU), published on July 20, 2017. The Opinion was presented by the Attorney General's Office and the Brazilian Office of the Comptroller General (CGU) in the demarcation process of the Raposa Serra do Sol Indigenous Territory (PET n. 3.388/RR). The Opinion defines 19 conditions to proceed with land rights demarcation, one of which is the so-called *Marco temporal* (time frame). According to the Marco temporal thesis, indigenous peoples must be occupying the land on the date of promulgation of the Constitution (October 5, 1988) for its recognition as indigenous land. It also interdicts the expansion of indigenous lands already demarcated (including cases in which indigenous people have been evicted from their lands).

The legal document had its effects suspended by a Supreme Court decision on May 2020<sup>21</sup>. Nevertheless, as the Supreme Court procedures allow a sort of stop-and-go judgment, the pressure (and informal lobby) on this judgment has increased in the last two years, including the military and agribusiness lobby (Recondo et al., 2022). In December 2022, indigenous peoples' representation requested the Court to retake this trial.

## **5. Discussion**

The narrative of Bolsonaro's government about indigenous peoples involves two main aspects: all the restrictions to economic exploitation imposed by the norms are a "waste" of money, land, of resources, and that indigenous people should be "integrated" into Brazilian society – leaving the territory to be exploited. The normative changes during

<sup>21</sup> <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=442891&ori=1>



the last four years are part of this context. In this section, we interpret these points based on two explanatory keys of environmental justice (Martinez-Alier, 2002); the dispute for defining materially and symbolically the use of territories, and racism towards indigenous peoples.

The federal normative acts discussed above intended to weaken the territorial rights of indigenous peoples, and stem from the interest in redefining the ways of using the territory. Therefore, Bolsonaro and his supporters tried to deal with the issue by reducing the limitations to total exploration: legal limits, material limits – current uses and experiences in the territories – and symbolic limits – the meanings printed for these uses and experiences.

The process of weakening territorial rights tends to favor those with economic power to intensify the exploitation process to “consummate” the appropriation of territory (through, for example, deforestation) given the difficulty of inspection and the suspension (albeit only factual, but not formal) of the application of protective rules. In this sense, regulatory changes are part of a phenomenon that produces and reinforces inequalities, reaching vulnerable groups in the absence of state protection. In the words of Sonia Guajajara, executive coordinator of APIB (and since 2023, Ministry of the Indigenous Peoples):

Bolsonaro's death and destruction project remains the same: removal of our rights, legalization of socio-environmental crimes, and discontinuation of policies to protect the Amazon forest. The government has never called us to dialogue with indigenous peoples about the invasion of our lands<sup>22</sup>.

In Brazil, indigenous peoples (as well as other traditional populations) resist the attempt to eliminate their way of life imposed by ‘development’ projects that aim to transform the territory (Martinez-Alier, 2002). They resist when they fight to remain in the territory because they see culture and environment as ‘one’, and are together, i.e., people live and build individual and collective meanings in places - in the territories (Escobar, 2001). As Acselrad (2014) explains, the actions of appropriation of the material world (whether by indigenous peoples or by large agricultural producers or mining

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<sup>22</sup> In the original: “O projeto de morte e destruição de Bolsonaro continua o mesmo: retirada de nossos direitos, legalização de crimes socioambientais e a descontinuidade das políticas de proteção à floresta amazônica. Até agora não houve sequer um diálogo desse governo com os povos indígenas para enfrentamento às invasões de nossas terras “Available at: <https://www.brasildefato.com.br/2021/04/22/pesquisadores-e-liderancas-reagem-as-mentiras-de-bolsonaro-na-cupula-do-clima>.





companies) are related to activities of attributing meaning to the biophysical space (which can mean house, shelter, mother; or wealth, resources), since:

Cultural facts are not restricted to simple epiphenomena of society's productive structures but appear, on the contrary, as an integral part of the world construction process, giving it meanings and orders, commanding different acts and practices based on mental categories, different perception schemes and collective representations (ACSELRAD, 2014, p. 15).<sup>23</sup>

The technical appropriation of the material world is not carried out only according to biophysical conditions but results from choices guided by a particular prevailing cultural model. In this way, the option for a particular development model is not just due to material or technical limitations of space and time, its justification and legitimacy reflect the power structure in a historical moment. Therefore, the contestation of the territorial rights of indigenous peoples, as it has been carried out in Brazil, meets the interests of actors who are often hidden but who will directly or indirectly benefit from the appropriation and exploitation of territories, characterizing a process of accumulation by plunder (Acselrad et al., 2012; Harvey, 2004). The resistance struggles of these peoples are struggles for environmental justice, as it intertwines “living” with “living in the territory” to the detriment of other projects of exploration and use of the same (Acselrad, 2020; APIB & Amazon Watch, 2021).

To make such an agenda viable, the current government invokes a narrative that, as highlighted in the second section, attempts to deconstruct the elements that forge the identity of indigenous peoples. It is a narrative that promotes a movement of devaluation of their culture, identified as primitive, inefficient, and an encapsulation of cultural practices as immutable. It threatens their existence, as its meaning is linked to the tie with the land/environment/territory. This is, in essence, a rhetorical dehumanization (Barreto & Ferraz, 2020; Milanez et al., 2019), as communicated in the expression "zoo animals" referred to in Bolsonaro's tweet<sup>24</sup>. Due to such statements, APIB presented a representation against the President, pointing out the racism in its manifestations (APIB, 2020)<sup>25</sup>.

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<sup>23</sup> In the original: Os fatos culturais não se restringem a simples epifenômenos das estruturas produtivas da sociedade, mas mostram-se ao contrário, como parte integrante do processo de construção do mundo, dando-lhe sentidos e ordenamentos, comandando atos e práticas diversas a partir de categorias mentais, esquemas de percepção e representações coletivas diferenciadas.

<sup>24</sup> <https://twitter.com/jairbolsonaro/status/1117021839123988482>

<sup>25</sup> This speech by President Jair Bolsonaro is a remnant of colonial thinking present in the imagination of many Brazilians, not finding support in the current Constitutional court. For a long time, the idea of racial superiority and tutelary practice that placed the indigenous people in the position of "legally incapable" marked the



On the one hand, the federal government, through aggressive rhetoric, searches to mobilize support for deconstructing the rights of indigenous peoples - which has an immediate effect on the production of social dynamics and the institutional implementation of its agenda. On the other hand, the analysis of the normative initiatives indicates that some themes have been recurrent since the Constituent period, such as the environmental and social limits to mineral extraction and agricultural activities, the autonomy of indigenous peoples, etc.

## 6. Final remarks

The resurgence of racist speeches over indigenous peoples and the renewed breath of attacks on indigenous peoples in Brazil, carried out by a militarized government, preserves a deep identity with the ideas held by sectors relatively defeated in the constituent period (1987-1988), identified with the Indigenist policy of the Military Dictatorship. The normative changes regarding indigenous territorial rights between 2019 and 2022 are part of an explicit strategy for revising the constitutional principles and institutional guidelines that should guide the actions of the Brazilian State about native peoples.

In an increasingly authoritarian context and one in which democratic institutions were weakened in Brazil under the aegis of "bolsonarism", the struggle for territorial rights of indigenous peoples synthesizes the struggle for environmental justice and for the right to exist in the territory. Studying the relationship between normative acts and the authoritarian political context that legitimizes the norms that restrict indigenous territorial rights allows us to understand aspects of anti-environmentalism and anti-indigenism that characterize that government.

The presidency of Jair Bolsonaro ended on December 31, 2022. Notwithstanding, his anti-environmentalist and anti-indigenist rhetoric has not disappeared. It still inspires social actors and economic sectors that are willing to maintain

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relationship of the Brazilian State with the original peoples. If it was questioned whether indigenous, people were human beings or holders of souls in the past, such statements were overcome by establishing the Democratic State of Law, which recognized indigenous peoples as subjects of rights, guaranteeing them the protection of their territories originating. The retrograde discourse that indigenous peoples need to "evolve" are manifestations that tend to legitimize violations of their way of life for indigenous peoples. It was like that in the past, where the dispossession of territories, indigenous slavery and the handling of state actions that violated peoples' fundamental rights were justified by positivist ideas, based on the argument of a supposed superiority of national communion, where indigenous people should suffer all kinds of "tutelary action" aiming at supposed progress (APIB, 2020).



the patterns of environmental destruction and genocide that result from neo-extractivist practices in Brazil, linked with global chains of economic exploitation. However, an unprecedented situation of indigenous protagonism emerges nowadays in the country, articulated with different global environmental agendas.

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#### About the authors

##### **Veronica Korber Gonçalves**

Universidade Federal do Rio Grande do Sul, Porto Alegre, Rio Grande do Sul, Brasil. E-mail: [veronica.goncalves@ufrgs.br](mailto:veronica.goncalves@ufrgs.br). ORCID: <https://orcid.org/0000-0001-7144-4707>.

##### **Marcelo Eibs Cafrune**

Universidade Federal do Rio Grande, Rio Grande, Rio Grande do Sul, Brasil. E-mail: [marcelocafrune@furg.br](mailto:marcelocafrune@furg.br). ORCID: <https://orcid.org/0000-0001-8283-4209>.

**The author contributed equally for the writting of the article.**

