Decolonizing genocide in Brazil:

challenges to defending Indigenous collective life

The plan to exterminate the country’s Indigenous Peoples has been reconfigured time and again to adapt it to the country’s different cultural and political contexts. More recently, the anti-Indigenous policies of Jair Bolsonaro and the Covid-19 pandemic have shone a renewed light on the need to decolonize the crime of genocide. The legal classification of this crime represents a challenge in terms of proving a subjective element of malice, i.e., that there was an intention to destroy, in whole or in part, the Indigenous Peoples of Brazil.

By Maria Judite da Silva Ballerio Guajajara - May 1st 2023

The Indigenous population has grown. Preliminary data from Brazil’s population census (2023), published by the Brazilian Institute of Geography and Statistics (IBGE), reveal a significant increase in the number of Indigenous people. The Indigenous population increased from 900,000 to 1,400,000 between 2010 and 2023, providing evidence for at least two hypotheses: the constant resistance of the communities settled on their ancestral territories and the right to Indigenous self-declaration, hindered by violence and violations.

Unfortunately, this fact alone is unable to accurately reflect the reality of a country that has almost always been anti-Indigenous. The diminishment of diversity (estimated in millions) caused by the Brazilian invasion must never be forgotten because it cannot be repaired: the Indigenous blood shed has been systematically silenced through criminal proceedings that fail to establish the criminal nature of the atrocities committed.

There is no innocence in this statement. It is simply the yearning of the Indigenous people, people who need to see the malicious conduct that destroys them recognized as distinctive, guilty and punishable, particularly conduct aimed at the “destruction, in whole or in part, of the ethnic group”. While it may seem disproportionate, then, to speak of the genocide of
Indigenous Peoples given their noted population growth, there is no contradiction. Indeed, while resistance continues to grow within the communities and around the outskirts of the cities, the plan for their extermination is constantly being reconfigured to adapt to social and political contexts.

**Krenak Reformatory – Naturalizing the Stigma of Cultural Inferiority**

We need to strip away the bloodthirsty Brazilian history, disguised as conquest, if we are to understand how State policies (with all their due caveats) have largely served as a backdrop for the instrumentalization of practices of dispossession, implemented through the suppression of the physical bodies and identities of Indigenous people. Contact policies with Indigenous Peoples living in voluntary isolation are one concrete example of how forced displacement from their traditional territories is being promoted with the aim of favouring the particular interests of third parties.

The Krenak Reformatory, located in the state of Minas Gerais during the IA-5 period (Institutional Act of 1968, which scaled up the military dictatorship of 1964), was the first to be officially classified as a prison specifically for Indigenous people. Used to repress Indigenous individuals who rebelled against the violations, it represented a true “project to homogenize diversity” and, in turn, an attempt to suppress identities. Although supposedly focused on individuals, the reformatory had the capacity to collectively target communities and villages.

There have been, and still are, numerous efforts to hide, camouflage or even misrepresent the strategies used to operationalize a disregard for the lives of Indigenous Peoples in Brazil. Rooted in the deepest spheres and structures of State and society, the instrumentalization of decision-making power over another’s right to life, in this case, the Indigenous people, has been perpetuated over time. Even in the recent past and present, we can see how State policies are potentially used to violate Indigenous rights, above all the right to life, by means of deliberate actions and omissions in the protection of their rights, to land and the environment for example.
Perhaps the difficulty in getting such crimes classified as *genocide* is intentional. There is no single, definitive explanation for understanding this difficulty. We can, however, note the Western construction of the classification, which “appears to fail to reflect Indigenous life” by placing value on these lives according to a pattern of power and racial hierarchization that has codified the differences. The stigma of cultural and human inferiority becomes naturalized, to the detriment of the native peoples, and is used as a means to justify actions of transformation and extermination.

Faced with this scenario and protected by a Constitution that makes notable references to the fundamental rights of Indigenous Peoples, the Western limitations of the definition of *genocide* are now being discussed by Indigenous Peoples and their legal representatives with a view to decolonizing the classification and bringing it closer to the Indigenous reality, a process that urgently needs to be heard and constitutionally protected.

**The crime of *genocide* during the Covid-19 pandemic**

Brazil ratified the Rome Statute in 2002 and it was then transposed into domestic legislation. The country thus came under the jurisdiction of the International Criminal Court (ICC). The idea that, 17 years later, in November 2019, there would be a “complaint against Bolsonaro for crimes against humanity and incitement to *genocide* of Brazil’s Indigenous Peoples” was at that point unimaginable.

The complaint came before the ICC at one of the most complex moments in Brazil’s Indigenous history. The then head of government was beginning to reaffirm and implement the promises he had made during his electoral campaign, giving rise to the formulation of a true anti-Indigenous policy. The National Foundation for Indigenous Peoples (Funai) was being militarized and manipulated, environmental protection bodies were being weakened and incitement to hatred and dispossession was becoming commonplace. Bolsonaro gave public speeches deriding fundamental rights on several occasions, most often in relation to the demarcation of Indigenous lands.

This scenario was exacerbated by the Covid-19 pandemic and, with it, the risk of repeating an event that has often been repeated in Brazil: the spread of disease among the Indigenous
Peoples as a way of making them vulnerable and imposing foreign interests over their territories, lives and natural wealth.

Something new was brewing in this process, however. The Indigenous Peoples took “Action for Non-Compliance with Fundamental Precepts No. 709” to the Federal Supreme Court, an action proposed by the Coordinating Body of Indigenous Peoples of Brazil (Articulação dos Povos Indígenas do Brasil - APIB). The organization questioned the Federal Government's failure to combat the pandemic and to warn of the risk of genocide to which they were being exposed. In this case, APIB was legitimately recognized as a national representative with the authority to bring the existence of specific forms of potential genocidal practices before the highest body of the Brazilian judiciary.

The criminalization of genocide in Brazil and the subjective element of intent

These milestones in defending the rights of Indigenous Peoples have an impact on and alert us to the necessary process of decolonizing the crime of genocide, which is still limited by “civilizing” myths. Beyond the broad discussion surrounding the criminalization process (rightly broad, as a way of qualifying and adapting the category to the social and human groups), another emerging and urgent legal void that must be challenged relates to the evidentiary burden of its subjective element.


All this legislation has in common the fact that it requires a subjective element of malice for the crime to have been committed, i.e., a proven intent to destroy, in whole or in part, a national, ethnic, racial or religious group. And despite the immense evidentiary challenge that this represents for those defending collective interests, Jair Bolsonaro's anti-Indigenous policy made its intention to destroy Indigenous Peoples perfectly clear.
Towards the decolonization of justice

In the broad brushstrokes of Western law (or of those who implement it), it could be concluded that 2023 began peacefully enough in Brazil. The limitations of this approach do not, however, take into account the permanent state of war to which several Indigenous Peoples are exposed in Brazil, particularly the Yanomami people. Even less so when, in recent years, systematic attacks have been sustained against these peoples with the intention of exterminating them.

The attempt to deregulate mining exploitation and exploration activities and the legalization of garimpos, or the lack of protection of the lands of the Mundurukú people, which has resulted in the contamination of rivers and soil with mercury, putting women’s pregnancies and their subsequent breastfeeding at risk: are these not measures that prevent births within Indigenous communities? Does the tabling of a bill before Congress to deregulate these activities not clearly represent an intention to totally or partially destroy the Indigenous Peoples?

Perhaps, and only perhaps, one of the answers lies in the inevitable process of decolonizing the national and international judicial bodies, the ultimate guardians of fundamental rights, a movement that has already begun by recognizing the specific advocacy of Indigenous Peoples through their legal representatives, who are also Indigenous.

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