Traditional peoples and communities in Brazil: the work of the anthropologist, political regression and the threat to rights

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Abstract

The article problematizes the questions of identities and territories, and the forms of resilience in contemporary Brazil, based on the correlation between power, territoriality, State and development, emphasizing situations of vulnerability of indigenous peoples, quilombos, peoples and traditional communities, as well as their fights for recognition, access to land/territory and other rights. The developmentalist perspective adopted by the Brazilian State has resulted in a series of impacts on territories and ways of life, resulting in deficits of citizenship for various historically excluded groups. This situation has worsened over the last few years with a political setting of demographic regression (revocation of legal frameworks, dissolution of social oversight bodies, dismantling of State apparatuses, cancelation of social programs, budget cuts), in line with hegemonic interests and projects. The article also problematizes the work of the anthropologist in the processes of recognizing collective and territorial rights, in dialogue with the judicial field, the federal government and social movements.

Key words: Traditional peoples and communities; the anthropologist's work; political regressions; threat to rights and risks to the anthropological practice.

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Os povos e comunidades tradicionais no Brasil: o trabalho do(a) antropólogo(a), retrocessos políticos e ameaça aos direitos

Resumo

O artigo problematiza as questões das identidades e territórios e as formas de resiliências no Brasil contemporâneo, a partir da correlação entre poder, territorialidade, Estado e desenvolvimento, enfatizando situações de vulnerabilização de povos indígenas, quilombos, povos e comunidades tradicionais, bem como suas lutas por reconhecimento, acesso à terra/território e demais direitos. A perspectiva desenvolvimentista adotada pelo Estado Brasileiro tem resultado numa série de impactos sobre territórios e modos de vida, resultando em déficits de cidadania de vários grupos historicamente excluídos. Essa situação se agrava nos últimos anos, com cenário político de retrocesso democrático (revogação de marcos legais, extinção de instâncias de controle social, desmonte de aparatos do Estado, supressão de programas sociais, cortes orçamentários), em sintonia com interesses e projetos hegemônicos. O artigo também problematiza a atuação do(a) antropólogo(a) nos processos de reconhecimento de direitos coletivos e territoriais, em diálogo com campo jurídico, poder executivo e movimentos sociais.

Palavras-chave: Povos e comunidades tradicionais; atuação do(a) antropólogo(a); retrocessos políticos; ameaças aos direitos e riscos à prática antropológica.

Traditional peoples and communities in Brazil: the work of the anthropologist, political regression and the threat to rights

Aderval Costa Filho

Introduction

Brazil is a country of continental dimensions and mega-diversity, both in terms of the peoples and communities that compose it, and in relation to numerous biomes and ecosystems associated with their territories and ways of life. This represents a big challenge to order, public policies and the production of knowledge. Among the guaranteed collective rights we can highlight the right to difference and its maintenance, and the right to territory, including various constitutional devices and norms that establish as a fundamental right the maintenance of culture and the access to and maintenance of ownership/tenureship of the lands traditionally occupied by various historically excluded social groups. Nevertheless, in Brazil most of the denunciations concerning human rights violations in the rural world are directly or indirectly connected to the question of land/territory. A survey by the Comissão Pastoral da Terra (Pastoral Land Commission) found that in 2018 there was:

> [a] sharp increase in all forms of violence in the rural world (and, correlatedly, in urban peripheries), especially against traditional peoples and communities, focused on their territories, rich in natural resources (desired commodities) under their control, and intentionally rendered precarious from the legal point of view. [...] Conflicts in the rural sphere (land, water, work, during droughts, mining, unions and violence against the person – murders, threats, assaults, imprisonments, etc.) increased by 4% in relation to 2017, rising from 1,431 to 1,489. Of these, 1,124 were over land. Close to a million people in total were involved in the conflicts, 36% more than in 2017, 51.6% in the North region. Land conflict were concentrated there too: 92% of the total in 2018. Other alarming indices [confirm] Amazonia as the main focal point. (Comissão Pastoral da Terra 2019: 11)

Despite these figures, there is actually no lack of legal instruments available to protect these peoples and their territories, identities and ways of life, including Convention 169 of the International Labour Organization (2004), the Convention on Biological Diversity (1992), the Convention on Cultural Diversity (2007), the United Nations Declaration on the Rights of Indigenous Peoples (2007), Articles 215 and 216 of the Federal Constitution, Articles 231 and 232 of the 1988 Federal Constitution, Article 68 of the Transitory Constitutional Provisions Act of the 1988 Federal Constitution, and all the infra-constitutional legislation and regulation at federal, state and municipal levels, highlighting Decree 6040/2007, which institutes the National Policy for the Sustainable Development of Traditional Peoples and Communities.

A more recent instrument, the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, was approved by the UN General Assembly on November 19, 2018, having been proposed, voted on and approved in September of the same year by the UN Human Rights Council. I had the opportunity to contribute to this process over recent years, participating in a side event at the 36th Session of the UN Human Rights Council, as well as various agendas with international bodies, seeking to address collective rights, the right to land/territory and Brazilian sociobiodiversity.

The Declaration represents the outcome of a campaign lasting almost two decades, led by Via Campesina International, involving peasants, herders, artisanal fishing communities, farmworkers and indigenous peoples organizations, seeking to safeguard the rights of peasants and other people working in rural zones, categories that encompass Brazil's 'traditional peoples and communities.'

Among the rights mentioned in the Declaration are: the right to the land title regularization of their lands and territories; the right to access the natural resources necessary for the social reproduction of the communities; the right to form organizations, unions, cooperatives or any other organizations; participation in the creation and implementation of public policies, programs and projects that may impact their lives, territories and means of survival; the right to access to justice, education, shelter and water; the right to food security and sovereignty; the right to access production tools, technical assistance, credit and insurance; the right to conservation and protection of the environment; the right to welfare (social welfare, public healthcare and social security); the right to use and protect their traditional medicine; the right to biodiversity and to fair and equitable sharing of the products arising from the exploration of natural resources traditionally used for their social production and reproduction; among others.

Consequently, the Declaration seeks to improve the living conditions of peasants and rural workers, strengthening their fights to access rights, recognizing that the ways of life of peasants, people who work in rural areas and traditional peoples and communities are fundamental to the maintenance of sociobiodiversity, the guarantee of food sovereignty, and the fight against climate change.

Brazilian sociobiodiversity: a short introduction

Collective rights-holders – indigenous peoples, quilombo communities, traditional peoples and communities – and their territories and ways of life represent counter-hegemonic forms in the face of the advance of capitalism and development. Rethinking the local and the global, Arturo Escobar (2005) argues that a series of recent works have attempted to reposition 'the place,' offering elements for thinking beyond development – that is, for a conceptualization of post-development, which, in the author's view, is more favourable to the creation of new types of language, understanding and action.

Escobar emphasizes the role of ethnography in this respect, documenting the resistances to capitalism and modernity in diverse environments, and demonstrating practices and processes that represent forms of active resistance to development itself. He lists various works on local models of economy and environments maintained by peasants and indigenous communities, in part rooted in local knowledge and practices (Escobar 2005: 76).

According to the author, in Latin America special attention has been given to cultural hybridization, rendering explicit the dynamic encounter of practices originating in many different cultural and temporal matrices. Moreover, local groups, far from being passive recipients of transnational conditions, actively configure the process of constructing identities, social relations, new practices (Escobar 2005: 76) and new territorialities. In Brazil, this is what has been happening particularly in relation to traditional peoples and communities.

According to Eliane Cantarino O'Dwyer:

> The expression traditional peoples designates a diversity of social situations that have as a common denominator conditions of existence considered to contrast with 'modernity,' situated on the margins of the representations of 'development' and 'progress' of the hegemonic economic and political powers. The expression is used in the context of the processes of building 'modernizing' Nation States and encompasses social and political identities constructed in relation to the current constitutional and legal framework [...], as a guarantee of the recognition and reproduction of their ways of making, creating and living. (O'Dwyer 2018: 35)

The author emphasizes the category 'traditional peoples' as an inclusive category, encompassing various groups that assume descriptive and analytic meanings, but also as diacritical marks used by social actors in interactive contexts to signal forms of belonging through the construction of ethnic, social and spatial boundaries, as well as in relation to the State.

Paul Little (2002) identifies as elements related to traditional peoples "the existence of regimes of common ownership, the sense of belonging to a place, the search for cultural autonomy, and the sustainable adaptive practices that the various studied social groups demonstrate in the present." As for the ethnogenesis of the concept of *traditional peoples* and its subsequent political and social uses, according to Little the concept has emerged to encompass distinct social groups who defend their territories against the usurpation attempted by adversaries, other social groups or even the Nation State itself.

Alfredo Wagner Berno de Almeida (2006), in turn, emphasizes that 'traditional' is not reduced to history, nor to primordial ties that incorporate collective identities, but involves identities that are redefined situationally in a process of continuous mobilization. "The political-organizational criterion stands out, combined with a 'politics of identities,' used by objectified social agents in movement to confront their adversaries and the apparatuses of the State" (Almeida 2006: 25-26).

Costa Filho (2015) explains that traditional peoples and communities in Brazil have in practice attributed themselves identities on the basis of four criteria, sometimes mobilizing more than one depending on their socio-spatial and historical situation:

a. ethnic-racial, such as indigenous peoples, quilombo communities, Roma peoples, *terreiro* [candomblé] peoples, and others;
b. through the connection to a specific biome or ecosystem, like the *geraizeiros* or peoples of the cerrado [Brazilian savanna], the *catingueiros* or peoples of the caatinga [Brazilian steppe savanna], the *pantaneiros* (peoples of the pantanal of the states of Mato Grosso and Mato Grosso do Sul);
c. by a predominant work activity that figures as a mark of identity, such as the rubber tappers, Brazil nut harvesters [...] fisherfolk [...], among others;
d. by the type of occupation and use of the territory, combined with historical-conjunctural circumstances, such as the *retireiros* of the Araguaia (free range cattle ranchers in common use areas along the shores of the Araguaia river), [...] the *comunidades de fundos* [communities that live from gathering wild caatinga fruits and breeding goats and sheep on common use areas] and *fechos de pasto* [who live from gathering cerrado fruits and breeding free range cattle, while also practicing common use of the territory], the *ilhéus* (residents of coastal and river islands, who mix fishing with crop cultivation and gathering) (Costa Filho 2015: 82-83; my additions).

Whatever the specific case, the expression 'traditional peoples and communities' refers to modes of appropriating, organizing and using space that produce territories of traditional occupation, constituted by the political exercise of groups subalternized by the State, in contrast to conceptions of land as a commodity, a natural element available to economic exploitation.

In Brazil, these social forms are identified to a large extent with the peasantry, associated with ethnic attributes or overdeterminations, territorial connections, knowhow and practices linked to the use of biodiversity, their own forms of organization and mobilization, among other factors.

These can indeed be considered contemporary peasant forms, countering the argument or the possibility of the death of the peasantry as a result of modernization and globalization (Mendras 1991), or alternatively as forms of resistance and resilience displayed by these ways of life and their territorial bases.

Mauro Almeida (2007: 14) describes the death of the peasantry more as the death of "a system of thought; the end of a code. The pieces that this code organized in the past, though, are still in circulation," through the "reactivation of indigenous, native, grassroots, ethnic politics," the discourses and practices of

> [...] rural democratization, environmental self-government, counter-hegemonic gender politics whose actors are affected by dams, indigenous peoples undergoing movements of ethnic revivalism, *caboclos* who rediscover themselves as Indians, rubber tappers who transfigure into peoples of the forest, *caiçaras* who turn into peoples of the seas, marginal peoples who become quilombolas [...] we see that cultural, economic and ecological traits that were associated with it [the classical theory of the peasantry], though disjointed and separated from the grand theoretical narrative of which they formed part, remain on the agenda. (Almeida 2007: 14)

I tend to think of these peasant forms as prevalent in the rural world, especially when we seek to understand the historical or processual dimension of these situations and avoid essentializing concepts and/or freezing realities, territories and social groups. Instead, I seek to demonstrate their patterns of resistance and resilience – just how plural, multiform and contextual these groups or societies are, especially through the processes of fighting for and maintaining their territories and identities.

The production of anthropological reports and the implementation of rights: the Gurutuba case

Considering the right to land/territory to be a fundamental right of these groups, it should be emphasized that, in terms of legal-formal structures, Brazil has Indigenous Lands, Quilombola Territories, Extractivist Reserves (RESEX), Sustainable Development Reserves (RDS), Agro-Extractivist Projects (PAEs), Real Right to Use Concessions (CDRUs),[1] the conventional agrarian reform settlements and the land title regularizations of territories by state agencies, among other instruments. It is essential to recognize, however, that these administrative forms are not always sufficient to meet demands or to accommodate traditional modes of use and occupation.

There is also an increasing tardiness in the land regularization processes and a rapid advance of hegemonic interests: the pace of the regularization processes of territories has failed to match the advance of macroeconomic interests, undermining territorial demands and community bonds, causing disagreements and rifts within groups, compromising natural resources, territorial bases and ways of life, and prompting a whole series of rights violations.

This is the context in which anthropologists work in the processes of land regularization of territories, producing technical documents that substantiate rights, when they are not working directly alongside communities and community members in the fight to obtain recognition and the realization of their rights. On the other hand, the actions of the responsible agencies (the Colonization and Agrarian Reform Institute, INCRA, in the case of quilombo communities, and the National Indian Foundation, FUNAI, in the case of indigenous peoples) have been marked by delays and by political-administrative decisions that do not always consider territorial demands – or the territories identified and delimited by anthropologists and community leaders – "which are sometimes shrunk under the pretext of respecting the principles of reasonability, rationality and feasibility, among others, which, in practice, have restricted the amplitude of their rights [...] and favoured their adversaries" (Costa Filho 2016b: 278).

1 The Real Right to Use Concession, which concerns the allocation of federal lands, will be discussed further below.

In the case of the production of technical reports for territorial identification and delimitation, it is essential to consider Eliane Cantarino O'Dwyer's assertion:

> [...] following my own ethnographic experience in the field of applying constitutional rights, rather than ignoring the conditions that enable the realization of this kind of anthropological knowledge, it is necessary to describe the panoptic processes and disciplinary techniques to which state power and relations of domination subject those groups that demand their rights and their economic, social and political autonomy (O'Dwyer 2011: 116).

While the disciplinary action of the State affects "groups that demand territorial rights, notably the quilombo communities [and indigenous peoples], the anthropologist and anthropological practice are also exposed to the risk of compliance or disciplining" (Costa Filho 2016a: 278), especially when conducting ethnographic research on the production of ethnicity, processes of territorialization (Oliveira Filho 1998; 1999) and the consubstantiation of community demands within territorial limits.

In the field we can also observe an enormous lack of awareness about the land regularization process – among both the communities and their adversaries – combined with fragilities caused by long periods of exclusion and discrimination, resulting in "low group self-esteem." Also frequent are

> [...] the apprehensions of community members concerning the tacit declaration of their interests in recuperating territorial portions, today in the hand of farmers and economic groups. Many were until recently, or still are, exploited or 'favoured' by these invaders, who appropriated their territories and resources, and the relations of 'good neighbourliness' have assured the economic viability of families and the group itself. In turn, these land regularization processes, highly complex and protracted, once begun result in the gradual or immediate suspension of 'favours' and the worsening of conflicts at local/regional level (Costa Filho 2012: 336).

To give an idea of the difficulties of the land regularization process of a quilombola territory, for example, especially the lengthy delays that these processes entail, I briefly present the saga of the quilombola community of Gurutuba and their attempt to guarantee their territorial rights. "The Gurutubana community has lived in the Gorutuba river valley, in the north of Minas Gerais, since the eighteenth century, victimized by a brutal process of expropriation, unleashed in the twentieth century, more precisely in the 1950s, and intensified with the arrival of the Northeast Development Office (SUDENE) from the 1970s" (Costa Filho 2008: 11). Their large population is dispersed among 31 localities or local groups situated at the confluence of the northern Minas Gerais municipalities of Pai Pedro, Porteirinha, Jaíba, Janaúba, Gameleira, Monte Azul and Catuti. In all, there are approximately 6,000 people, 1,200 families, many coinhabiting and occupying tiny fractions of the land of their ancestors, amid large cattle ranches.

The "Report on the Identification and Territorial Delimitation of the Gurutuba Quilombo – North of Minas Gerais" was elaborated on the basis of Directive n. 36, of 27/12/2002 of the Ministry of Culture – Palmares Cultural Foundation[2] and was registered at INCRA in 2003. Following the foundation of the Gurutuba Quilombola Association (2003) and the articulation of various partnerships, a wide-ranging mobilization process was initiated with various interventions conducted with the aim of accessing rights and improving the community's living conditions.

In 2006 work was continued on the administrative land regularization process with various stages already concluded: elaboration of an anthropological report, registration of families, land surveys, a survey of the ownership sequence of the land deeds relating to the delimited territory, publication of the RTID[3] – 20/12/2013

2 Today these processes are based on Decree 4887, which regulates the procedure for identification, recognition, delimitation, demarcation and official registration of lands occupied by descendants of quilombo communities as defined in Article 68 of the Transitory Constitutional Provisions Act of the 1988 Federal Constitution.

3 *Relatório Técnico de Identificação e Delimitação* (Technical Report of Identification and Delimitation).

(process 54170.000533/2005-81), notification of the non-quilombola owners and tenants with a deadline set for contestations, the response to the contestations, and preparation of the Declaratory Directive by National INCRA. The process is currently in the final regulatory phase at federal level. According to Costa Filho (2016b), there are various decision-making forums or barriers that delay the process for issuing the quilombo land titles:

> One of the instruments or barriers that needs to be broken are the decision-making forums within the Colonization and Agrarian Reform Institute (INCRA), namely: the Regional Decision Committee (CDR) and the Board of Directors (CD: decision-making forum of National INCRA). [...] This forum decides on questions such as whether to publish the Technical Report of Identification and Delimitation (RTID), as well as assessing the contestations received after publication of the RTID and notification of the owners; it also decides on the technical and political merit of the territorial claim, [...] for the purposes of ratification and publication [of the INCRA Administrative Directive], that is, definitive recognition as the territory necessary for the group's social, economic and cultural reproduction (Costa Filho 2016b: 279, my addition).

It should be emphasized that the Quilombo do Gurutuba RTID remained under discussion for various years in INCRA's Regional Decision Committee (CDR) due to a lack of consensus on approval for publication, especially on the part of the Chief Prosecutor of INCRA/MG. More than 17 years after submission of the Anthropological Report to INCRA, the community is still fighting for the land registration of its territory, which, with the current scenario of national political regression (depletion of public policies and weakening of rights already achieved), has demanded constant social mobilization and the deployment of various defence strategies amid the rising violence in the region.

It is also important to observe that the tutelary status, superseded by legal frameworks introduced after the 1988 Constitution with respect to the relationship between the State and indigenous peoples, is still deeply rooted in government structures and forms of governance. In this case, tutelage is not limited to indigenous peoples but is extended to quilombola communities and to all historically excluded groups. Control over social life, as demanded by the hegemonic model, have been perpetrated and amplified, meaning that protective measures present biases that meet other interests, hegemonic in this case.

Souza Lima (2015), analysing tutelage and participation, simultaneously foregrounding the attention paid to forms of action and the sociohistorical dimension of the processes of State formation, argues that tutelage is a "modality of exercising power" (Souza Lima 2015: 430). Thus, the government administrative mesh extends over populations and territories, articulating and centralizing networks of powers, resources and interests. These dynamics are examined by the author through the idea of participation, "taking as a nodal point the reconfiguration of the political setting since the 1988 Constitution" (Souza Lima 2015: 426).

In this context, the very meaning of participation has altered "from an eminently political practice marked by the pursuit of autonomy in the dialogue with government agencies, and [...] has been converted into a more technical, bureaucratic and sometimes figurative presence" (Souza Lima 2015: 444).

According to Zhouri and Valêncio:

> [...] in the last 20 years, democratization processes in the country have been depleted and subsumed by government techniques that, despite utilizing terms that indicate participation, end up reaffirming political projects that diverge from the emancipatory perspective of civil society (Zhouri and Valêncio 2014: 9).

The authors discuss the negotiation/mediation/resolution procedures for environmental conflicts and the construction of consensuses in the context of large-scale construction and development projects, which seem to adhere to democratic forms of management but, in fact, shift the focus of action from the sphere of rights to the sphere of interests, diluting constitutionally guaranteed rights.

Members of civil society in these circumstances or in the so-called social oversight forums end up constituting, through prescient elite strategies, one more component in the performance of democratic life in a country whose history is marked by authoritarianism in the exercise of State power, by the permanent production of social inequalities and by violence.

Working as a judicial expert in the conflict between the PNSC and Traditional Communities: the Canastra case

It should also be observed that many national and state parks were created as a mitigatory/compensatory measure for the environmental damage caused by large-scale development projects and by the steel industry linked to iron smelting. Moreover, many of these parks overlap the territories of indigenous peoples, quilombo communities and traditional communities. The liability in terms of the land regularization of these full protection conservation units is greater than the Legal Reserve[4] liability of the properties in the respective states/biome. In this context, we have, on one hand, rural properties obliged to recuperate or compensate for deforested areas that correspond to the Legal Reserve of their properties; and, on the other hand, lands expropriated for the creation of Conservation Units without due payment of compensation to the owners, nor any prevision of public money to pay for the same.

The solution has been encountered through an administrative measure based on a provision of the Brazilian Forest Code: the Legal Reserve Compensation, involving the purchase and donation to the federal government of an area located in a Conservation Unit and awaiting land regularization. It is worth emphasizing that the legal reserve compensation can be effected anywhere in the national territory so long as it belongs to the same biome. This has resulted in the incursion of preservationist interests over traditionally occupied lands, since it lies in the interest of large rural landowners to relieve the State of outlays in the land expropriation processes for preservation purposes, obtaining, in exchange, permission to exploit all the lands on their properties in the production of commodities, for example. This has severely affected traditional territories and ways of life.

Legal reserve compensations, with the respective legalization of new areas, have frequently occurred in the regularization of many parks, notably the Serra da Canastra National Park. The park was created in 1972 with 200,000 hectares and regularized through a Management Plan in the 1980s, in the middle of the military dictatorship, with an area of 71,525 hectares. From 2005 the recently created Chico Mendes Institute for the Conservation of Biodiversity (ICMBio) restored the original proposal of 200,000 hectares, covering parts of six municipalities in the state of Minas Gerais: São Roque de Minas, Sacramento, Delfinópolis, São João Batista do Glória, Capitólio and Vargem Bonita.

Various interests and threats hover over the region, including the expropriation for public ends (environmental preservation) of another 130,000 hectares, posing a risk to more than 1,500 families of producers and residents of the rural area, and 43 traditional communities. Some 550 families are traditional occupants of the region. In terms of prevailing interests, we can note diamond mining, in direct conflict with environmental preservation, as well as the interests of the communities in maintaining their territory and way of life.

I was appointed to act as an expert witness for the evaluation of the Public Civil Action under way in the Federal Courts, filed by the Federal Public Defender's Office in defence of the right of the traditional communities and community members of Serra da Canastra to remain in the territory. During this process,

4 The Legal Reserve represents a percentage of the property that must be maintained with native vegetation, its use restricted. The size of the area that should be allocated to the Legal Reserve varies according to the geographic localization of the rural property and the surrounding biome: if the property is located in Legal Amazonia (states of Acre, Pará, Amazonas, Roraima, Rondônia, Amapá and Mato Grosso and the regions situated to the north of parallel 13° S of the states of Tocantins and Goiás, and to the west of meridian 44° W in the state of Maranhão), the legal reserve must be 80% in forest areas, 35% if the property is situated in a cerrado area [Brazilian savanna] and 20% in areas of open fields; if the property is located in other regions of the country, the legal reserve is 20% of the property.

I was also subject to a claim of grounds for disqualification on the part of the federal prosecutor (Federal Attorney General's Office in the state of Minas Gerais), who questioned my condition of 'exclusive dedication' at the Federal University of Minas Gerais and prior knowledge of the subject of the Public Civil Action (correlated publications and professional activities), which, according to the accuser, amounted to lack of impartiality in relation to the subject of the lawsuit.

I consider presumable and entirely reasonable that it was precisely my professional and academic trajectory as a whole, including the specific bibliographic production, that had led the Judge responsible for the lawsuit to nominate me as a court expert to coordinate the investigative studies on the land conflicts in which the traditional communities were involved and on the implantation of the Serra da Canastra National Park.

In this context, although anthropologists are obliged to present ethnographic 'proofs' and 'evidence,' one of the potential risks for the expert is to come under suspicion, as in my own case. As Almeida (2008: 46) stresses, while the doctor, for example, cannot be an expert witness in cases involving his or her own patient, the anthropologist can and indeed should be a witness when the legal action lies within his or her theoretical-conceptual or ethnographic domain. According to the Assistant Attorney General of the Republic at the time and coordinator of the 6th Chamber of Coordination and Review of the Public Prosecutor's Office, Dr. Deborah Duprat, it is

> [...] important to emphasize, in relation to the anthropological study, that this does not and could not have a neutral position in relation to its research, in the sense of objectifying and defining a particular domain through norms or patterns external to the group, since this would entail depriving it of its statutory force. Thus the anthropological study aimed at the identification of a traditional territory [or even of the traditionality of the group] presumes comprehension and translation of the forms in which the group sees itself over the course of its existential trajectory, how it sees and knows the world, how it organizes itself in it (Duprat 2016).

The jurist added:

> In this sense, the decisions that reject the validity of anthropological expertise because of suspicions concerning the researcher's close relations with the group are somewhat curious. However, any expert opinion requires the professional's technical and scientific knowledge (Article 424, I, CPC). Furthermore, in the case of anthropology, only someone with knowledge of the group's everyday existence is qualified to produce this proof. On the other hand, the definition of a traditional territory [or of a traditionality] cannot ignore anthropological research, unless we wish to re-establish the ethnocentric bias that guided the previous law in which the judge attributed the agents with his or her own vision (Duprat 2016).

The Brasilia Protocol (ABA 2015) contains explicit guidelines for the training and experience of the anthropologist expert witness to participate in administrative and judicial processes, once again making clear the

> [...] need to take into account the specific training and experience of the anthropologist in relation to the communities involved and their territories, and/or proven experience in the production of technical and expert reports [...]. Moreover, the effective participation of the communities is fundamental, not only because they figure as rights-holders in the context of the investigative studies, but also because they are participants in the knowledge building process, in accordance with already established regulations. [...] The researcher also needs to be assured the autonomy necessary for interaction with the group during all phases of the research and the writing of the expert/technical report (ABA 2015: 22).

Configuring as an assistant to the courts, in the capacity of an expert witness, as set out in Articles 148 and 149 of the Code of Civil Procedures (CPC/15), he or she also meets the requirements of Article 10 presented in the code of ethics for expert witnesses at federal level:

> Article 10. The nomination as a Court Expert or as a Technical Assistant should always be considered, by themselves, as a distinction and a recognition of their special technical or scientific knowledge, capacity and honourability, and they will decline from these nominations in the cases set out in the Code of Civil Procedures.

It is clear, therefore, that not only the CPC and the Code of Professional and Disciplinary Ethics of the National Council of Experts of the Federal Republic of Brazil, but also the Code of Ethics of the Brazilian Anthropology Association expect the expert to possess knowledge of the issue (naturally, obtained through studies conducted and accumulated previously) or of the social group in question, and that the proofs or evidence have been compiled through scientific research.

As for the Institutions of Higher Education, specifically the Federal University of Minas Gerais (UFMG) where I work as a member of the academic staff, there is a constitutional principle of indissociability between teaching, research and extension that governs Public Universities (Article 207 of the 1988 Federal Constitution). In relation to the participation of academic staff employed full-time in occasional collaborative work on topics relating to their speciality, under the terms of Article 21, caput, of Law 12.772/2012, the provision of these services has been regulated by UFMG since 1995; it is, therefore, a matter regulated both by Federal Law and by Resolution of the university itself.

It should be emphasized, therefore, that in the specific case of Serra da Canastra, the provision of judicial services did not lead to any remuneration of the expert witness or his team. With free legal assistance made available via the website of the Federal Justice,[5] the system only permitted reimbursement of expenses on travel, accommodation and food in the field.

The claim of a conflict of interests mentioned above delayed the technical studies considerably, reflecting the frequency with which claims and arguments compromise the realization of such investigations, sometimes even amounting to persecution of anthropological researchers and professionals.

Government allies, judicial power and conciliation: the case of the PNPCT

In terms of professional activity and, above all, the defence of the rights of indigenous peoples, quilombo communities and traditional peoples and communities in the government sphere, it is common to encounter technicians and managers engaged with their interests, but this does not occur in all government sectors. The same occurs in the legislature and less frequently in the judiciary. Furthermore, the Public Prosecutor's Office, the Public Defender's Offices and Public Lawyers have supported the struggle of traditional peoples and communities for their territorial, social, cultural and political rights. This support has grown in Brazil.

Public lawyers have worked tirelessly in defence of leaders, communities and community members, especially when their rights are undermined or they become criminalized for their work in defence of the territories and communities to which they belong. It is here too that the work of anthropologists enters in land regularization processes, producing technical reports that substantiate the right to the territory in question, when they are not assisting organizations and communities in the fight for rights, or indeed working in the government structure itself as public policy technicians or managers.

5 http://portal.trf1.jus.br/portaltrf1/servicos/ajg-assistencia-judiciaria-gratuita

Many different campaign strategies have also been used by communities, including training workshops in rights, associativism, cooperativism, the construction of social cartographies or participatory social mappings, self-delimitation and territorial reoccupation processes, and so on. It is important to remember that usually there is no government support for community organisation and empowerment.

In the judiciary, we sometimes encounter allies, but conciliation strategies have tended to predominate. Inspired by the new Code of Civil Procedures, these have been prejudicial to the basic rights of traditional peoples and communities: after all, a conciliation meeting sets out from the premise that the parties will give up something.

The new Code of Civil Procedures (CPC), which came into force on March 18, 2016, emphasizes the need for courts and other executive bodies to create chambers for mediation and conciliation with powers related to consensus-based conflict resolution. The problem is that these forums and bodies have applied the provision to any issue or legal dispute, including 'basic rights,' which should be outside the bounds of conciliation.

Among the rights recognized to indigenous peoples, quilombola communities and traditional communities are their civil and political rights, denominated first-order rights, which include the rights to life, equality, liberty, security and property. These are set out in Article 5 of the CF/88 and envisage full protection for the freedom of individuals from violations by governments, social organisations and private organisations, ensuring the capacity of subjects to participate in the civil and political life of society and the State without repression or discrimination based on their specificities and ways of life.

Also included are the right to safeguard human dignity in all its dimensions, taken to include the originary rights of indigenous peoples to their lands, the right to lands traditionally occupied by quilombo communities and by traditional peoples and communities; as well as the right to maintain difference and preserve their identities; respect for their way of interacting with the world, their social organisation and cultural identity; among other derived rights.

As I mentioned earlier, anthropologists also work as technicians and managers in diverse government sectors. In December 2004, I was invited to coordinate the recently created National Commission for Sustainable Development and Fighting Hunger, run by the Ministry of the Environment, later reformulated as a joint commission (July 2006).

The objective of this commission was to establish a National Policy for the Sustainable Development of Traditional Peoples and Communities (PNPCT). The policy was constructed with a high degree of civil society participation and was issued on February 7, 2007 (Decree 6.040). Today Social Oversight Forums have also been created in various federal states, most of them joint entities, and diverse laws and decrees have been issued protecting the territorial, social, cultural and political rights of traditional peoples and communities – for example Law 21.147 of January 14, 2014, to which I contributed, today already in force and whose first effects are being felt in terms of formal recognition of the identities and land regularization of vacant state lands to the benefit of local communities.

In August 2018, the National Confederation of Agriculture and the Parliamentary Agriculture Front of the National Congress, which represent the interests of agrobusiness and the big rural landowners, submitted an official letter to President Temer requesting revocation of Decree 6.040/2007. In this letter, they questioned the right to self-attribution of traditional peoples and communities, as well as the concept of traditional territory, which, they claimed, jeopardized national order and security, as well as violating the constitutional guarantee to protect private property, claiming that rural owners had lost their lands, production and family livelihood. The official letter also mentioned the demarcation of areas of land along the shores of the São Francisco River, in Minas Gerais, by the Federal Assets Office/Ministry of Budget Planning and Management (MPOG).

The concepts of self-attribution and traditional territory that the big rural landowners were questioning are consecrated by international law, not just by the International Labour Organisation (ILO Convention 169), but also by the system of Human Rights Protection of the United Nations, and by anthropology itself since the end of the 1960s. This comprises an international consensus of which Brazil is part, as well as diverse legal provisions already cited, which assure the rights of these peoples and communities.

It is also worth emphasizing that the already cited Direct Action on Unconstitutionality (ADI) of Decree 4.887/2003 had already been voted on. Practically the same arguments were presented, then: the ADI was contrary to the principle of self-attribution and contrary to land regularization, among other policies assisting quilombo communities. In other words, jurisprudence already existed on the issue.

The previously mentioned Decree 6040 of February 7, 2007 is structured in four government lines of action or programs: access to the territories and natural resources; infrastructural initiatives adapted to the realities of these peoples and communities; initiatives for sociopolitical inclusion; and initiatives for production and sustainability. Guaranteed, therefore, are the territories and the autonomy of socioproductive processes, as well as the forms of social and political organisation of these peoples and communities. Thousands of families and hundreds of communities potentially benefitting from this National Policy would be cast adrift by revocation of Decree 6.040.

Federal lands along the shores of national rivers (those that cross two or more federal states) are defined by the average flooded area (median ordinary flood line: *linha média das enchentes ordinárias* or LMEO) over the last ten years. In other words, they do not meet all the needs of 'rivershore' communities but are indispensable to the social reproduction of these groups, according to their uses, customs and traditions.

These small strips of land that form part of territories can be covered by Real Right to Use Concessions (*Concessão de Direito Real de Uso*: CDRU), with TAUS (Term of Authorization for Sustainable Use) able to be emitted until the CDRU is issued. The regularization of federal lands is specified in Article 7 of Law Decree n. 271 of 28/02/1967; and Law n. 9.636 of 15/05/1998 regulates the regularization, administration, leasing and sale of properties belonging to the federal union. The lands in question will always be federally owned for the usufruct of the benefitted communities.

It is important to understand that after the SPU declares the LMEO, all the land titles existing there become immediately null and void, leading to the allocation of these lands to local communities who have traditionally occupied them, or to payment for the use of tracts of land by those making use of them. The SPU/MPOG also conceives the declaration and administration of these lands as a source of revenue for the State. In this case, while these areas are found in the possession of rural landowners, the latter are using these strips of land illegitimately, since they would not be or are not paying the public coffers for use of this land with losses for the Brazilian people.

The SPU is responsible for supervising and taking the necessary measures in relation to the destination and public interest of the lands and property of the federal union. To this end, it can issue embargos, fines and other legal penalties, as well as request support from the police forces, in accordance with Article 11 of Law n. 9.636 of 15/05/1998. It is also worth stressing that the SPU/MG to date has undertaken a number of studies and issued a TAUS for the quilombola community of Caraíbas – Pedra de Maria da Cruz/MG, with a considerable liability existing in terms of regularization of federal lands in favour of traditional peoples and communities.

While at the level of Congress and the General Secretary of the Presidency of the Republic things are resolved by official notice, at local level farmers, in collusion with the Military Police, expelled community members, flattened and burned down houses, and criminalized leaders and pastoral agents, as in the case of the land conflict affecting the Canabrava Artisanal Fishing Community in Buritizeiro/MG, accentuating the violence in the rural area.

In almost all cases, eviction has been implemented by force. A process similar to the compulsory resettlement of Algerian peasant families and communities described by Bourdieu and Sayad (2004). The strategy or tactic is still the same: "a scorched-earth tactic: burnings of forests, annihilation of reserves and livestock – every means was used to force the peasants to abandon their land and their homes" (Bourdieu and Sayad 2004: 446-447).

According to Baviskar (2010), the violence of the State – we could also say the violence authorized by the State – is made routine by the constitution of social categories, including those who can legitimately use violence and those against whom violence can legitimately be used. The State also comes to define the context in which violence is justified. The definition of the conflict as a "law and order problem" becomes the next step in its suppression.

The outcome of the prevalence of hegemonic interests, the risks have grown to the legal frameworks themselves, along with sharp rises in violence in the rural world, with the criminalization of leaders and movements, murders, violent evictions, the disproportional use of police force against communities, as well as the frequent repression experienced within government departments, in the social oversight forums, in meeting rooms and in decision-making spaces, perpetuating forms of domination and exclusion. The uniting of politics and violence has been constitutive of this State that we expected to be transitory. As Bourdieu would say: "Every established order tends to produce the naturalization of its own arbitrariness" (Bourdieu 1977: 164).

This is the situation in which many of the indigenous peoples and quilombola communities and the traditional peoples and communities find themselves living in Brazil. Moreover, the current scenario is far from favourable: the land regularization of indigenous and quilombola territories and those of traditional communities is subordinate to the interests of large rural producers. It is worth emphasizing too that environmental licenses for development projects that sometimes impact the territories and the lives of quilombola communities and other traditional peoples and communities are also controlled by the big landowners and their representatives.

Beyond these governmental and situational shortcomings, various parliamentary actions have worked to undermine the processes of recognition and implementation of rights, jeopardizing legal frameworks arduously conquered by historically excluded groups and by civil society.

Political regressions and the erosion of rights: ADI 3239, PEC 215, CPI INCRA/FUNAI

The situation of traditional peoples and communities, especially in relation to processes of identity self-affirmation and institutionalized access to territories, have worsened over the last five years with the emergence of a political scenario of democratic regressions in syntony with hegemonic interests and projects. This has been especially pronounced under the last two governments of Michel Temer and Jair Bolsonaro, including the revocation of legal frameworks, closure of social oversight forums, dismantling of State apparatuses, suppression of social programs, and budget cuts.

Some specific threats are worth highlighting: the Direct Action on Unconstitutionality put into effect by the Democratas Party in relation to Decree 4887/2003; PEC 215, which transfers to Congress decisions concerning the demarcation and regularization of indigenous lands and the territories of quilombola communities and traditional peoples and communities; the CPI introduced in the Chamber of Deputies against the work of FUNAI, INCRA and anthropologists in land regularization processes, which has been shelved but may return; among other risks.

The Direct Action on Unconstitutionality (ADI) n. 3.239/2004 questioned the rights to self-identification of communities of quilombos and the ownership of lands traditionally occupied by them, as well ordering the paralysation of the land regulation processes in the territories. The vote in favour of the ADI and the consequent legal uncertainty lasted for years with the argument based on the temporal landmark – that is, referencing land regularization to effective occupation at the time of promulgation of the 1988 Federal Constitution.

The temporal landmark represented and still represents a strong threat to quilombola rights, as well as the rights of indigenous peoples and other traditional peoples and communities, given that it ignores the historical processes of expropriation of lands suffered by these groups, the processes of compulsory migration caused by the advance of economic fronts, construction works and development projects over their territories, and the unequal correlation of forces existing in the land conflicts in question. Very often the adversaries of the communities are agents of the State itself or backed by it, as in the case of infrastructural works and projects licensed by the State. However, despite the votes based on the temporal landmark and the unfavourable decision of 2012, on February 9, 2018, after large-scale mobilization of civil society and the professionals involved, as well as the Federal Public Prosecutor's Office, the quilombola cause emerged victorious. The STF declared the constitutionality of Decree n. 4.887/2003.

The other threat to the territorial rights of quilombola and indigenous communities mentioned above was the creation of the Parliamentary Commission of Inquiry (CPI)[6] into the National Indian Foundation (FUNAI) and INCRA. The CPI was set up in 2015 and had the aim of investigating the work of FUNAI and INCRA in relation to, respectively, the work of these institutions in the demarcation of indigenous and quilombola lands. It is worth emphasizing what Santos (2016) claims concerning the CPI in question:

> [...] that the objective of the parliamentarians that requested it, as the document establishing the CPI demonstrates, is to disqualify the technical work of anthropologists, whether in relation to the reports that make up the technical and scientific documents that provide the basis to the indigenous and quilombola land regularization processes, as well as the environment impact studies and reports... (Santos 2016: 111).

It is also worth stressing that the CPI is closed, but in the current context may be reopened. As I have stated elsewhere, "the CPI meets the interests of the rural caucus and hegemonic Brazilian sectors and attempts to hinder even further the processes of land regularization of indigenous and quilombola territories" (Costa Filho 2016a: 136).

As well as the CPI, another government action that has been undermining the process of regularization of quilombola lands is the deterioration of INCRA. According to information from the Instituto Socioambiental (ISA) in 2019:

> Between 2012 and 2018, the effective expenses on processes and expropriations [of INCRA] plummeted from R$ 51.6 million to R$ 2.7 million, a fall of 94% [...]. The situation tends to worsen due to the ceiling on public expenses and the orientation of fiscal austerity of the new government (ISA 2019).

Across Brazil there is a shortage of civil servants and, since 2013, INCRA has seen substantial cuts in its budget. The Michel Temer government, in 2017, established a significant reduction in the funding for agrarian reform in the country. As a consequence, the INCRA program for the regularization of quilombola territories fell by 48%. This trend has worsened under the current government.

6 CPIs are normally set up by parliamentarians with the aim of investigating, hearing testimonies and obtaining information directly from those involved, responding to popular grievances.

Final considerations

In this context of growing violence there is simply no question of abandoning the communities with which we work and about whom we write. When we produce reports or provide technical support, we sometimes feel the retaliation of adversaries who, as Alcida Rita Ramos would say (1990: 15), feel that their interests are attacked by our testimony-work. But we are in the field for relatively short periods of time, while the communities and community members sleep there everyday, unsure about tomorrow.

In this era of regression in which we live, whose risks are imminent, especially for traditional communities and peoples, but also for those of us who work on the regularization of indigenous and quilombola territories and those of traditional peoples and communities, or with the socioenvironmental component of licensing processes, we are called to respond to two primary movements: the first is to continue contributing to the consolidation of the democratic rule of law established by the 1988 Constitutional Charter, especially the rights of historically excluded groups; the second is to resist with care and theoretical-conceptual, ethnographic and political expertise, just as the groups with whom we work have always fought, in order to contribute effectively and exercise our role as anthropologists.

Even so, the sensation that lurks today is one of displacement, without having travelled anywhere, without leaving the place where we are. Here displacement is not diasporic in the sense used by Stuart Hall (2003), the feeling that the 'land' is no longer the same; it is no longer a question of breaking natural and spontaneous connections that the groups with which we work once possessed, connections interrupted through their diasporic experiences. Displacement now is felt in unprecedented form by ourselves, and is ethical and political in kind, a strange sensation that we are displaced without leaving the present place, a sensation that "we are no longer at home," which imposes on us the urgent need to (re)exist.

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