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INDIGENOUS LANDS IN BRAZIL

A report Prepared by the CEDI (Ecumenical Center of Documentation and Information, São Paulo, Brazil) & the National Museum (Federal University of Rio de Janeiro). CEDI, November 1987.

Contents:

- "Indigenous Lands: A Preliminary Assessment of their Official Recognition and other Uses made of them".
by João Pacheco de Oliveira Filho
(contains 8 tables & figures).
- A Listing of Indigenous Lands in Brazil: 20/10/87
Includes Methodological Note, Listing of Officially Recognized Indian Lands, Listing of Non-identified Indian Lands, 11 Maps, and Index of Cross-references.

(148 pages) (Report in Portuguese)

Copies available from:

CEDI
Avenida Higienópolis, 983
São Paulo, 01238, S.P., BRAZIL

Report Summary

The Ecumenical Center of Documentation and Information (CEDI) and the National Museum of Rio de Janeiro have just published a comprehensive, up-to-date survey and analysis of the land situation of indigenous peoples in Brazil. This work, unparalleled in the history of Brazilian indigenism, was made possible by the joining of forces over the past two years of the staff of the CEDI program "Indigenous Peoples in Brazil", coordinated by anthropologist Carlos Alberto Ricardo, which relies on an extensive nation-wide network of collaborators, as well as information and experience accumulated over the past ten years; and the staff of the "Study Project on Indigenous Lands in Brazil: Invasions, Use of Soil, Natural Resources", coordinated by anthropologist João Pacheco de Oliveira Filho of the National Museum, which has been developing academic work on the subject, as well as on indigenist policy and the relationship between indigenous peoples and the State.

The Report appears at a particularly important moment in the history of the country, as the National Constitutional Assembly is in the final stages of preparing the new Brazilian Constitution. The Report is thus intended especially to inform the delegates to the Assembly. It is also designed to fill a total lack of regular, public information from the official Indian agency, FUNAI, on the question of government actions on indigenous lands. The lack of information has become a serious problem in view of recent major changes in Indian policy which have resulted in the reorganization of the agency and its administrative apparatus, its forms of action and ideology, and the norms relative to the definition of indigenous lands. In effect, FUNAI has become virtually unchecked in the kinds of information and analysis it provides the public, which can have dangerous results as evidenced in a FUNAI document recently presented to the Constitutional Assembly containing serious distortions of data and conclusions about indigenous peoples and the land.

Hence the purpose of the Report is to provide a succinct, comprehensive, and reliable picture of the formal recognition of indigenous lands throughout the country, as well as the demographic situation, and the economic, private and state interests which affect such lands, as a basic, preliminary tool with many potential future uses. Based on a systematic survey of official documents on all indigenous areas since the beginning of official concern for indigenous land recognition, as well as the most recent information from fieldworkers on land use and occupation, the Report summarizes the situation of 518 indigenous areas which are listed and categorized according to their legal situation and de facto occupation. An introductory essay by João Pacheco de Oliveira Filho presents an overall analysis of the data contained in the lists.

Legal Definitions and Reality

Any discussion of Brazilian Indian lands must begin with their legal definition, as put forth in the current Federal Constitution (article 198 and article 40, par. 40) and in specific legislation (The Indian Statute, Law 6.001/73, arts. 17 & 38). These definitions recognize the necessity and importance of maintaining the indigenous peoples' habitat, or territory, as a guarantee of their physical and cultural survival. Indigenous lands are thus put under the protection and responsibility of the Union, which must see to administrative recognition, demarcation, and the defense of the indigenous peoples' right to permanent possession and exclusive use of the wealth existing on these lands. Indigenous land rights are considered by law to be aboriginal rights, deriving from the socio-cultural connection of present-day indigenous populations to the pre-Columbian peoples of the continent. These rights, thus, precede official recognition by the state; yet, the State has the responsibility of guaranteeing and protecting these rights to the surviving descendants of the aboriginal population who maintain their indigenous identity and links to a physical territory. In this regard, Brazilian legislation can actually be considered progressive and humanitarian.

As currently operationalized, the process of State recognition of Indian lands involves five stages distinguished as follows:

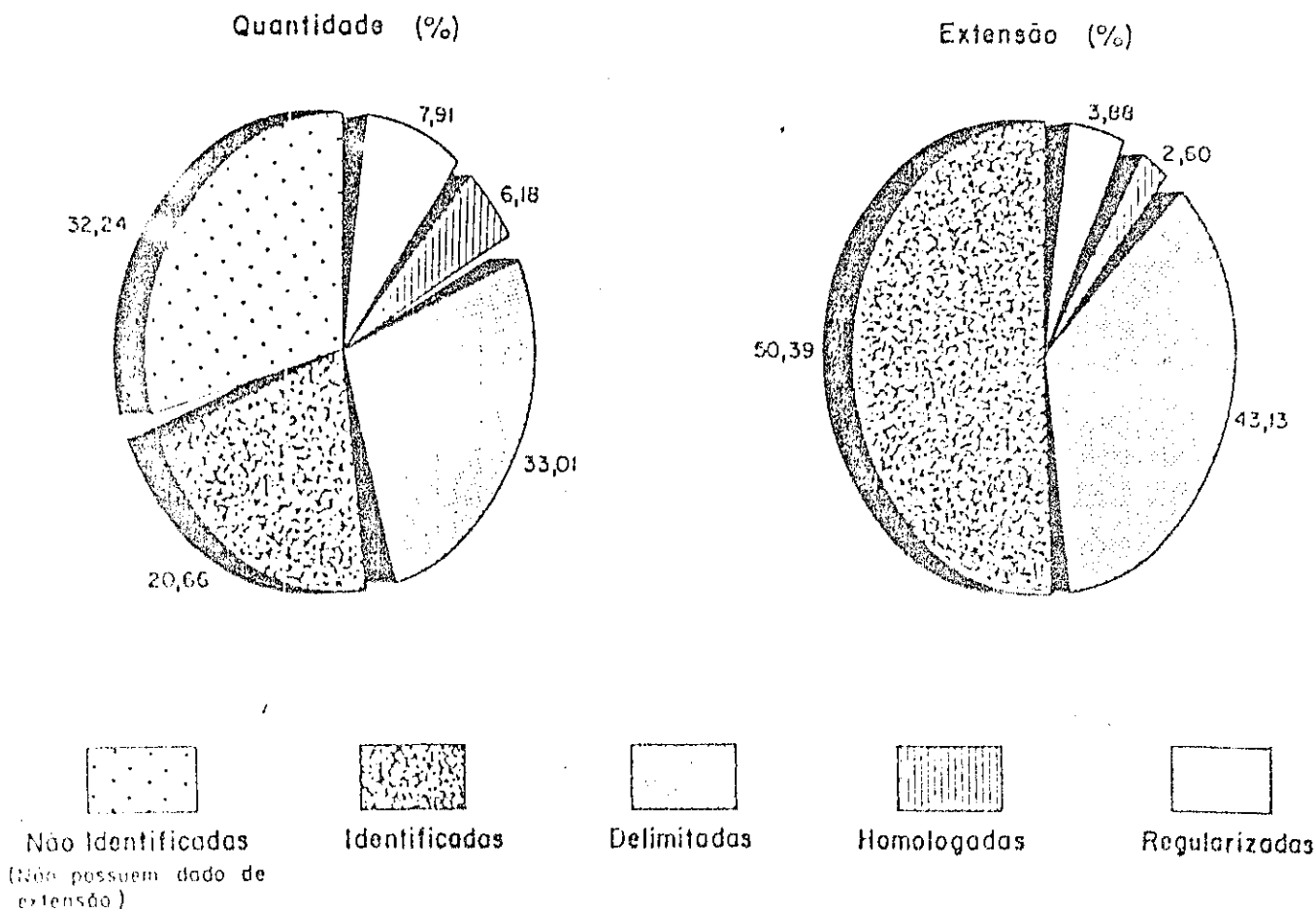
a) Non-identified lands in which, although indigenous peoples are known to inhabit these

lands, the State has taken no positive action towards recognition; b) Identified lands, in which FUNAI has taken the preliminary steps towards recognition such as administrative acts to identify or delimit lands, or 'Interdicting' (prohibiting access) given areas; c) Delimitation, implies the existence of an administrative act, which has the force of law or decree, establishing the physical limits of an area and recognizing it as indigenous; d) Demarcation, the physical, on-the-ground marking of the boundaries of an area as defined by the delimitation document, and as corrected and ratified by Presidential decree; and e) Regularization, the official registering of the demarcated areas in federal and local land registry offices.

If the actual situation of indigenous land recognition in Brazil is examined, however, the ideal picture presented in legislation is reversed. The figure below represents this situation, showing the number of indigenous areas and the amount of indigenous lands actually corresponding to the five stages listed above. This figure is based on a summary of the listings of the 518 indigenous areas and their current legal status.

FIGURE

Gráfico: QUANTIDADE E EXTENSÃO DAS TERRAS INDÍGENAS RECONHECIDAS PELO ESTADO BRASILEIRO.



Fonte: LISTAGEM CEDI/MUSEU NACIONAL, 20/10/87

The survey results show that of the 518 indigenous areas:

- 167 areas (32.4%) with a total population of about 10,245 Indians, have not been identified, nor is the extent of their land area known;
- 107 areas (20.6%), with a population of 67,290 Indians, have been identified, representing 50.4% of the total extent of land area inhabited by Indians;
- 171 areas (33.01%), with a population of 96,505 Indians, have been delimited, representing 43.13% of the total land area;
- 22 areas (6.18%), with a population of 18,000, have been demarcated, or 2.6% of the total land area; and

- 41 areas (7.91%), with a population of 21,276, have been regularized, or 3.88% of the total land area.

These figures clearly demonstrate that the majority of Indian lands are only in the initial phases of the processes of recognition, without any greater administrative guarantees. One-third of the total (the 167 non-identified areas) are absolutely without any official protection whatsoever from FUNAI, nor does there exist any significant official information about the indigenous population and their territorial base. Among these groups, "whose existence is being seriously threatened", at least 37 are classified as "isolated", that is, having no regular contacts with the national society.

Of the groups recognized by FUNAI, more than half of their total land base has been merely identified and, in many of these cases, local, state, and even federal authorities question the existence of these communities. Federal police protection from invasion in these areas, for example, can only be provided through a formal request from FUNAI and only if the legal and administrative procedures for delimitation have been initiated.

Threats to Indigenous Lands

One of the serious distortions in the FUNAI data on the Indian land situation is that they overstate the formal process of land recognition and understate the actual situation of indigenous land use and possession. More serious is the fact that no official survey has been made of the forms and degrees of intrusion by non-Indians on indigenous lands, which are presented as being completely reserved for the Indians. There has been no attempt to assess the effects of, for example, the presence of invaders (squatters, ranches), the construction of hydroelectric, mineral exploitation and prospecting, roads and highways which cut through reserves.

The CEDI/National Museum survey thus presents a preliminary evaluation of these threats in terms of the proportions of indigenous lands which each of these activities actually utilizes or is planned to utilize. The results are alarming: Prospecting activities by non-Indians have been reported in 22 areas, representing 30% of all indigenous lands. Mining companies have intervened (through survey request or claims) in nearly 70% of all Indian lands, and principally on lands which are in the early phases of official recognition. The pressure from companies is relatively less on demarcated or registered lands. Eight Indian areas are affected by hydroelectric dams in construction, while four have already been reduced in size by construction or flooding (with relocation of communities). Forty areas, representing about 40% of indigenous lands, are affected by government plans for hydroelectric development. Actual and/or projected roads and highways cut through 73 areas, or 50% of the total indigenous land area. As with hydroelectrics and mining, lands which have been demarcated or registered are less affected by roads than are areas merely identified.

In all, 167 areas are, or will be, affected by some form of non-indigenous land and resource utilization. This represents one-third of all areas and 87% of the total Indian land area. This does not include the actual and widespread invasions by squatters, ranches, etc.

The results cast a rather different light on the impression created by FUNAI data that indigenous lands are entirely reserved for indigenous use, and put in serious doubt FUNAI's claim that it is doing its job.

A Question of Numbers

The Report examines several arguments used since the end of the '70s by interest groups to support a position against the policy of reserving large areas of land for Indians. Based on the premise that the Brazilian Indian population is much reduced - representing 0.1% of the total population of the country - these arguments maintain that creating large reserves for such a small population has nothing to do with the real needs of indigenous populations and prevents future regional development, restricting the land market and threatening the expansion of agricultural frontiers.

A spate of recent decrees has, in fact, resulted in the reversal of FUNAI's position with regard to the demarcation of indigenous lands. Today, the President of FUNAI has openly declared:

his position against previous policies of demarcation, using for his arguments statistical data to show that "Indians have too much land" in Brazil.

The Report responds to these positions, first, by criticizing the premise of a "reduced Indian population" as a gross over-amplification of reality, for it lumps the Indian population with the rest of the country. Actually, the majority of the Indian population is found in Amazonia where penetration by the national society has, until recently, been less intense. Taking this area as the unit for comparison, it can be seen that their numbers are much greater: in Pará, for example, 72% of the rural population is Indian; in the State of Amazonas nearly 10%; and in certain municipalities and micro-regions, Indians are the overwhelming majority.

Secondly, the argument of "too much land per Indian" is shown to be based on a manipulation of statistics, comparing the number of hectares of land per Indian with the number of hectares per non-Indian in each state or territory of the country.

Once again, the Report argues, the units of comparison are falsely constructed, for they ignore the real cultural and qualitative differences and specificities inherent in indigenous concepts and uses of land. "To make all of these variables uniform through a single index that generically associates an individual with a given amount of land corresponds to a useless and dangerous exercise of schematism, an attempt to create an illusion of rigour which obscures the advance of knowledge and leads in false directions" (p.21). The FUNAI statistics, for example, include rural and urban white populations of all states, as well as the entire rural and urban land areas for all states, thus comparing the land needs of rural groups (Indian and non-Indian) with urban groups. The obvious conclusion - that the rural population uses more land than the urban population - is used, however, to demonstrate numerically the "excessive amounts of indigenous land area".

If, by contrast, one compares only data on Rural Properties with Indian land areas, the relation of Indian/hectare and non-Indian/hectare is reversed; that is, for the majority of states, the average figure of non-Indian/hectare in rural areas is greater than the average of Indian/hectare; or, in other words, indigenous lands in these states are less extensive than rural property. The states where the averages show a higher relation of Indian/hectare, are precisely the areas where Indian lands have been most invaded or are being utilized for national development purposes. In these same states, Indians in fact retain complete possession of less than one-fifth of their lands.

Finally, the Report examines the question of the alleged exhaustion of lands for agriculture that the demarcation of indigenous areas would create, once again demonstrating the deception represented by this assertion. Using 1986 Land Registry figures, the Report shows, for example, that in the states with the greatest concentrations of indigenous lands and population, there exists a high percentage of lands not included in rural properties; that is, the stock of lands available for agriculture is highly significant. Furthermore, in the majority of the states of legal Amazonia, indigenous lands constitute areas of lesser extent than the lands of potential use but which are not exploited in existing rural properties. The total amount of exploitable land in Amazonia, in other words, is more than twice the total amount of indigenous land. Lands occupied by large estates in Amazonia represent more than five times the total amount of indigenous lands.

In its Conclusions, the Report

1. Affirms the fundamental importance of incorporating Article 198 of the Brazilian Constitution in force, which guarantees indigenous rights to land, into the new Constitution;
2. Points to the inefficiency of FUNAI in its failure to fulfill its legal obligation, as defined by the 1973 Indian Statute, to demarcate all Indian lands within a period of ten years (today, only 7.91% of Indian lands have been registered, while more than half have been merely identified, or not recognized at all);
3. Points to the poor performance of FUNAI in protecting the identified and/or delimited areas, as evidenced by widespread invasions and utilization of indigenous lands for development

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- purposes, which confirms FUNAI's lack of legitimacy as a defender of the Indians;
4. Emphasizes that the low population total of Indians in Brazil is a deceptive figure for, in specific regional contexts, their numbers are significantly greater which explains, in part, why their demands for land are greater;
 5. Points out that the discussion of the quantitative aspects of indigenous lands has been conducted by FUNAI in a very hasty and superficial way, with equivocal uses of social indicators, unfounded inferences, and extemporaneous historical comparisons; and
 6. Emphasizes that the recognition of Indian lands does not in any way impede the development of rural areas, given that Indian areas constitute a small fraction of the total land available for government colonization or agrarian reform.