

2022

Brazil's Violence Against Indigenous Peoples

Andre Taylor

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Comparative and Foreign Law Commons](#), [Human Rights Law Commons](#), [Indigenous, Indian, and Aboriginal Law Commons](#), [International Humanitarian Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Andre Taylor (2022) "Brazil's Violence Against Indigenous Peoples," *Human Rights Brief*. Vol. 26: Iss. 1, Article 6.

Available at: <https://digitalcommons.wcl.american.edu/hrbrief/vol26/iss1/6>

This Column is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

BRAZIL'S VIOLENCE AGAINST INDIGENOUS PEOPLES

by Andre Taylor*

I. INTRODUCTION

Centuries of violence and displacement define the relationship between indigenous peoples and the successive governments of Brazil.¹ As Brazil embarks on a massive expansion of its agribusiness and mining operations, the systemic denial of land rights and illegal economic activity on protected lands has threatened traditional ways of life practiced by indigenous peoples.² The most aggressive policy taken by the Brazilian government has involved legitimizing land claims on unregistered ancestral indigenous lands for development, putting 37,800 square miles of territory at risk for exploitation by loggers, ranchers, and farmers.³

The rhetoric of the outgoing Brazilian government, led by Jair Bolsonaro, has also intensified anti-indigenous sentiments and emboldened trespassers

* Andre Taylor is a 2L student with American University's Washington College of Law. He is a staffer for the Human Rights Brief.

1 *Brazil: Five Centuries of Change*, BROWN UNIV. LIBR., <https://library.brown.edu/create/fivecenturiesofchange/chapters/chapter-2/native-populations/> (last visited Nov. 22, 2022) (Explaining how the pursuit of agricultural goods such as sugar and rubber drove the enslavement and intentional dislocation of indigenous peoples in Brazil).

2 Fiona Watson, *Brazil's Treatment of Its Indigenous People Violates Their Rights*, THE GUARDIAN (May 29, 2013, 11:46 AM), <https://www.theguardian.com/commentisfree/2013/may/29/brazil-indigenous-people-violates-rights>.

3 Mauricio Torres & Sue Branford, *Brazil Opens 38,000 Square Miles of Indigenous Lands to Outsiders*, MONGABAY (May 8, 2020), <https://news.mongabay.com/2020/05/brazil-opens-38000-square-miles-of-indigenous-lands-to-outsiders/>.

to kill tribesmen across the Amazon Rainforest.⁴ Brazil is in violation of the right to land under Article 7 of the United Nations Declaration on the Rights of Indigenous Peoples and Article 27 of the International Covenant on Civil and Political Rights (ICCPR) because the government undermines the territorial integrity of indigenous communities.⁵

II. BACKGROUND

Roughly 900,000 indigenous people live in Brazil, with the government demarcating about thirteen percent of the country's landmass for the population.⁶ In 1967, Brazil founded Fundacao Nacional do Indio (FUNAI), which oversees the land and cultural rights of indigenous peoples.⁷ In recent years, Brazil has minimized the institutional support available to indigenous peoples. For example, on former President Bolsonaro's first day in office, his administration issued a provisional measure that stripped indigenous land demarcation powers from FUNAI and shifted them to the Ministry of Agriculture, Ranching, and Supply.⁸ Demarcation

4 Katie Surma, *Bolsonaro Should Be Tried for Crimes Against Humanity, Indigenous Leaders Say*, NBC NEWS (Feb. 18, 2022, 1:48 PM), <https://www.nbcnews.com/news/world/bolsonaro-should-be-tried-crimes-against-humanity-indigenous-leaders-say-n1272193>.

5 G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples (Oct. 2, 2007) (stating that indigenous peoples have the right to life, integrity, liberty, and security of person); International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, U.N.T.S. 171 art. 27 [hereinafter ICCPR] (detailing the responsibility of states to safeguard the rights of minorities to enjoy and profess their own cultures, religions, or languages).

6 Fabiano Maisonnave & Lalo de Almeida, *On the Edge of the Amazon, Manoki People Grow Soy & Fight for Land Rights*, CLIMATE HOME NEWS (Oct. 15, 2021, 2:00 PM), <https://www.climatechangenews.com/2021/10/15/edge-amazon-manoki-people-grow-soy-fight-land-rights/>.

7 Madeline Asta, *Future of Funai: Indigenous Rights or Agribusiness Paramountcy*, COUNCIL OF HEMISPHERIC AFFAIRS (July 26, 2017), <https://www.coha.org/future-of-funai-indigenous-rights-or-agribusiness-paramountcy/>.

8 Sue Branford & Mauricio Torres, *Bolsonaro Hands Over Indigenous Land Demarcation to Agriculture Ministry*, MONGABAY (Jan. 2, 2019), <https://news.mongabay.com/2019/01/bolsonaro-hands-over-indigenous-land-demarcation-to-agriculture-ministry/> (noting this measure greatly weakens FUNAI).

is the means by which land is distributed to indigenous peoples in Brazil and granted territory over which they have collective legal rights.⁹ While a subsequent ruling from the Supreme Federal Court of Brazil articulated that the government is obligated to guarantee and demarcate indigenous land, Bolsonaro's executive action reflects a wider effort by Brazilian officials to neuter legal protections for indigenous communities.¹⁰

The Brazilian government has implemented other strategies to limit land rights, including the transfer of the Brazilian Forestry Service from the mandate of the Ministry of Environment to the Ministry of Agriculture, reducing oversight of the protection of the Amazon rainforest and the indigenous communities that exist within it.¹¹ The government also moved the provision of fishing licenses to the Ministry of Agriculture and gave the body oversight over delimiting indigenous lands.¹² Brazilian officials have proposed opening indigenous lands to conventional agribusiness models used for commercial commodities and suspended partnerships with non-governmental organizations by stopping the transfer of funding resources to civil society organizations.¹³ The rural unions and civil society organizations that traditionally benefited from government partnerships have served as the

9 *Brazil: Reject Anti-Indigenous Rights Bill*, HUM. RTS. WATCH (Aug. 24, 2021, 3:33 PM), <https://www.hrw.org/news/2021/08/24/brazil-reject-anti-indigenous-rights-bill>.
10 Marina Cases Sánchez, *The International Criminal Court to the Rescue of the Home and Lives of the Brazilian Indigenous Peoples*, UNIV. PADUA 25 (2020) (explaining how Articles 21.XIV and 37.XXI were removed from the law after the provisional measure to shift land demarcation powers to the Ministry of Agriculture failed before the Federal Supreme Court).

11 Fernando Tadeo Maraes, Angela Boldrini, & Joelmir Tavares, *Ministry of Agriculture Is Tasked With Appointments Previously From Funai & Environment Department*, FOLHA DE S.PAULO (Jan. 3, 2019, 11:58 AM), <https://www1.folha.uol.com.br/internacional/en/brazil/2019/01/ministry-of-agriculture-is-tasked-with-appointments-previously-from-funai-and-environment-department.shtml>.

12 *Id.*

13 Anne Jean Kaiser, *Brazil Environment Chief Accused of 'War on NGOs' As Partnerships Paused*, THE GUARDIAN (Jan. 17, 2019, 2:30 PM), <https://www.theguardian.com/world/2019/jan/16/brazil-environment-chief-accused-of-war-on-ngos-as-partnerships-paused>.

backbone of indigenous advocacy and political representation.¹⁴

The Brazilian government made more aggressive attempts at consolidating indigenous territory by co-opting FUNAI to allow non-indigenous business interests to register for land claimed by indigenous communities but not yet formally demarcated.¹⁵ Despite warnings from experts that policies of this nature will displace indigenous peoples from over 200 tribes and exacerbate the destruction of the Amazon Rainforest, the Brazilian government has used nationalist, discriminatory rhetoric to justify its actions.¹⁶ President Bolsonaro publicly bemoaned demarcations of indigenous land and after his 2018 election promised there would be no more demarcations.¹⁷ In 2019, the former President tweeted a video of a high-ranking security minister asserting that "many existing indigenous lands were based on fraudulent documents."¹⁸ Bolsonaro has also made a myriad of blatantly dehumanizing remarks about indigenous peoples. In July 2019, the President referred to indigenous peoples as "prehistoric men."¹⁹ The characterization of indigenous peoples as obstructions to Brazilian economic development has energized illegal miners and loggers to settle in indigenous territory, leading to clashes with indigenous peoples oftentimes taking the form of targeted killings.²⁰

14 Mia Alberti & Teresa Bo, *Brazil NGOs Must Search for Alternative Funds to Save the Amazon*, AL JAZEERA (Sept. 9, 2019), <https://www.aljazeera.com/news/2019/9/9/brazil-ngos-must-search-for-alternative-funds-to-save-the-amazon>.
15 See Torres, *supra* note 3.

16 Sánchez, *supra* note 10.

17 Ernesto Londoño & Leticia Casado, *As Bolsonaro Keeps Amazon Vows, Brazil's Indigenous Fear 'Ethnocide'*, N.Y. TIMES (Apr. 24, 2020), <https://www.nytimes.com/2020/04/19/world/americas/bolsonaro-brazil-amazon-indigenous.html>

18 Sam Cowie, *Jair Bolsonaro Praised the Genocide of Indigenous People. Now He's Emboldening Attackers of Brazil's Amazonian Communities*, THE INTERCEPT (Feb. 16, 2019, 7:31 AM), <https://theintercept.com/2019/02/16/brazil-bolsonaro-indigenous-land/>.

19 Dom Phillips, *Bolsonaro Declares 'the Amazon is Ours' & Calls Deforestation Data 'Lies'*, THE GUARDIAN (July 19, 2019, 12:00 PM), <https://www.theguardian.com/world/2019/jul/19/jair-bolsonaro-brazil-amazon-rainforest-deforestation>.
20 *Id.*

The government further fails to meet its obligations under Article 3 of the Indigenous and Tribal Peoples Conventions by refusing to implement urgent measures as suggested by the Chamber of Indigenous People and Traditional Communities of Brazil's Public Prosecutors Office.²¹ The Chamber declared that violence is increasing against indigenous peoples across the Amazon due to an increase in illegal occupation of indigenous land characterized by targeted killings in indigenous communities.²² For example, the Awa people, with only 355 surviving members, have been driven nearly to extinction by an organized campaign of violence led by the illegal logging industry, which uses hired gunmen to hunt down and kill Awa who resist the illegal land occupiers.²³

III. LEGAL ANALYSIS

Brazil ratified the Indigenous and Tribal Peoples Conventions, 1989 (No. 169) on July 25, 2002.²⁴ The Convention establishes the rights associated with indigenous peoples, stressing the responsibility of states to preserve tribal institutions and quality of life in conjunction with development plans.²⁵ Government responsibility for the protection of indigenous peoples is rooted in the recognition of the "aspirations of [indigenous] peoples to exercise control over their own institutions, ways of life and economic development . . ."²⁶ Article 3 presents that indigenous communities should be protected from "force or coercion . . . used in violation of human rights and fundamental freedoms . . ."²⁷ Article 3 also provides that "indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or

²¹ See Cowie, *supra* note 18.

²² *Id.*

²³ Genthin Chamberlain, 'They're Killing Us': World's Most Endangered Tribe Cries for Help, THE GUARDIAN (Apr. 21, 2012, 7:07 PM), <https://www.theguardian.com/world/2012/apr/22/brazil-rainforest-awa-endangered-tribe>.

²⁴ *Convention (No. 169) Concerning Indigenous and Tribal People in Independent Countries*, June 27, 1989, 1650 U.N.T.S. 383.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

discrimination."²⁸

Brazil is failing to uphold its obligations under Article 3 by allowing the infiltration of indigenous land, leading to widespread deadly violence and systematic marginalization against communities. Brazil's conduct breaches Article 3 because government rhetoric created a social environment wherein indigenous peoples' rights to land are characterized as obstacles to national development. In doing so, government statements embolden illegal miners and farmers to occupy lands held by indigenous peoples and openly commit murder against these communities with impunity.²⁹ Government rhetoric entices illegal occupations of indigenous land by signaling to the majority population that indigenous communities deprive the country of resources which may be better utilized elsewhere, intensifying resentment and lack of respect for indigenous peoples in violation of Article 3.³⁰

The Inter-American Commission on Human Rights has found that failing to prevent penetration of indigenous territories by outsiders carrying harmful infectious diseases can contribute to violations of the rights to health and wellbeing under Article XI of the American Declaration of the Rights and Duties of Man.³¹ Predating the Universal Declaration of Human Rights, the Declaration of the Rights and Duties of Man contains relevant material regarding the rights of indigenous people.

It can thus be argued that failure to prevent the infiltration of indigenous land by outsiders actively killing indigenous citizens constitutes a violation of Article 3 in the Indigenous and Tribal Peoples Conventions context given the similar scale of neglect and harm. In characterizing indigenous peoples as impediments to the interests of the majority, the Brazilian government violates Article 3

²⁸ *Id.*

²⁹ Surma, *supra* note 4 (providing the example of Emyra Wajapi, the leader of the Wajapi people, who was stabbed to death by illegal miners who invaded her village).

³⁰ Cowie, *supra* note 18.

³¹ Brazil, Comunidad Yanomami, Case 7615, Inter-Am. Comm'n H.R., Report No. 12/85, OAE/Ser.L./V/II.85, doc. 5 (1985).

by signaling that illegal occupiers can take protected indigenous resources with deadly force.

The UN recognizes that under Article 27 of the ICCPR, state parties must ensure that minorities — including indigenous peoples — have a right to enjoy their culture.³² This right includes the use of land, because the enjoyment of a culture “may consist in a way of life which is closely associated with territory and use of its resources.”³³ Indigenous communities often possess highly spiritualized relationships with the natural world, imparting a high degree of significance to traditional activities such as hunting and fishing.³⁴

Article 27 thus creates an obligation for Brazil to engage in developmental practices which advance the material wellbeing of its wider population while preserving the ability of indigenous minorities to enjoy territory protected by law. Brazil’s government has violated Article 27 through policies that encroach upon indigenous lands, preventing communities from carrying out their traditional ways of life. Brazil has done this by advancing policies that weaken the constraints against economic development in the Amazon rainforest. For example, according to former government officials, there have been substantial personnel shortages in bodies like FUNAI, as well as

³² See, e.g., *General Comment Adopted by the Human Rights Committee under Article 40, para. 4, of the International Covenant on Civil and Political Rights*, CCPR/C/21/Rev.1/Add.9 (April 26, 1994).

³³ *Id.*

³⁴ Andi Murphy, *The Revival of Indigenous Subsistence Whaling Hangs in the Balance*, CIVIL EATS (Feb. 8, 2022), <https://civileats.com/2022/02/08/revival-indigenous-subsistence-whaling-inupiaq-makah-wampanoag/>; *Defending the Amazon: How Indigenous Culture Protects Colombia’s Rainforest*, THE STRAITS TIMES (Feb. 4, 2022, 12:16 PM), <https://www.straitstimes.com/world/defending-the-amazon-how-indigenous-culture-protects-colombias-rainforest>; Fábio Zuker, *Brazil’s Indigenous Xavante Strangled by Agribusiness, Slammed by COVID-19*, MONGABAY (Nov. 4, 2021), <https://news.mongabay.com/2021/11/brazils-indigenous-xavante-strangled-by-agribusiness-slammed-by-covid-19/>.

reductions in funding.³⁵ The Inter-American Court on Human Rights has ruled that refusal to demarcate indigenous territories to prevent land concessions to third parties reflects a denial of communal property rights under Article 21 of the American Convention on Human Rights.³⁶ Brazil’s violation of Article 27 is analogous because the government’s resistance to demarcating indigenous land in the Amazon rejects communal land practices of native groups and opens the land to exploitation by agribusiness.

IV. CONCLUSION

The Brazilian government’s attempts to weaken constraints against the development of indigenous land in combination with rhetoric which casts indigenous peoples as an obstacle to development constitutes a violation of the rights to life and enjoyment of culture pursuant to international law. Brazil should rectify the current regulatory environment in which business interests are receiving access to indigenous lands to uphold its human rights duties. It is also equally important for the Brazilian government to play a role in restoring the damage already done to indigenous communities by investing in rainforest-restoration efforts and research into sustainable forms of agriculture.

³⁵ Anthony Boadle, *Gold Miners Fire on Yanomami Indigenous Community in Brazil*, REUTERS (May 11, 2021, 12:24 PM), <https://www.reuters.com/world/americas/illegal-gold-miners-fire-yanomami-indigenous-community-brazil-2021-05-11/>.

³⁶ Nicaragua, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79, 75 (August 31, 2001).