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Brazilian government violates Indigenous rights: What could induce a change?

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Abstract

The current presidential administration of Brazil has implemented a legislative agenda aimed at weakening protections of Indigenous peoples, in line with an ideological discourse and the direct participation of the armed forces in this process. This agenda has enabled invasions of Indigenous lands and a much higher COVID-19 mortality rate for Indigenous peoples when compared to non-Indigenous people. A bill recently approved by the Chamber of Deputies aims to extinguish all Indigenous lands established by the Brazilian government from 1988 onwards. This bill represents the official opening for violation of the rights of Indigenous peoples by the Bolsonaro administration and facilitates invasion of Indigenous lands. The president's multiple efforts to weaken or deny protection of these peoples, to usurp their lands and to deny their rights to consultation on projects that affect them need to be judged by Brazil's Federal Supreme Court, the UN Human Rights Council, the Inter-American Commission on Human Rights (IACHR), the Inter-American Court of Human Rights (IACtHR) and the International Criminal Court.

Zusammenfassung

Die derzeitige brasilianische Regierung hat, im Einklang mit einem ideologischen Diskurs und der direkten Beteiligung der Streitkräfte, eine Gesetzgebungsagenda zur Schwächung des Schutzes indigener Völker umgesetzt. Diese Agenda führte zu Invasionen von indigenem Land und zu einer viel höheren COVID-19-Sterblichkeitsrate für indigene Völker im Vergleich zu nicht-indigenen Völkern. Ein kürzlich von der Abgeordnetenkammer verabschiedeter Gesetzentwurf zielt darauf ab, alle von der brasilianischen Regierung ab 1988 erfolgten Abgrenzungen indigener Gebiete rückgängig zu machen. Dieses Gesetz stellt die offizielle Einleitung zur Verletzung der Rechte indigener Völker durch die *Bolsonaro*-Regierung dar und erleichtert die Invasion indigener Gebiete. Die mehrfachen Bemühungen des Präsidenten, den Schutz dieser Völker zu schwächen oder zu verweigern, deren Land zu usurpieren und deren Rechte auf Anhörung zu Projekten, die sie betreffen, zu verweigern, müssen von dem brasilianischen Bundesverfassungsgericht, dem Menschenrechtsrat der Vereinten Nationen, der Interamerikanischen Kommission für Menschenrechte (IACHR), dem Interamerikanischen Gerichtshof für Menschenrechte (IACtHR) und dem Internationalen Strafgerichtshof beurteilt werden.

Keywords Amazonia, Brazilian politics, COVID-19, ecocide, genocide, military forces, pandemic, political history

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1. Consequences of presidential rhetoric

Invasion of Brazil's Indigenous lands (*Terras Indígenas*) surged dramatically after President *Bolsonaro* took office (CIMI 2019; HRW 2019; ISA 2019). This is in response to President *Bolsonaro's* rhetoric and policies that impede the actions of government agencies that should be curbing these invasions, in addition to the administration's promotion of large infrastructure projects while ignoring the right of impacted Indigenous people to consultation as established by International Labour Organization (ILO) Convention 169 (Ferrante and Fearnside 2019, 2020a,b,c; Ferrante et al. 2020a). While other presidential administrations have also violated Indigenous rights, the *Bolsonaro* administration has been outstanding, especially in its use of rhetoric (de Carvalho et al. 2021). The presidential administration of *Jair Bolsonaro* is implementing a 'ruralist' agenda aimed at opening Indigenous lands for the entry of agribusiness, mining and hydroelectric dams (e.g., Rocha 2020). Brazil's 'ruralists' are large landholders and their representatives are a key part of *Bolsonaro's* political base (Ferrante and Fearnside 2019). *Bolsonaro* lied to the world about deforestation and burning in the Amazon, blaming Indigenous people when the real causes are the 'ruralists' who benefit from the dismantling of environmental policies (Ferrante et al. 2020b).

The frequency of attacks against Indigenous peoples more than doubled during President *Bolsonaro's* administration (Cruz 2020). Goldminers are one important source of attacks, such as a May 2021 attack that burned down the houses of Munduruku leaders (Alves and Farias 2021). In the same month, miners linked to the First Command of the Capital (PCC), which is a criminal organization that leads drug trafficking in Brazil, attacked Yanomami villages in the state of Roraima (Brasil et al. 2021). Attacks on Indigenous peoples are directly stimulated by *Bolsonaro's* hate speech (HRW 2019). When President *Bolsonaro* took office he declared that not a single centimeter of land would be demarcated for Indigenous peoples and that he would try to reverse the demarcations that have already been done (Ferrante and Fearnside 2019). On 11 January 2019, just ten days after President *Bolsonaro* took office, the president's discourse was explicitly cited by land grabbers as justification when they invaded the Uru-Eu-Wau-Wau Indigenous Land (*Terra Indígena*) in the state of Rondônia, claiming that the Indigenous people no longer had rights to their lands now that *Bolsonaro* was president. In addition, the

land grabbers threatened to decapitate all the children in the village if the people tried to repossess their lands (Arrais Neto 2019; Thomas 2019).

Biofuel companies, such as Millenium Bioenergia, are consolidating a production chain of biofuels and food products in Amazonian Indigenous lands. This has the potential to trigger new pandemics as a result of zoonotic leaps due to environmental degradation and the presence of pigs, cattle and other domestic animals (Ferrante et al. 2021a). On 20 August 2020, the Vice-President (General *Mourão*) met with the sugar-energy sector, where one of topics of the meeting was the Renova Bio program (FIEG 2020), which has great potential to stimulate a new cycle of deforestation (Ferrante and Fearnside 2018, 2020d).

Groups of illegal miners targeting Indigenous lands in the Amazon region have used explosives that are only allowed to be used by the Brazilian military (Raquel 2021), raising two hypotheses: 1) these explosives were diverted by corrupt military personnel, or 2) this is a deliberate action with the complicity of the armed forces. During Brazil's Military dictatorship (1964 to 1985) the Brazilian army used explosives and automatic weapons against the Waimiri-Atroari Indigenous people to allow construction of the BR-174 (Manaus-Boa Vista) highway, an act that is being investigated as genocide by the Federal Public Ministry (Farias 2019; Fearnside 2018a). In 2020 and 2021, Brazilian military forces have distributed chloroquine and other ineffective medicines for the treatment of COVID-19 to Indigenous people (Montel 2021; Portal Roraima 2020). One of the concerns with the militarization of the environment that has been the hallmark of the current presidential administration (Astrini et al. 2020; Teixeira, P. 2020) is the human-rights record of the Brazilian armed forces recently documented in the extensive report of the Inter-American Commission on Human Rights (IACHR 2021a).

Scientists who defend the environment and have denounced President *Bolsonaro's* 'death agenda' have suffered attacks, death threats and harassment, including the first author of this article (*The Intercept Brasil* 2021). Rhetoric and a constant flow of posts to supporters on social media have effectively encouraged acts like these (e.g., Severo 2019). Prior to his candidacy and election as president, then Federal Deputy *Bolsonaro* declared that a civil war was desirable and that some 30,000 needed to die in Brazil (*Jornal da Cultura* 2021).

2. Dismantling of agencies and legal protections

A pervasive dismantling of federal agencies and legal protections has been underway since President *Bolsonaro* took office in 2019 (*Abessa et al. 2019; Ferrante and Fearnside 2019; Werneck et al. 2021*). Funding for the agencies responsible for the environment and Indigenous peoples have been drastically cut, staff is reduced, the agency heads and other leadership positions have been given to *Bolsonaro* supporters who oppose the objectives of the agencies, and hundreds of internal regulations that can be issued at the stroke of a pen have hindered agency operations (e.g., *Amaral et al. 2020; Gonzales 2020a*). On 22 April 2020, these changes were famously referred to as a ‘*boiada*’ (herd of cattle) by then Environment Minister *Ricardo Salles* when he called on his fellow ministers to take advantage of media attention being focused on COVID-19 as an ‘opportunity’ to “let the herd of cattle pass through” (*Youtube 2020*, minute 25). Using events such as the COVID-19 pandemic has been a common practice of the government to cast a smokescreen over the weakening of legislation on the environment and Indigenous peoples (*Ferrante and Fearnside 2020b; Vale et al. 2021*).

In December 2020 and January 2021 President *Bolsonaro* released record quantities of pork-barrel funds known as ‘*emendas*’ (*Shalders 2020; Soares 2021*) and managed to induce members of Chamber of Deputies and the Senate to elect his political allies as the presidents of both houses of the National Congress on 1 February 2021. Immediately after this political upset *Bolsonaro* sent the newly elected chamber presidents a list of 35 bills to be given priority for passage in 2021 (*Agostini 2021*). These include PL 191/2020 that would open up Indigenous lands to agribusiness, ranching, dams and mining (*Villén-Pérez et al. 2020*). Another bill effectively ends environmental licensing (PL 3729/2004, now approved by the Chamber of Deputies and currently advancing through the Senate; see *Ruaro et al. 2021*). Another PL 490/2007, now approved by the Chamber of Deputies (see *Pontes, F. 2021*), weakens legislation protecting Indigenous peoples and allows revocation of Indigenous lands created from 1988 onwards. Another PL 2633/2020, now approved by the Chamber of Deputies, relaxes regulations on legalizing illegal land claims, greatly facilitating land grabbing (*grilagem*), or the illegal claiming of large areas of government land (*Fearnside 2020*). Others (PL 6438/2019 and PL 3723/2019)

would relax gun-control laws, thus facilitating the formation and arming of ruralist paramilitary groups (*Ferrante and Fearnside 2021*). During the infamous 22 April 2020 ministerial meeting (where the ‘herd of cattle’ was promoted), the video recording of which was released to the public by order of the Federal Supreme Court, President *Bolsonaro* stated that he wanted to arm the people so that they could rise up against ‘tyrannical’ state governors who wanted to institute social-distancing measures to contain COVID-19 (*Youtube 2020*). Indigenous leaders have pointed out that *Bolsonaro* is arming people to invade their lands (*Ávila 2021*).

Among the setbacks in PL 490/2007 is its provision that only those lands that were already formally in possession of the Indigenous people on the date Brazil’s 1988 Constitution was enacted can be considered ‘Indigenous lands’, thus requiring proof of ownership, which is not necessary today. This provision changes the configuration of Indigenous lands in Brazil and, given the weakening of protection promoted by the government itself, these peoples will be vulnerable to armed invaders intent on claiming their territories. Indigenous lands represent two thirds of the area under some form of protection in Brazil’s Amazon region, with less deforestation than in protected areas destined exclusively for conservation (*Nogueira et al. 2018*).

Deforestation in Brazilian Amazonia has increased dramatically since President *Bolsonaro* took office as president in January 2019 (*INPE 2021*). This is largely the result of the president’s actions and anti-environmental discourse (*Ferrante and Fearnside 2019*). Actions can send a strong message both to potential violators of regulations protecting the environment and Indigenous peoples and to the government agents responsible for enforcing these regulations. On 12 April 2020 an episode of the popular *Fantastico* television program showed inspectors from the environmental agency (IBAMA) burning the equipment of illegal goldminers in an Indigenous land, as is authorized by law (*Gonzales 2020b*). President *Bolsonaro* was furious, and two days later his environment minister dismissed two IBAMA officials as punishment. On 7 May 2020 the president issued a ‘Guarantee of Law and Order’ (GLO) placing all IBAMA inspections under military command (*Bragança 2020*). This was reportedly to guarantee that no equipment would be destroyed when illegal loggers and miners were caught (*Climainfo 2020*). Destruction of equipment is the main disin-

centive to these illegal activities, as the other consequences of getting caught essentially amount to a tap on the wrist. All environmental enforcement actions were placed under 'Green Brazil Operation 2', led by the Vice-President (General *Hamilton Mourão*) as head of the new 'Council of Amazonia'. This council is composed of 19 military officers and four federal police officers, but has no technical experts in the environmental area (*Quadros 2020*). The new structure establishes an alternative chain of command that is independent of the government's environmental agencies and staff, directly implementing the orders of the commander in chief (President *Bolsonaro*).

General *Mourão* notably declared that he would 'eat the beret' from his military uniform if the notoriously destructive BR-319 highway is not completed within the current presidential administration (*Amazonas Atual 2019*). This highway would link the 'arc of deforestation' in the southern part of the region to relatively intact central and northern Amazonia, while planned roads connecting to BR-319 would give deforesters access to western Amazonia and to most of what remains of Brazil's Amazon forest (*Andrade et al. 2021; Ferrante and Fearnside 2020a; Ferrante et al. 2020a, 2021b,c*).

The environmental impact assessment (EIA) for the middle stretch of the BR-319 highway is not yet approved by IBAMA. IBAMA failed to comply with a recommendation by the Federal Public Ministry to wait for the pandemic to be controlled before holding the public hearings that are a required part of the licensing process. The BR-319 highway threatens at least 18,000 Indigenous people who have had the right of consultation denied by the Federal Government (*Ferrante and Fearnside 2020a; Ferrante et al. 2020a, 2021b,c*). The lands of these peoples are already being invaded by land grabbers during the pandemic, and deforestation is rampant in the affected area of the BR-319 highway (*Andrade et al. 2021; Ferrante et al. 2021b*). The 13 May 2021 passage of PL 3729/2004 by the Chamber of Deputies was celebrated by politicians in Manaus because it would allow construction work on BR-319 to begin immediately without the present environmental licensing requirements (*Amazonas em Tempo 2021*). These requirements include consideration of impact Indigenous peoples.

The military has avoided carrying out operations in deforestation hotspots (*Alessi 2020*), and environmental inspectors have reported that the military has

intentionally hindered their inspection actions (*Preite Sobrinho 2020*). The military operation also wastes large amounts of money that could have a significant effect on repressing deforestation if applied by the environmental agency, this being one reason why Brazil would be better served by strengthening its environmental agencies such as IBAMA and the Chico Mendes Institute of Biodiversity (ICMBio) instead of militarizing the protection of the Amazon (*Dolce 2021*).

The military also now dominates the National Indian Foundation (FUNAI), which is the agency responsible for protecting Indigenous Brazilians. An incident that epitomized the consequences of this occurred on 23 June 2021, when an army lieutenant who coordinates a local FUNAI branch in the state of Amazonas suggested 'setting fire' to a group of isolated Indigenous people (*Masionnave 2021*). New military appointees heading local FUNAI branches often renege on the promises of assistance made by the previous local heads (e.g., *Lima 2021*). The current FUNAI leadership has persecuted Indigenous leaders and organizations, for example by filing a complaint with the Federal Police claiming that FUNAI was a victim of calumny in the video series 'Mayará – an Indigenous emergency' produced by the Articulation of Indigenous Peoples of Brazil (APIB) (*APIB 2020*). The police investigation was halted on 5 May 2021 by a federal court in Brasília a few hours after APIB filed cases simultaneously with the Inter-American Commission on Human Rights (IACHR) and the Federal Supreme Court (STF) (*APIB 2021a*).

In addition to military officers, evangelical Christians, an important part of *Bolsonaro's* political base, have also been appointed to key positions in FUNAI. This includes a former missionary from the New Tribes Mission as head of Coordination of Isolated and Recently Contacted Indians (CGIIRC) (*Branford 2020*). The result has been a surge in authorizations for proselytizing in Indigenous areas, including contacting isolated groups. Spreading COVID-19 is one of the risks of this activity (*Milanez 2020*).

3. COVID-19 and Indigenous peoples

Brazil's military forces have been used as a smoke-screen for Amazon degradation and violations of Indigenous peoples' rights in the midst of the pandemic (*Ferrante and Fearnside 2020b*). Many Indigenous lands have been invaded, and the invaders can spread

COVID-19 in Indigenous communities (Ferrante and Fearnside 2020c; Oviedo et al. 2020). The Apurinã people have denounced the invasion of their lands from an illegal side road that is being built to connect to the BR-319 highway, which could lead to the dissemination of COVID-19 (Fearnside et al. 2020; Ferrante et al. 2021b,c,d). Indigenous peoples are a COVID-19 risk group, and the virus can decimate entire cultures because Indigenous traditions are passed on orally by the village elders who are the most affected (Ferrante and Fearnside 2020e; Ferrante et al. 2020c). The *Bolsonaro* administration's treatment of the COVID-19 pandemic among Indigenous people forms a major part of the suit to prevent genocide that was filed in Brazil's Federal Supreme Court by Indigenous organizations on 30 June 2020 (ISA 2020; Sarmiento et al. 2020).

President *Bolsonaro* vetoed measures such as supplying drinking water and hospital beds to Indigenous peoples during the COVID-19 pandemic, actions that, together with the political and ideological agenda of the *Bolsonaro* administration, have put multiple ethnic groups at risk (Ferrante et al. 2021d). Preliminary studies suggest that part of the Amazonian population does not generate a natural immune response to the SARS-CoV-2 virus that causes COVID-19 (Ferrante et al. 2021e). The lack of co-evolution of these peoples with many viral diseases is probably a contributing factor (Ferrante and Fearnside 2020e). Higher Indigenous mortality is evident when compared to the mortality of the non-Indigenous population, which is linked not only to the genetic heritage of these peoples, but also to their social vulnerability, which has become even more pronounced as a result of the policies of the *Bolsonaro* administration during the pandemic (Ferrante and Fearnside 2020e; Ferrante et al. 2020c, 2021d; Parola and Wu 2021). A calculation based on data from the Ministry of Health indicates Indigenous people having a 98% greater chance of dying from COVID-19 than Brazilians of European descent (Serra 2020).

4. Threats to Brazil's democracy

President *Bolsonaro* likes to use the expression 'my army' which implies that he does not accept the military's role as uninvolved in politics. On 8 March 2021 *Bolsonaro* announced that 'his' army would not force the population to stay at home to contain the COVID-19 pandemic (Jornal da Cultura 2021). A statement

by *Bolsonaro* suggested using the army to promote a state of siege in the country, which would violate the Brazilian constitution, indicating an attempted military coup to establish a dictatorship (Jornal da Cultura 2021). On 14 March 2021 Defense Minister *Fernando Azevedo e Silva* declared that the army would not lean towards authoritarianism and on 30 March was fired for refusing to align the armed forces with President *Bolsonaro's* ideology (Cantanhêde 2021). Immediately thereafter, the commanders of the Army, Navy and Air Force resigned, claiming that the armed forces would not participate in a coup adventure (Gielow et al. 2021). The key replacement for commanding the army was hand-picked by *Bolsonaro* rather than following the normal procedure based on seniority (Frazão and Castanhêde 2021), and two months later his subservience was demonstrated by granting an unprecedented pardon to an active army general who made a political speech at a *Bolsonaro* rally (G1 2021). President *Bolsonaro* has made extraordinary efforts to curry favor with Brazil's various federal and state police forces, including granting or otherwise obtaining generous salary and other benefits (Mena 2021). This support is seen as a possible alternative to military leadership in a potential coup attempt (e.g., Kotscho 2021).

Media outlets have reported this as orchestrated actions for a military coup (see *Jornal da Cultura* 2021). If this were to occur one can expect the invasion of Indigenous lands by ruralist groups in the absence of any government protection for these peoples. *Bolsonaro* has advocated the return of the military dictatorship, and every year has ordered the military commemorate the date of the 1964 military coup (e.g., DW 2019). Both before and after his election as president, *Bolsonaro* has repeatedly praised one of the most notorious torturers of Brazil's military dictatorship (Fearnside 2018b; Mazui 2019). Although not universal, the existence of significant support for *Bolsonaro's* ideology within the military is clear (Machado 2021).

Bolsonaro has stated that the armed forces owe him full support (Carta Capital 2021a), which reinforced his supporters' calls for a military coup. Brazilian institutions must not ignore the risk of a military coup in Brazil, given *Bolsonaro's* need for self-preservation. On 13 August 2021 the president of the Brazilian Labor Party (PTB), an outspoken *Bolsonaro* supporter, was arrested for threats to the Federal Supreme Court (STF) (Borges 2021). On 20 August 2021 *Bolsonaro* submitted a request to the Senate to impeach the STF

Judge who had ordered the sentence, despite little chance of passage (*Vargas et al. 2021*). This is believed to be a move to divert attention from the president's own crimes during the pandemic, as pointed out by several senators (*Carta Capital 2021b*). Brazil's current 'institutional crisis' between the three branches of government (legislative, executive and judiciary) that is fueled by President *Bolsonaro* and his supporters, including constant attacks on the electoral system suggesting that the upcoming October 2022 presidential election is likely to be rigged, is believed to be part of a strategy preparing for an uprising of supporters to overturn an electoral defeat, following the example of US President *Donald Trump* (*Gielow 2021*).

5. Potential consequences for *Bolsonaro*

Brazil's National Congress holds the authority to impeach the president. Over 130 motions calling for impeachment of President *Bolsonaro* are pending in the Chamber of Deputies, but the president of the chamber (*Artur Lira*), a *Bolsonaro* supporter, has not allowed any of them to proceed through the process of committee approval and a plenary vote (*Ferreira 2021*). The rationales for impeachment range from the president's disastrous handling of the COVID-19 pandemic to corruption, environmental destruction and attempts to undermine democracy. Treatment of Indigenous peoples is among the rationales. The justifications for impeachment of President *Jair Bolsonaro* are more than sufficient to allow the congress to consider this option.

Brazil's Federal Supreme Court (STF) holds a variety of powers, including requiring the National Congress to act on certain matters. In July 2020 a senior member of the STF made two public statements associating the military with genocide (including the Ministry of Health, then controlled by the military) based on their handling of COVID-19 in Indigenous peoples (*Mello 2020; Teixeira, M. 2020*). A variety of criminal charges against President *Bolsonaro* could be considered (*Brandino 2021*). Court actions could be extended to those staff of government agencies who have contributed to the vulnerability of these peoples during the pandemic, such as the technical heads of IBAMA who insist on holding public hearings on the BR-319 highway. The vulnerability of affected Indigenous peoples also means that Brazilian judges have a responsibility to suspend these projects during the pandemic.

The Organization of American States (OAS) can issue a variety of measures to its member states. In July and October 2020 and in January 2021 the Inter-American Commission on Human Rights (IACHR) issued precautionary measures to the Brazilian government over the government's failure to take measures to protect Indigenous people from COVID-19 (*IACHR 2020, 2021b; ILRC 2020*). In July 2021 APIB submitted a denunciation to the IACHR to prevent a new massacre of the Munduruku, Yanomami and Guajajara peoples (*APIB 2021b*). In addition to the IACHR, the Inter-American Human Rights System (IAHRS) also includes the Inter-American Court of Human Rights (IACtHR), to which the IACHR can forward cases for prosecution.

The United Nations system includes the Office of the High Commissioner of Human Rights (OHCHR). On 23 August 2021 the UN Special Rapporteur on the rights of Indigenous peoples called for Brazil's Federal Supreme Court to uphold Indigenous land rights (*OHCHR 2021*). UN Human Rights Council (UNHRC), also part of the UN system, received a report on 28 June 2021 from its special counselor for the prevention of genocide formally raising the issue of 'risk of genocide' of Brazil's Indigenous peoples (*DW 2021*).

The International Criminal Court (ICC) in The Hague has received an array of cases against President *Bolsonaro* for 'crimes against humanity' and 'genocide'. On 9 August 2021 APIB submitted a case accusing President *Bolsonaro* of these crimes (*Pontes, N. 2021*). This is the first time that Indigenous leaders have submitted such a case directly, rather than through intermediaries (*APIB 2021c*), such as a case submitted in July 2020 by 60 health organizations in Brazil (*Jucá 2020*). On 16 August 2021 APIB released a dossier of international complaints concerning Brazil's Indigenous peoples (*APIB 2021d*). The court only proceeds with judgment of a small percentage of the cases it receives, but it must act on some of the pending cases from Brazil, both those based on destruction of the environment and on violation of the rights of Indigenous peoples. It is urgent that Brazil reverse the progressive erosion of the rights of Indigenous peoples.

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