Disrespecting indigenous rights in the prison system of Roraima state, Brazil

Le non-respect des droits des peuples autochtones dans le système pénitentiaire de l'État du Roraima, Brésil

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DISRESPECTING INDIGENOUS RIGHTS IN THE PRISON SYSTEM OF RORAIMA STATE, BRAZIL

Stephen G. Baines

I EXAMINE the situation of indigenous people in the prisons of Boa Vista, the capital of Roraima State, in the extreme north of the Amazon basin in Brazil, starting from a research survey carried out in January 2008 and 2009 [Baines 2009]. Since then, research has been continued in short periods of three weeks during university recess at the beginning of the year in 2011, 2012, 2014, and 2015. This research fits within the research tradition in anthropology with indigenous peoples in Brazil in being politically engaged [Melatti 1984: 19-20] in the sense of being involved directly in the process of informing indigenous people in prison of their rights so that they can claim them, considering that the majority are unaware of the specific rights they are entitled to.

I started the survey with indigenous prisoners, establishing contacts with various governmental and non-governmental organizations in Boa Vista which work with indigenous peoples and with the prison system. I then examine some statements from indigenous people in prison and custodial officers who share the

same institutional space, to examine how the indigenous peoples express their own experience of deprivation of liberty, from the notions of “total institution” [Goffman 1974] and surveillance and punishment in penitentiary institutions of Michel Foucault [1979], taking into consideration the extremely asymmetrical social relations of subjection/domination [Cardoso de Oliveira 1996] in which indigenous peoples are incorporated into Brazilian society. The concept of “coloniality of power” [Quijano 2000] helps to understand the enormous inequalities and injustices in which indigenous peoples live in Latin America, describing the living legacy of colonialism in contemporary societies in the form of social discrimination and racism that outlived formal colonialism and became integrated in succeeding social orders.

The aim of this paper is to present some of the results of this research. The information gathered in Roraima State reinforces conclusions drawn in surveys carried out in other Brazilian states, including a survey made by the Brazilian Anthropological Association and the Superior School of the Federal Public Ministry¹ in which I participated, gathering

1. ABA/ESMPU (*Associação brasileira de antropologia/ Escola superior do Ministério público da união*), “Criminalização e situação prisional de Índios no Brasil” (edital projeto de pesquisa ESMPU No. 19/2006). Relatório final convênio: *Procuradoria Geral da República (PGR), Associação brasileira de antropologia (ABA)*. Coordenador: Crithian Teófilo da Silva (ABA, UnB), Brasília, Distrito federal, maio 2008.

data for Roraima State, in 2008.² In Roraima, I observed a disregard for indigenous identities by government functionaries (police officers, prosecutors, judges, the State Secretary for Public Security, State Secretary for Justice and Citizenship, etc.). This disregard results in an inaccuracy of official statistics relating to the contingent of indigenous persons arrested and their “invisibility” as subjects of the Law. A multitude of situations involving indigenous people are present in Roraima State, from internal problems between indigenous people on indigenous lands³ to situations of indigenous people living in towns, cases involving indigenous and non-indigenous people, and indigenous people born in cities, villages and farms outside of indigenous lands. There are cases involving indigenous people who have spent most of their lives in indigenous communities, and other cases involving indigenous people displaced from their land, raised in urban centres, who have a long and intense coexistence within the national society.

In addition to the ethnic by jurists, and the fact that a large part of the prison population do not have documents, some indigenous prisoners choose not to identify themselves, and others assume the racist stereotypes about indigenous peoples current in the regional society. In addition, government functionaries have no administrative guidance to identify prisoners according to their ethnic identity.

Both the indigenous prisoners serving prison sentences, and indigenous young people in the Juvenile Detention Centre in Boa Vista who are fulfilling “corrective measures”, are rendered invisible in the statistics of the institutions. A universalist perspective expressed

by the majority of officials is that everyone should be treated equally before the Law, regardless of whether they are indigenous or non-indigenous, revealing a lack of awareness of the differentiated rights of indigenous peoples in the 1988 Brazilian Federal Constitution. Several indigenous prisoners have raised claims for differential treatment, such as, for example, alternative sentences carried out on indigenous lands in the case of crimes practised within indigenous lands, with the consent of the communities and councils of indigenous leaders (*tuxauas*), and/or a separate wing in the prisons. Indigenous persons in prison say that

2. ABA/ESMPU, “Processos de criminalização indígena em Roraima/Brasil” (número do formulário: 2008.2.1.1.297). Edital projeto de pesquisa ESMPU No. 98/2007. Relatório final convênio: *Procuradoria Geral da República* (PGR), *Associação brasileira de antropologia* (ABA). Coordenadores: Stephen G. Baines (UnB) e Cristhian Teófilo da Silva (ABA, UnB), Brasília, Distrito federal, março 2009.

3. In Brazil “indigenous land” is a juridical category which designates lands of traditional use and occupation by indigenous peoples which are demarcated by the federal government, which they need to maintain their ways of life, according Article 231 of the Federal Constitution (1988). In Brazil, a total of 1.131.856 km² or approximately 13.3% of the land surface have been demarcated as “indigenous lands”, although many of these lands have been invaded and occupied by non-indigenous peoples. See <http://pib.socioambiental.org/pt/c/terras-indigenas/demarcacoes/localizacao-e-extensao-das-tis> (access on 15/02/2014). In Roraima, a Brazilian state which has one of the largest populations of indigenous peoples, “indigenous lands” make up a total of 10.370.676 hectares or 46.20% of the land surface of this state. See <http://pib.socioambiental.org/pt/c/terras-indigenas/demarcacoes/localizacao-e-extensao-das-tis> (access on 18/11/2014).

they are doubly discriminated by the fact of being prisoners and also indigenous.

Taking into account the immensely asymmetric interethnic system that underlies social practices, law enforcement and criminal cases in Brazilian society, it is necessary to consider the obstacles faced by indigenous peoples to gain access to justice, and to study the possibilities of creating differentiated prison institutions and alternative measures, to bring into effect the constitutional rights of indigenous peoples in Brazil.

In little more than a year after starting this research project the first results of this engaged research started to appear as some indigenous prisoners in Roraima began to organize themselves politically to claim the differentiated indigenous rights guaranteed by the Constitution, which also became the subject of debate in the Organization of Indigenous People in the City (*Organização dos indígenas da cidade*: ODIC) in Boa Vista. At the Public Defense Office in the State of Roraima, many of the issues raised are being discussed, especially the fact that many indigenous people are held in pretrial detention for periods far beyond the legal period. The possibility of setting up a separate wing in the penitentiary institutions to house detainees has been taken up by federal prosecutors in Roraima.

This article examines the complex situation regarding indigenous identity and constitutional rights in the prison system in Roraima, Brazil, and the emergence of a consciousness of differentiated indigenous rights in a society where these rights have been historically denied.

Guidelines

According to Michel Foucault:

Penal imprisonment, from the beginning of the nineteenth century, covered both the deprivation of liberty and the technical transformation of individuals [1979: 233].

The prison must be an exhaustive disciplinary apparatus: it must assume responsibility for all aspects of the individual, his physical training, his aptitude to work, his everyday conduct, his moral attitude, his state of mind [...] the prison has neither exterior nor gap, it cannot be interrupted, except when its task is totally completed; its action on the individual must be uninterrupted: an unceasing discipline. Lastly, it gives almost total power over the prisoners; it has its internal mechanisms of repression and punishment: a despotic discipline [1979: 235-236].

Foucault also asserts that:

Although it is true that prison punishes delinquency, delinquency is for the most part produced in and by incarceration [...] The delinquent is an institutional product [1979: 301].

In undergraduate research on the Agricultural Prison of Monte Cristo in Boa Vista, Roraima, Jonildo Viana dos Santos affirms:

Today it is clear that the prison is a school for the maintenance, reproduction and even improvement of criminal conduct [2004: 63].

The official goals of the penal system to submit the population of prison inmates to

resocialization are reified in the prison administration's jargon of "reeducation" and "corrective measures". The situation of indigenous peoples is aggravated by the fact that they suffer discrimination for being ethnically different and poor. The concept of "coloniality of power" of Anibal Quijano [2000] identifies the racial, political and social hierarchical orders imposed by European colonialism in Latin America that valued the European colonizers while disenfranchising indigenous peoples, putting them at the bottom of the colonial power structure due to their different phenotypic traits and cultures presumed to be inferior. The discrimination continues to be reflected in the structure of modern post-colonial societies.

Although the vast majority of indigenous prisoners in Roraima were born in this state, a small number have Guyanese nationality, others are Guyanese indigenous living in Brazil for many years, or their descendants [Baines 2006]. For indigenous people who live on the border, these differences are of little relevance, considering that the political boundaries of national states were imposed on their territories only in 1904 in the case of the Guyana border [Rivière 1995].

Indigenous Prisoners

The practice of imprisoning indigenous people in the area which currently makes up the State of Roraima is not new. From early in colonial history indigenous people of this region were captured and disciplined in settlements which shared the characteristics of a "total institution" [Goffman 1974] in the

Portuguese colony. The process of settlement of indigenous people by the Portuguese in "multiethnically composed settlements", in the second half of the 18th century, is described by Nádia Farage [1991: 125], using historical sources to reveal that there were a number of uprisings in response to the "over-exploitation of the labor of settled Indians" [*ibid.*: 131].⁴ Farage also reports massive escapes of indigenous people that spread through these settlements "in proportion to the violence used by the Portuguese to repress them" [*id.*]. When repeated attempts to keep indigenous people in settlements on the Rio Branco failed, the Portuguese colonizers began to send them as prisoners to serve as laborers in other regions of the Amazon basin where escape was impossible.

Throughout the 19th century, Paulo Santilli [2002] relates the practice of illegal expeditions to capture indigenous people as slaves in this region after indigenous slavery had been banned in the Amazon basin in 1755. However, "slavery continued in the form of private expeditions which relied on the active support of government representatives in the area to recruit indigenous labor force for rubber extraction" [2002: 493] in the forests of the lower Rio Branco, which resulted in the indigenous population fleeing from contact with White people.

The Federal Constitution of Brazil of 1988 assures indigenous peoples the right to their difference, that is, the right to be different and to be treated differently:

4. Translated by the author.

Indians shall have their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy, it being incumbent upon the Union to demarcate them, protect and ensure respect for all of their property (Article 231).

In the case of execution of a sentence of imprisonment or provisional arrest of indigenous people, it must be carried out as regulated by articles 56 and 57 of the Indian Statute (Law No. 6,001 of 19/12/1973):

In case of conviction of an Indian for a criminal offense, the penalty should be mitigated and in its application the judge should take into consideration the degree of integration of the forest dweller (*silvícola*⁵).

Custodial sentences and detention will be fulfilled, if possible, in a special regime of semi-liberty, in the place where a federal agency for assistance to Indians operates closest to the convicted Indian's home (Article 56).

The application of penal or disciplinary sanctions against their members by tribal groups, according to their own institutions, will be tolerated, provided they are not of cruel or degrading character, the death penalty being prohibited in all cases (Article 57).

According to international legislation, in the case of indigenous prisoners, Convention 169 of the International Labor Organisation, of which Brazil is a signatory, states in paragraph 2 of Article 10:

Preference must be given to other types of punishment than imprisonment.

However, the process of criminalization of indigenous prisoners itself denies their ethnicity, from the common sense assumption that everyone should be treated equally before the Law, and the fact that indigenous people themselves often identify with arguments of police and prison officers, denying their identity. A survey carried out by the *Centro de trabalho indigenista*⁶ (CTI) in Mato Grosso do Sul State⁷, together with the *Universidade católica Dom Bosco*⁸ (UCDB) reveals that there is a disrespect for human rights from the initial police investigation. Many of the indigenous people in prison do not understand Portuguese, which hinders their comprehension of the charges brought against them and of the defense process, since they often do not understand the procedural situation and rules of the prison system. Biviani Rojas Garzón and Raul Silva Telles do Valle [2006] emphasize that the issue of indigenous rights in Brazil is no longer their legal recognition, but the application of these rights, considering the enormous distance between recognized rights and their being brought into effect.

5. The term "*silvícola*" (forest dweller) reflects the ideal of the "Indian" in popular imagery in the period in which the Indian Statute was written, associating indigenous peoples with forests.

6. Centre for Indigenist Work.

7. "Situação dos detentos indígenas do Estado de Mato Grosso do Sul", Brasília, 2008.

8. Dom Bosco Catholic University.

Roraima State

Roraima State is located in the extreme north of Brazil, and borders Venezuela and Guyana, occupying an area of 224,298.98 km². The creation of the administrative region, Capitania Real de São José do Rio Negro, by the Charter-Regia of March 3, 1755, was the result of the concern of the Portuguese in establishing the borders of the colony and fear of Dutch expansion into the Amazon basin [Farage 1991]. With the establishment of Forte São Joaquim do Rio Branco in 1775, many indigenous settlements were established, including the settlements of Nossa Senhora do Carmo, founded by Carmelites. During the Brazilian Empire it was elevated to the status of a town (1858) and with the proclamation of the Republic (1889) the town was renamed Boa Vista do Rio Branco (1890). The present-day State of Roraima was dismembered from Amazonas in 1943, creating the Federal Territory of Rio Branco, later renamed as the Federal Territory of Roraima (1962), and turned into a state by the Constitution of 1988.

The indigenous peoples in the State of Roraima are primarily speakers of the Carib, Arawak and Yanomami language groups. According to the Brazilian non-government *Instituto socioambiental*⁹ (ISA), the indigenous population of Roraima in 2008 was 32,771 individuals. The government indigenous agency *Fundação nacional do Índio*¹⁰ (FUNAI) calculated the indigenous population of Roraima to be 31,265, while the Brazilian Institute for Geography and Statistics (IBGE) estimate was 23,422. Roraima State has a total of more than 30 indigenous lands.

The population census carried out by the agreement between the Indigenous Council of Roraima (*Conselho indígena de Roraima*: CIR) and the former government National Health Foundation (FUNASA) shows a rapid increase of the population in most communities. In 2005, just in the Eastern District of Roraima, which comprises ten municipalities, health teams reported 33,108 people, especially in the highland region of northeast Roraima.

According to IBGE data, the total population of Roraima in the last national census of 2010, was 395,725, of whom 284,313 live in the state capital Boa Vista. In this national census, the IBGE data classify the population of Roraima by “color-race” as: 20.9% “White”, 4.1% “Black”, 61.2% “Pardo” (Brown-skinned), and 11% “Indigenous”, being presented as the Brazilian state with the highest percentage of indigenous people, 6.1% of the total indigenous population of Brazil¹¹, with 49,637 self-declared “indigenous people” and a population increase of 5.8% per annum, while in the municipality of Uiramutã indigenous peoples make up 88.1% of the population. The state capital Boa Vista has an indigenous population calculated as 8,550 by the IBGE.¹²

9. Socio-Environmental Institute.

10. National Indian Foundation.

11. Site of the IBGE consulted on 15/03/2014, p. 3. See https://www.ibge.gov.br/indigenas/indigenas_censo2010.pdf.

12. Site of the IBGE consulted on 15/03/2014, p. 20. See https://www.ibge.gov.br/indigenas/indigenas_censo2010pdf.

These statistics represent a partial correction of the demographic data about the indigenous population compared with previous censuses, but depend on self-identification in a state where many people choose not to identify as “indigenous” considering the strong racial discrimination.

Discussing the indigenous population registered in the national censuses, João Pacheco de Oliveira Filho [1999] points out that the categories used in the censuses are directly related to the ideals of Brazilian nation-building. Within the nation-building issue there is an anachronistic and racist ideal of whitening of the Brazilian population. Regarding the census category “Brown-skinned” (*cor parda*), Oliveira Filho comments that using this “operational category – which is artificial, arbitrary and of a technical-scientific appearance – in reality is invalidating the census as a more accurate tool for sociological analysis and transforming it into a passive legitimizing discourse of miscegenation” [1999: 128-129]. Oliveira Filho observes, in the case of Roraima State, that:

In the North, where there was no significant transfer of black slaves nor extensive flows of immigrants, the category “Brown-skinned” evokes primarily an indigenous ancestry or identity [*ibid.*: 134].

In the 2010 national census, a partial correction of previous data, explains an apparently enormous increase in the indigenous population through a more detailed examination of the category “Indigenous”, although the terms of “race” or “colour” persist in the general census data. However, in the prison

system there has not been even a partial correction of statistical data, largely due to what I argue as being the process of criminalization which makes indigenous prisoners ethnically invisible.

In the prison system, most of the staff use the common sense categories of the regional society, believing that indigenous people who live in the city are no longer “Indians”, and often see them through the categories of the national census itself, which have been incorporated into the prison computer system software called “Canaimé”. This software, installed in the prisons of Roraima in 2006, records the name and address of the prisoner, data about the crime, the prison regime in which s/he is placed and ethnicity.

The category “Brown-skinned” is not in common use in the region outside the context of the IBGE national census, and also covers a plethora of regional terms such as “*caboclo*”¹³, “civilized Indian”, “*cafuzo*” (afro mixed), and others. The use of the category “Brown-skinned” can partially explain the low estimate of indigenous peoples in the prison system of Roraima, turning invisible a large part of the population that in other contexts might consider themselves “indigenous”.

13. The ambiguous term “*caboclo*” or “*caboco*” is used in the Amazon Region of Brazil as the equivalent of the contradictory term “civilized Indian” in which “civilized” and “Indian” are held in opposition. It is often used as equivalent to, “mixed blood”, “acculturated Indian”, “*mestizo*”, all in opposition to the romantic stereotype of the “pure Indian”. The term has been reappropriated by some Afro-Brazilian religions.

The Prison System of Roraima

The five state penal institutions in Roraima are administered by the State Secretary of Justice and Citizenship (SEJUC) and include: the Public Jail of Boa Vista, the Public Jail of São Luíz do Anauá; the Professor Aracelis Souto Maior Pension for prisoners in regime of semi-liberty; the Agricultural Prison of Monte Cristo (PAMC)¹⁴ built in 1989, and the Women's Prison of Monte Cristo. Another prison is under construction in the town of Rorainópolis on the BR-174 Highway, due to be inaugurated in 2014-2015.

One feature that prisons in Roraima share with others in the national prison system is severe overcrowding. According to statistical data released by the Integrated System of Information on Prisons (*Ministério da Justiça, Sistema nacional de informação penitenciária*: InfoPen¹⁵, 2015) in June 2014 the total population of prisoners in the Brazilian prison system and in police custody in Brazil was calculated as 607,731¹⁶ of which 579,423 were in the prison system with a total prison capacity for 376,669. Of the total only 0.2% were registered as "indigenous". The prison population in Brazil has been growing very rapidly accompanying population increase. As a comparison, in December 2008 the total prison population of Brazil was 451,219 (*Ministério da Justiça*, InfoPen), with a prison capacity for 296,428 and a total of 511 prisoners registered as "indigenous".

For Roraima State, in December 2012, of a total population of 451,227 inhabitants the total prison population was published with

incomplete data for this year by the InfoPen, and in the section "Number of prisoners by skin colour-ethnicity", only 40 detainees were registered as being "Indigenous", 152 as "White", 301 as "Black", none as "Yellow", nor as "Others". However 942 were registered as "Brown-skinned". In December 2008, for which more details are given, of a total state population of 412,783, the total number of persons in custody was published as being 1,522, of which 1,493 were in the prison system, and of which 48 were registered as being "indigenous". The prison capacity in 2008 was for 538 prisoners in the state prison system, there being approximately three times more prisoners. However, despite this apparent decline in prison population in Roraima between 2008 and 2012, possibly due to incomplete data, in a newspaper article published in early 2014, "according to the SEJUC, Roraima has a capacity for 1,106 prisoners in the prison system, however, this number is insufficient with a prison population of 1,666".¹⁷ According to the InfoPen report in June 2014 there were 1,610 prisoners in Roraima, being the state with the largest

14. The Agricultural Prison of Monte Cristo was originally designed to be a prison which involved the inmates in agricultural work, but, according to a prison officer "was never agricultural beyond its name".

15. System of statistical information of the Brazilian prison system which resumes information about prison units and the prison population.

16. Brazilian Ministry of Justice, InfoPen site, June 2014, *Departamento penitenciário* (DEPEN). See *relatorio-depen-versao-web%20(2).pdf*.

17. *Folha de Boa Vista*, 17/03/2014, p. 7.

indigenous population in prison of around 6.3% of the total.

In the Agricultural Prison of Monte Cristo, I was told on 29/01/2009 that the prison capacity was for 414 prisoners, with 964, while in the Women's Prison I was informed that there was space for 72 with 129 prisoners. The situation in the penitentiary system in Roraima is considered to be critical by the judicial authorities. In January 2008, Roraima State had a deficit of 693 vacancies, and overcrowding was present in all prison units.

The tables published by the InfoPen for Roraima State reveal a disproportion of prisoners classified as "brown-skinned" that subsumes certainly an unknown number of indigenous detainees and partly explains the reduced number of indigenous prisoners and the excessively high number of "brown-skinned" prisoners. From a total of 1,359 arrested, only 240 were classified as "White", 187 as "Black", 1 as "Yellow", 45 as "Indigenous" and the vast majority of 886 as "Brown-skinned" (Table 1).

In data released by the InfoPen for June 2008 on the "number of crimes attempted-consummated" in all the prison system of Roraima State, the crimes that were numerically predominant are presented in Table 2.

The profile of indigenous prisoners, with regard to the quantity of crimes follows, in general, the profile of all prisoners for the State of Roraima, with small differences that can be explained partly by the fact that many crimes considered minor are resolved within indigenous communities and only crimes considered to be more serious reach the state justice system. According to the ABA/ESMPU

report on Roraima, the first reason for which indigenous people are imprisoned is involvement with drugs (30.91%), being sentenced under Article 12 of Law 6.368/76 or Article 33 of Law 11.343/07. It is observed that:

A recurring complaint from detainees sentenced for these crimes is that they were deprived of access to defense early in the police investigation, and several of them who allege that they are just drug users, were sentenced as "traffickers".¹⁸

This is frequently the complaint raised by women who allege that their partner, often non-indigenous, was involved with drug trafficking without their knowledge and they were arrested and charged when the police raided their home in Boa Vista and found drugs, in the absence of the partner.

The second reason for which indigenous people are imprisoned (25.45%):

[...] are the crimes, referred to in Article 121 of the Constitution, of attempted murder or murder [...], the complaint of the detainees is a lack of monitoring at the stage of police investigation, which would allow greater accuracy in the investigation of the facts, revealing that the majority of these crimes resulted from self-defense.¹⁹

The third most frequent cause of imprisonment (20%):

[...] regards crimes with a sexual connotation of rape and indecent assault. In

18. ABA/ESMPU, 2009, p. 22.

19. ABA/ESMPU, 2009, p. 23.

Table 1.
Prisoners by skin color and ethnicity (sample of 80%)

	Male	Female	Total
White	200	40	240
Black	172	15	187
Brown-skinned	815	71	886
Yellow	1	0	1
Indigenous	37	8	45
Others	0	0	0
			1.359

Source: InfoPen

<http://www.mj.gov.br/data/Pages/MJD574E9CEITEMIDC37B2AE94C6840068B1624D28407509CPTBRIE.htm>
(consulted on 15/05/2009)

Table 2.
Crimes attempted-consummated (over 50 people criminalized) in June 2008

Crime	Masculine	Feminine	Total
Indecent assault (Penal Code, Article 214)	52		52
Rape (Penal Code, Article 158)	53		53
Qualified theft (Penal Code, Article 155, § 4 and 5)	94		94
Simple theft (Penal Code, Article 155)	154	3	157
Simple murder (Penal Code, Caput 121)	65	2	67
Qualified robbery (Penal Code, Article 157, § 2)	131	3	134
Simple robbery (Penal Code, Article 157)	58	1	59
Drug trafficking (Law 6.368/76, Article 12)	199	55	254
International drug trafficking (Law 6.368, Article 18, Section 1)	128	47	175

Source: data adapted from InfoPen

<http://www.mj.gov.br/data/Pages/MJD574E9CEITEMIDC37B2AE94C6840068B1624D28407509CPTBRIE.htm>
(consulted on 15/05/2009)

such cases the vast majority of indigenous people have not accepted responsibility for the crimes. Here it is worth remembering the fundamental necessity of taking into consideration forms of social organization and kinship of the group to which the accused belongs in the process of criminal investigation.²⁰

I interviewed several prisoners who had been sentenced for rape. A 35 year old Wapishana man, interviewed at the Public Jail in 2012 and 2014, informed me that he had been sentenced to forty five years imprisonment (including aggravations) in closed regime under Article 217-A of the Penal Code, “to have sexual intercourse or practice other lewd acts with a minor under 14 years”, after being denounced by a neighbor for living with a 14 year-old girl. He alleged that his relation with the girl was consensual and that he considered this normal, but that his neighbor had denounced him after a dispute over another matter. According to a public defense lawyer, many indigenous men are accused of rape:

It is a cultural matter, but the judge sees it as rape of a vulnerable minor as the Law states 14 years of age.

She added:

One judge here is especially severe with indigenous prisoners and usually gives them the maximum penalty.

The minimum legal age to engage in sexual activity, in Brazil, is 14 years (Article 217-A of the Criminal Code, and Law n° 12.015/2009, article 3). Article 217-A defines as “rape of a vulnerable minor” the act of “carnal conjunction or the practice of a lewd act with a child

under 14 years of age, with penalty of imprisonment for eight to fifteen years”. Many indigenous people explained that marital relations of indigenous men with indigenous girls under the age of 14 are acceptable in their cultures when there is consensus between the families concerned.

Declarations of indigenous prisoners reveal conflicts of interpretations within indigenous communities and a reaction by many young indigenous women to sexual behavior towards women in the past in which the indigenous peoples lived in situations of extreme exploitation and subordination by the regional population, which has undergone drastic changes over recent decades. Conduct that would have been acceptable a few decades ago is questioned by some young women who have higher education, knowledge of feminist ideologies, and no longer accept sexual conduct considered by some to be traditional.

The fourth reason for arrests is robbery and theft (20%) and the remainder of imprisonments of indigenous persons stem from charges for other crimes (7.27%).²¹ Those crimes considered to be serious and result in arrests include murder, attempted murder, rape, indecent assault, robbery, theft, and drug trafficking. Few of the reported crimes are directly related to land conflicts, however, the crime rate registered among indigenous peoples is much higher in those communities which are close to the state capital, including

20. *Id.*

21. ABA/ESMPU, 2009, p. 22.

communities on small areas of reduced indigenous lands surrounded by ranches, whose inhabitants are suffering from exacerbated interethnic conflicts, and especially among the indigenous population living in Boa Vista. Despite the fact that drug trafficking appears to be one of the most common crimes among detainees in the prison system of Roraima, including indigenous prisoners accused of this crime, the indigenous prisoners interviewed who were arrested for this crime live in Boa Vista and in towns near the international borders, being a minute percentage of the total indigenous population of the State of Roraima.

The Research Survey

The research survey was conducted in prisons through interviews. In the Agricultural Prison of Monte Cristo I was allowed to carry out group and individual interviews in the library and church inside the prison. In the Public Jail officials designated a space in the administration buildings to conduct individual interviews. In the Women's Prison, I conducted group and individual interviews in the administration office in the presence of prison staff, and in a communal space designated by the guards inside the prison without their presence. In the Professor Aracelis Souto Maior Pension for detainees in semi-liberty I was given free access to talk to the residents. At the Socio-Educational Center Homero Cruz de Sousa Filho for juvenile detainees, I was only allowed to undertake a few rapid interviews in the presence of the director. In the prison environment, access to prisoners was only possible through interviews conducted in short periods of a few hours during each visit.

Since the beginning of the survey, conducted in January 2008, I observed the difficulty that most state agents have to identify indigenous prisoners. On the first day of my visits to the Agricultural Prison of Monte Cristo, my access to the prison was not allowed because two prisoners had been found hanged in a cell, and it was suggested that I return the following day. That same day, an employee of the prison administration provided information from data in the records in which 31 prisoners were registered as being "indigenous" of a total of 838, including those in closed and semi-open regimes, and pretrial detention.

The then head of the Internal Security Service (*Serviço de vigilância interna*: SVI) of the prison, a military police agent said there was no data about the origin of many detainees in the prison records, and that "only talking to them personally" could I find out which prisoners identified as "indigenous". A newspaper reported the following day that this was the third time in less than a year that escaped prisoners who had been recaptured had been found hanged in pairs. On 26/11/2008, articles published in newspapers Boa Vista reported that, through a Federal Police operation, 15 people had been arrested suspected of being part of a gang which operated in the prison system of Roraima, including murder, involvement with organized crime and drug trafficking. Among those arrested were the former director of the Department of Prison System, a civil police officer, five prison officers, a retired military police officer responsible for the internal security of the prison, and prisoners serving sentences in the Agricultural Prison of Monte Cristo.

On January 30th 2009, an article in a local newspaper announced that:

[25 more prisoners would be arrested] accused of having killed and tortured detainees in prisons of the state. The prisoners had been killed and had their bodies hung on ropes to simulate suicide.²²

Two days earlier 9 detainees had been arrested, making up 34 arrest warrants. The same report states:

To date, 11 deaths in prisons are being investigated, 7 have been confirmed as homicides, rather than as suicides as had been simulated.²³

Testimonies of Indigenous Prisoners and Prison Agents

Testimonies of prisoners reveal that the Info-Pen statistics which result from surveys conducted in the prison files of Roraima do not represent the real number of indigenous people in prison.

In January 2008, only 1 detainee among 176 was registered as “indigenous” in the Public Jail. When the prison officers of this unit were asked to verify how many people self-identified as “indigenous” or “*caboco*”, 13 people presented their names on the first list. Examining photos of prisoners in the Public Jail of Boa Vista, an indigenous prison officer confirmed that several other detainees were indigenous, one being the son of a village leader, and another son of an indigenous woman. Others were from municipalities where a large percentage of the population is indigenous such as Normândia and Bonfim. Yet others, born in the city of Boa Vista, had an

indigenous mother or father. When asked who had an indigenous father or mother, or who considered themselves to be “*caboclos*”, the number of interviewees increased rapidly. Some preferred not to talk, while others allowed their testimonies to be recorded.

In collective interviews, some commented their situation, with statements such as:

I was treated the same way as the other prisoners.

The prosecutor said I was not Indian, because I knew how to sign my name.

I do not have a lawyer [...], the FUNAI does not provide a lawyer. One year and nine months inside!

Here, you have no right to anything. I've been here one year and four months and I have never received a visit from a relative.

You never know when you will go for trial, waiting for trial.

We cannot get out of here. We don't have money to pay a lawyer.

It is all about money. Those who have money pay a lawyer, but we cannot. We are dumped here without knowing how long we shall spend inside.

Here in jail everything is bought. We don't have money.

We don't know anything about the progress of our case. We cannot get any reply about anything.

We are stuck here without work and without perspective [...], our criminal processes don't get dealt with.

What characterizes the declarations of many indigenous prisoners is the lack of access to

22. *Folha de Boa Vista*, 30/01/2009.

23. *Id.*

money and lack of support from relatives, especially for those who live in villages far from Boa Vista due to the difficulty of relatives reaching the state capital. Others said they had been abandoned by their families. Jonildo Viana dos Santos affirms that:

There are detainees who have no source of income, because they have been abandoned by their families or partners. They offer their services to wash the clothes of those prisoners who can pay [2004: 48].

Testimonies of the prisoners themselves reveal that the majority are in a much more vulnerable situation than most non-indigenous prisoners who have relatives in Boa Vista, and some who do have relatives in Boa Vista live in extreme poverty. There are a few exceptions, like a young woman who had been sentenced to twenty years imprisonment in closed regime, who said her relatives had hired a private defense lawyer.

Many indigenous prisoners complained that non-indigenous prisoners accused of far worse crimes than them and whose families hired a private lawyer, get out of prison very quickly, whereas indigenous prisoners spend months and even years awaiting trial, often without understanding the reason for their detention. In January 2008, in the Women's Prison of Monte Cristo, one woman said that her indigenous identity was questioned by prison staff, and insisted that her mother's family was from the Surumu indigenous village, and her paternal grandparents were from Ceará State:

They said that I'm not Indian because of my skin colour. I was born in Surumu

[...] and came to live in Boa Vista when 4 years old.

Another young woman claimed to be the daughter of indigenous parents from Roraima and Amazonas State, but affirmed that she did not know the ethnic groups of her parents. However, prison staff did not question her indigenous identity since she had a popular Brazilian indigenous name, little formal education and phenotypic characteristics associated with the popular stereotype of indigenous peoples, different from another young fair-skinned woman with a high school degree, only recognizable as being indigenous from her verbal self-identification. One year later, the latter reaffirmed the difficulty she faced to be recognized as indigenous in prison, and that only those prisoners who speak Portuguese with difficulty and have little schooling are seen as being authentically indigenous, giving the example of a Guyanese woman who only knew a few words of Portuguese.

At the Public Jail of Boa Vista, an indigenous prison officer identified several indigenous detainees from the prison records whom she knew personally, even though many were not registered as "indigenous", but as "brown-skinned". At the time, many prisoners were classified as "brown-skinned", born in indigenous communities and/or who identified themselves as close relatives of indigenous people. Many of those who presented themselves as "indigenous" were not registered as such in the prison records, such as two brothers of the same mother and father who were classified, one as "indigenous" and the other as "brown-skinned". To facilitate the identification of prisoners who might identify as "indigenous"

I asked to speak to those who identified themselves as “*caboclos*”, “descendants of Indians” or who had “indigenous relatives”, taking into consideration that there are different ways of identifying as “indigenous” which frequently reflect the contradictions imposed by hegemonic discourses of the national society.

At the Professor Aracelis Souto Maior Pension, among the then 94 inmates in open regime, only 3 were registered as “indigenous”. However, 90 were classified as “brown-skinned”. In this prison unit I interviewed a man who presented himself as “indigenous” and asked me to register in my notebook his “indigenous name”, saying that he was born in “an indigenous village” of a non-indigenous father from Sergipe State and a Macushi mother and had been raised in the city. He then questioned his own identity, affirming that he was *caboclo* and *mestizo* and not indigenous because he lived in the city, adding that he could be considered indigenous through his mother.

The testimonies of indigenous prisoners shed light on the enormous injustices they face and lack of information about their differentiated rights. In the Agricultural Prison of Monte Cristo, a middle-aged man who said that his father was Macushi who had been adopted and raised by ranchers and his mother from Amazonas State, affirmed that when he was arrested and charged with murder:

[He] was not classified as an Indian because [he] did not know how it [the prison system] worked. [His] parents were of very humble class. Only after [he] was sentenced did [he] find out.²⁴

Another prisoner who identified as “indigenous” retorted:

They take more care of the “civilized people” who have money [...] They say “he has no money, he does not know, because he’s a *caboco*” [...] I can’t get out of here because I have no one. I have been forgotten [...] My brothers turned against me. They are angry with me and don’t want to see me.

Abandonment by family was frequently reported.

A young man²⁵ born in Malacacheta village near Boa Vista, who had left the village when 9 years of age after the death of his parents, declared that he was Wapishanawas and had been in prison for over a year and had not been tried. He had been arrested for indecent assault and had no defense lawyer in the two hearings that had occurred:

I was arrested in a plot in Cantá municipality. I was living with my partner, stepson and stepdaughter. My woman is now living with another laborer. I’m going to sell the lot and divide the money. I don’t want to live there anymore. She’s Wapishana.

He added that, when arrested, the police officer asked for money to release him. The indigenous lawyer of the *Conselho indígena de Roraima*²⁶ (CIR), Joênia Wapichana, stressed that one of the difficulties of trying to deploy alternative sentences for indigenous

24. Interview on 22/01/2009.

25. Interview on 22/01/2009.

26. Indigenous Council of Roraima.

prisoners, especially in the case of murder and sexual crimes, are that many indigenous communities do not accept that the accused return to their communities and victims' relatives often demand that they be incarcerated in government prisons.

Final Considerations

Information gathered in the State of Roraima reinforces some of the findings in studies conducted in other Brazilian states, including the ABA/ESMPU survey (2008), that there is also an ethnic mischaracterization of indigenous persons by functionaries of the law (police, lawyers, attorneys, judges, the State Secretary of Public Security, State Secretary of Justice and Citizenship, etc.). This results in an inaccuracy of official statistics on the number of indigenous prisoners and their "legal invisibility" as subjects of differentiated rights. There is a multitude of different situations which vary from internal problems within indigenous communities in rural areas, towns, and in the state capital, incidents involving indigenous and non-indigenous people, as well as indigenous people born and raised outside of indigenous lands. As I have shown in this article, self-identification as "indigenous" is frequently ambiguous and contradictory, reflecting the ambiguity of Brazilian society towards indigenous peoples, and many prisoners only identify as "indigenous" in certain contexts.

The inconsistency of the information in the prison records regarding the indigenous ethnic profile of the prison population is evident. Almost all indigenous prisoners interviewed denied having received any

differentiated treatment accruing from their specific rights as indigenous peoples. Both the indigenous prison population and the indigenous youths in the Juvenile Detention Centre are made invisible in the institutional statistics. The opinion expressed by the majority of the staff is that everyone should be treated equally, independent of being indigenous or non-indigenous, revealing an unawareness of the constitutional rights of indigenous peoples. Several indigenous prisoners raised claims for differential treatment such as alternative sentences which could be served in indigenous lands in the case of occurrences within indigenous lands, with the consent of the communities and councils of leaders, and/or a separate wing in prisons. Considering the disproportionately asymmetrical structure of interethnic relations that underlies the social, police and penal practices, it is necessary to consider the obstacles that indigenous peoples face to have access to justice and to consider the possibilities of creating differentiated institutions with alternative penalties, respecting their constitutional rights.

This research project has brought some changes. Since January 2008, when I began this study, with the collaboration of two post-graduate students in Anthropology in July of that same year, some indigenous prisoners in Roraima State have begun to demand their differentiated rights guaranteed by the Constitution, which have become a subject of debate in indigenous organizations such as the *Organização dos indígenas da cidade*²⁷ (ODIC) in the capital, Boa Vista, the *Conselho indígena*

27. Organisation of Indigenous People in the City.

de Roraima (CIR), and the Public Defense Office (*Defensoria pública*).

The possibility of creating a separate wing within the prison institutions to house indigenous detainees has become a proposal of the Federal Public Ministry in Roraima. In 2014, the anthropologist Dr. Gustavo Menezes who works in FUNAI also started a survey with indigenous prisoners in Roraima, in which I am participating. These actions characterize an engaged anthropology.

Although advances have been made in recognizing differentiated indigenous rights

in the 1988 Federal Constitution, through signing international legislation such as Convention 169 of the International Labor Organization, ratified by Brazil in 2002, and adopting the United Nations Declaration on the Rights of Indigenous Peoples in 2007, the gulf between legislation and practice is enormous and indigenous rights are constantly disrespected. Nowhere is this clearer than in the prison system where racist stereotypes prevail and indigenous rights continue to be ignored.

Bibliography

Baines, Stephen G. — 2006, “Entre dois estados nacionais. Perspectivas indígenas a respeito da fronteira entre Guiana e Brasil”, *Anuário antropológico* 2005: 35-49. — 2009, “Esperando para ser julgado. Indígenas no sistema penitenciário de Boa Vista em Roraima”, in M.I. Smiljanic, J. Pimenta and S.G. Baines eds., *Faces da indianidade*. Curitiba, Nexö Design: 169-186.

Cardoso de Oliveira, Roberto — 1996, *O Índio e o mundo dos brancos*. Campinas São Paulo, Editora da UNICAMP, 4ª edição.

Farage, Nádia — 1991, *As Muralhas dos sertões. Os povos indígenas no rio Branco e a colonização*. Rio de Janeiro, Paz e Terra/Anpocs.

Foucault, Michel — 1979, *Discipline and Punish. The Birth of the Prison*. New York, Vintage Books.

Garzón, Biviany Rojas and Raul Silva Telles do Valle — 2006, “Brasil e Colômbia. Resultados diferentes para realidades semelhantes”, in B. Ricardo and F. Ricardo eds., *Povos indígenas no Brasil: 2001-2005*. São Paulo, Instituto socioambiental: 85.

Goffman, Erving — 1974, *Asylums. Essays on the Social Situation of Mental Patients and Other Inmates*. Garden City (New York), Anchor Books.

Melatti, Julio Cezar — 1984, “A antropologia no Brasil. Um roteiro”, *Boletim informativo e Bibliográfico de ciências sociais* 17: 3-52.

de Oliveira Filho, João Pacheco — 1999, “Entrando e saindo da ‘mistura’. Os Índios nos censos nacionais”, in J.P. de Oliveira ed., *Ensaio em antropologia histórica*. Rio de Janeiro, UFRJ: 124-151.

Quijano, Anibal — 2000, “Coloniality of Power, Eurocentrism, and Latin America”, *Nepentla. Views From the South* 1 (3): 533-580.

Rivière, Peter — 1995, *Absent-minded Imperialism. Britain and the Expansion of Empire in Nineteenth-century Brazil*. London/New York, Tauris Academic Studies.

Santilli, Paulo — 1994, *Fronteiras da república. História e política entre os Macuxi no vale do Rio Branco*. São Paulo, NHII-USP, FAPESP. — 2001, *Pemongon Patá. Território Macuxi, rotas de conflito*.

São Paulo, Editora da UNESP. — 2002, “Trabalho escravo e brancos canibais. Uma narrativa histórica Macuxi”, in B. Albert and A. Ramos eds., *Pacificando o branco. Cosmologias do contato no Norte-Amazônico*. São Paulo, Editora da UNESP: 487-505.

Abstract

Stephen G. Baines, *Disrespecting Indigenous Rights in the Prison System of Roraima State, Brazil*

This article examines the situation of indigenous peoples in the prison system of Roraima State, in northern Brazil near the Venezuela-Guyana border. Since early colonisation of this region in the late 18th century, indigenous peoples were seen as a threat to the colonising process and incarcerated in settlements for forced labor as slaves. Despite the 1988 Brazilian Federal Constitution which recognizes differentiated indigenous rights, they are systematically disrespected in the prison system. I discuss here how the common idea that “everyone is equal before the Law” is in conflict with ideas about indigeneity and indigenous rights and paradoxally leads to various forms of injustice suffered by indigenous peoples.

Keywords

Roraima State, Brazil, indigenous peoples, prison system, indigenous rights

dos Santos, Jonildo Viana — 2004, “Relações sociais e mecanismos de conflito na Penitenciária Agrícola de Mote Cristo”. Trabalho monográfico de conclusão de curso apresentado para o bacharel em ciências sociais com habilitação em antropologia, Universidade federal de Roraima, Boa Vista.

Résumé

Stephen G. Baines, *Le non-respect des droits des peuples autochtones dans le système pénitentiaire de l'État du Roraima, Brésil*

Cet article s'intéresse au sort des peuples autochtones dans le système pénitentiaire de l'État du Roraima, au nord du Brésil, près de la frontière entre le Venezuela et la Guyane. Depuis le début de la colonisation de cette région à la fin du XVIII^e siècle, les populations autochtones ont été perçues comme une menace au processus colonisateur et ont été incarcérées dans des établissements pour travailler comme esclaves. Malgré la Constitution fédérale de 1988 qui reconnaît aux peuples autochtones des droits différenciés, ces droits sont systématiquement bafoués dans le système pénitentiaire. Je montre ici comment l'idée commune selon laquelle « tous les hommes sont égaux devant la loi » contredit les idées d'autochtonie et de droits des autochtones et donne paradoxalement lieu à des formes d'injustice qui touchent les autochtones.

Mots clés

État du Roraima, Brésil, peuples autochtones, système pénitentiaire, droits des autochtones