

Human Right violations of indigenous people in Mato Grosso do Sul, Brazil

In the state of Mato Grosso do Sul, Brazil, soy producers continued occupying and using indigenous land even after the indigenous' land rights were officially recognised and the soy producers were ordered to leave. After more than ten years the producers finally left the land. This case is one example among many in Brazil whereby indigenous people suffer human rights violations through to land conflicts.

Mato Grosso do Sul (MS) is one of the soy producing states of Brazil. This state covers an area of 358.158 km², has around 2 million inhabitants and contains the world's largest wetland area, the Pantanal, which covers one quarter of the state area. MS is responsible for 8% of the soy production in Brazil, which is mostly produced for export markets. In 2006, the EU imported 37.2 million tons of soy of which 56% was produced in Brazil.



Most of the land in MS is in the hands of large landowners, especially soybean farmers and cattle rangers. Land ownership is highly concentrated: only 1% of the farmers own 36% of the land. This small group has great economic, political and legal influence. Often, the land used for soy production is illegally obtained and taken from indigenous communities that have lived there for centuries.

The great majority of indigenous peoples in Brazil only have customary land rights, with the result that many live with high uncertainty with regard to their living situation. They are dependent on the land for their livelihoods, to plant food crops and access water resources.

Also, the land has high spiritual value to its indigenous peoples, given that their ancestors are buried in specific parts of the land. When they cannot live on their ancestral land, their spiritual life is heavily disturbed. Furthermore, without access to land, affected indigenous peoples lack access to basic goods and services, such as medicines, health services, transportation and school materials. Ironically, the government does not provide services when indigenous people are not living in an area officially recognized as indigenous land (see the box on the process of registering indigenous areas). This situation creates a vicious cycle of dependency on the distribution of food baskets and clothes, abuse of alcohol, prostitution, violence and suicides.

Indigenous areas in Brazil and MS

In Brazil, around 735.000 indigenous people live throughout the country - from the Amazon to the far South, from the borders with Paraguay, Bolivia and Argentina to the Atlantic coast. It is unclear exactly how many indigenous areas exist in Brazil, although according to the Indians, there are 851 such areas. After the Amazon area, MS is the state where the second largest indigenous population of Brazil can be found. The Guarani Indians form the majority of the 67.000 indigenous people living in MS. There are a total of 37.000 Guarani-Kaiowá Indians and 15.000 Guarani-Nhandeva Indians in the state of Mato Grosso do Sul. From these groups the Guarani-Kaiowá Indians live under particularly difficult conditions.

According to the Indians there are 194 indigenous areas in MS. However, FUNAI (the National Governmental Council on Indigenous Issues) states there are only 60 indigenous areas, while the anthropological department of the Catholic University Dom Bosco counts 120 areas.¹ Of the 60 to 194 indigenous areas in MS, only 21 are officially registered by the Federal Union of Brazil.

¹ FUNAI only counts the indigenous peoples who are living in indigenous villages. In Brazil there are, according to FUNAI, 611 indigenous areas. There is a number 460.000 Indians, divided into 225 different peoples. There are approximately 100 to 190 thousand Indians living in urban areas. 63 groups of Indians are still living without any contact with the Brazilian society.

Registration is the last step in a five-stage process towards land recognition (see box). Some of the other areas are already ratified, but still need to be registered officially. Others have just started or not even started yet with the identification.

A total of 25.277 hectares of land (17 areas) of the Guarani-Kaiowá Indians is currently registered. As the Guarani-Kaiowá live on these lands with more than 24.000 people, the space for them is limited. The Kaiowá have put forward 87 land claims, of which for 64 the administration process has not yet started.

Indigenous rights according to the Brazilian Constitution

In the most recent version of the Brazilian Constitution 1988, article 231, states: "*Indians shall have their social organization, customs, languages, creeds, and traditions recognized, as well as their native rights to the lands they traditionally occupy, it being incumbent upon the republic to demarcate them and protect and ensure respect for all their property*".

The process of registering indigenous areas consists of five stages:

1. Identification: study by a technical team of FUNAI of the original borders (using legal and historical documents, anthropological studies, archaeology, sociology). The President of FUNAI will, if appropriate, approve the study. A period of 90 days is set for interested parties to contest the report;
2. Declaration: the Ministry of Justice declares the size of the indigenous area;
3. Demarcation: physical delimitation/demarcation of the indigenous area;
4. Homologation/Ratification: the President of the Republic puts his signature to approve the demarcation;
5. Registration: the indigenous area is officially registered in the notary office.

The Kaiowá Guarani Indians fighting for their land in Sucuri´y, Mato Grosso do Sul

The Kaiowá indigenous people used to live in one large indigenous area in the state of Mato Grosso do Sul, Brazil – an area reaching from the Paraguay river to the Brilhante to Dourados river. At the beginning of the 1970's, this land was invaded by *fazendeiros* (big landowners) and the Kaiowá were forced to leave the area.

The Kaiowá claimed back six small indigenous areas, one of which is known as Sucuri´y. This area was identified as indigenous land in 1995. After the recognition, *fazendeiros* however succeeded in organizing a violent eviction of the indigenous people in 1996, resulting in the departure of most of the Kaiowá people from the area. In 1997, the Kaiowá people (40 families - around 180 people) decided to return to their land, as they did not want to wait any longer for official authorisation.

Together with the Public Ministry, a temporary deal was reached and subsequently accepted by the indigenous people, to live on a mere 67 hectares (12% of the total Sucuri´y area of approximately 550 ha), until the final decision of the land process had been taken.



Kaiowá women in soy field. Source: Geertje van der Pas

The remaining areas have been occupied by large soy plantations, which completely surrounded the Kaiowá families. These plantations were at some places located just five meters away from their houses. The few landowners received all the benefits of the land, which could have been used by the indigenous communities to plant rice, cassava, potatoes, corn, mamona (oil plant used for biodiesel), sunflowers, and possibly even soy.

The largest part of the disenfranchised land area, approximately 410 hectares, was owned by *fazendeiro* Sebastião Alve Marconde.² Alve Marconde produced mainly soy for Cargill - one of the four main soy companies worldwide. He has also created his own NGO called Fundação MS, sponsored by Cargill and Bayer, which conducts research on agro-technology. They also plant wheat and other products for bio-fuel. According to Alve Marconde, there have never been

² The other hectares are owned by the Mayor and senhor Zallard.

indigenous people in this particular area. This sort of argument is often heard in land conflicts between *fazendeiros*, companies and indigenous peoples.

In 1998, the whole area was finally recognized and registered as being indigenous land. But instead of leaving the area, the *fazendeiros* again tried to challenge the administrative decision at the court.

Over the last ten years (1997-2007) the indigenous people have organised innumerable actions and mobilizations, and denounced the spraying of the soy plantations with insecticides. In the mean time, the court requested new evidence. This was provided, examined, and subsequently contested, and new evidence was asked for again. It took 10 years to come to a decision.

During these years the soy producer and two other invaders occupied the Kaiowá land until finally, in January 2007, they were ordered to leave. Their removal was the result of a court decision in Maracaju, which provided them 90 days to collect their latest harvest and then leave. The *fazendeiro* indeed collected his harvest, but instead of leaving he planted new crops (corn) as if nothing happened, trusting that a higher court would overrule the decision. A few days before the end of the official period of 90 days, the Federal Court in São Paulo indeed decided in favour of the *fazendeiro*.

The Kaiowá however appealed against the court's decision at the Public Ministry in São Paulo. On the 5th of June 2007, the Federal Court of São Paulo revised her decision and recognized the rights of the indigenous people on their land Sucuri'y. After over 10 years the Kaiowá finally got what was rightfully theirs.

Current state of affairs

The court's ruling forced the occupying *fazendeiro* to leave the indigenous land. From that moment onwards the indigenous communities built huts in several corners of the area and started to plant food crops. They are now also rearing chickens, pigs and fishes, and take care of the natural resources. Furthermore, they have started discussions with their community, FUNAI, the Public Ministry, and CIMI (Missionary Council on Indigenous Issues) on how they will use the land. In addition, they are discussing with the Fundação MS (the great landowner) about compensation for their lost revenues during the years that the *fazendeiro* occupied their lands.

The Dutch Soy Coalition

The Dutch Soy Coalition brings together Dutch civil society organisations working in the fields of nature, environment and development. The coalition was founded in response to alerts by partner organisations in South America about the negative impacts of soy production and expansion. The Netherlands plays a central role in the soy sector as the second largest importer from South America and central distribution point for Western Europe. Therefore, the members of the Coalition see it as their responsibility to raise awareness with consumers and the media, and ask our government and companies to take steps to reduce the negative impacts of soy production and trade. Concrete suggestions of steps to be taken by companies and the government can be found in our publication "Big business, big responsibility: Addressing the social and environmental impact of the soy value chain", which is available through our website in English, Dutch, Spanish and Portuguese.

The factsheet and case study series has been developed to stress the urgency of the problems and the need to take action. They feature specific cases of social or environmental problems in particular soy producing countries. Should you wish to get in touch with the Dutch Soy Coalition or receive more background information on the issues, please contact the secretariat of the DSC at nsc@bothends.org or refer to our website <http://commodityplatform.org/wp>. An overview of the sources used for this case study is available on the DSC website ('Links and Documents' section).

