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## Colonial Subjugation and Human Rights Abuses: Twenty-First Century Violations Against Brazil's Rural Indigenous Xukuru Nation

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## Colonial Subjugation and Human Rights Abuses: Twenty-First Century Violations against Brazil's Rural Indigenous Xukuru Nation

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**Abstract.** This article addresses the struggle of the *Xukuru do Ororubá* indigenous people in rural Pernambuco, Brazil as they organize to stop historical violence against them and work to regain their constitutional right to their ancestral lands. Since Portuguese colonization and throughout Brazil's nation-building, the Xukuru have been particularly at-risk for human rights abuses. With the creation of the United Nations in 1945 and the drafting of the Universal Declaration of Human Rights (UNDHR) in 1948, member states have often provided rhetorical validity to human rights documents and conventions – rhetoric that is often ignored upon return to their sovereign territories. It is well understood that international human rights documents are based on constructed realities that historically validated Western European notions about the rights of individuals (Said 1994, 1979; Ignatieff, 2001; Niezen, 2003). As a member of the United Nations and a signatory of international human rights documents, Brazil has turned a blind eye to human rights norms as applied to indigenous peoples whose rural locations leave them vulnerable to persecution. This article: 1) situates the Xukuru Nation's rural location and presents a brief history of Portuguese colonial contact with Brazil's Indigenous peoples; 2) briefly discusses the Indian movement in Brazil as a background for the contextualization of the Indigenous Xukurus' fight for the return of their ancestral lands in the *Serra do Ororubá*, in the state of Pernambuco in the late 20<sup>th</sup> and early 21<sup>st</sup> centuries; and 3) articulates the human rights abuses perpetrated against them by the Brazilian Nation-State.

**Keywords:** indigenous, Xukuru, human rights, nordeste, Brazil

Brazil's *Nordeste* (Northeast) region is comprised of nine states that include Maranhão, Piauí, Ceará, Rio Grande do Norte, Paraíba, Pernambuco (and small islands off the NE coast), Alagoas, Sergipe, and Bahia. Stereotypes about the *Nordeste* are based on historical lore about Salvador da Bahia, sugar plantations, slavery, *cangaceiros* (bandits), *bandeirantes* (slave hunters and explorers), and the *latifúndios* (captaincy colonies) and their autonomous and privately owned Captain-majors (wealthy landed elites) appointed by the Portuguese Crown. Despite historical droughts, sugar cane, agriculture and cattle ranching are common occupations to this day. The Brazilian *Nordeste* is notoriously described as a region that is riddled with poverty and plagued by intense droughts, but rich in historical lore of both African and Indian peoples.

The Portuguese first landed on the coast of Bahia in 1500, and found the continent inhabited by indigenous peoples. Estimates vary regarding the population of Brazil's Indians in the 1500s, ranging from 500,000 to over two-million indigenous people who spoke over 100 diverse languages (Silva, 2008; Skidmore, 1999). Bahia, one of Brazil's most famous cities, is part of Brazil's *Nordeste*. As one of the oldest colonial cities in the Americas, Bahia was the first colonial capital of Brazil, and was a major sea port for the exportation of sugar and importation of slaves from Africa. Recife, another historic colonial city, and the current capital of Pernambuco is about 120 miles (193km) from Pesqueira (population 66,153). Pesqueira is the closest city to the Xukuru whose land lies adjacent to

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it in the rural mountainous regions of the *Serra do Ororubá* (Mountain Range of the Ororubá) (IBGE, 2015). The Xukuru word *Ororubá* signifies a type of wood, and also refers to the numerous birds in the region. Hence, *Xukuru do Ororubá* represents respect for nature and provides symbolic meaning to Xukuru identity (personal communication, Cacique Marcos Xukuru, 2009 & 2016).

In 1654, colonization of the region inhabited by the Xukuru occurred when the Portuguese Crown provided large land allotments (captaincies) in the area for cattle ranching to Portuguese landed elites. In 1661, the Catholic Church founded the Indian *aldeia* (village) of *Ararobá de Nossa Senhora das Montanhas* and built a church that would prove to be a key player in the battle for the return of Xukuru lands. Cattle ranchers were provided with Indian laborers from the mission. In return for labor and a small plot of arid land, Indian laborers worked for little to no pay, surviving by practicing forms of subsistence farming. In 1762, according to historic records, the *aldeia Ararobá de Nossa Senhora das Montanhas* was renamed *Cimbres*. Multiple requests by the Xukuru and their relatives were made to provincial authorities in the mid-1850s to return their lands to them. The city council of *Cimbres* argued that after 108 years, the Indigenous Xukuru no longer existed since they had been assimilated through miscegenation and were now referred to as *caboclos* (*mestiço*, a poor farm laborer of mixed blood and of low social class) (Gomez, 2000; Renato 2007; Silva, 2008; Stephens, 1999).

Population growth in *Cimbres* resulted in another name change in 1880, when the *aldeia* of *Cimbres* was abolished and renamed the municipality of *Pesqueira*. Cattle ranches (referred to in this research as wealthy land owners) continued to live on Xukuru land for the next century, using Xukuru Indians as surf laborers. Some Xukuru, defeated over time by the Catholic Missions built on their land, and by the Church's persistent efforts to Christianize them, fled the area for more remote regions in the interior. Others stayed and worked for cattle ranchers as their surfs, continuing to live on small pieces of arid land. Over time, the Xukuru intermarried with African slaves and Portuguese peasants and became part of the miscegenated *mestiços*. They were referred to as *caboclos do Orubá* (Gomez, 2000).

Today, the drive from *Pesqueira* to Xukuru lands takes approximately thirty-minutes by car. The Xukuru's ancestral lands were returned to them after years of struggle that began during the onset of the Brazilian Indigenous movement in the mid-1970s, and after the newly established Brazilian democracy of 1988. The movement was supported and fortified by the help of Non-Governmental Organizations (NGOs) in regional areas where Indian ethnicities lived in virtual isolation from other Indian peoples. As the movement expanded beyond local rural communities, it spread into a national movement. During this period of social and political change, the new Brazilian Constitution of 1988 provided a progressive chapter (chapter 8) ensuring Indian peoples' rights to live on, but not own, their ancestral lands (Brazilian Constitution, 2010). In 1991, a Constitutional Decree was added allowing for the return of Indian lands for their ownership (Brazilian Constitution, 2010).

A brief discussion on two polemical issues related to social justice research among rural peoples is needed to clarify the importance and difficulty involved in working with Indian peoples in Brazil. First, social scientists and activists (anthropologists, social workers, and sociologists) face unique challenges working in rural areas. Rural peoples have political and social circumstances not faced by most urban populations, including a lack of professionals willing to work among them in isolated locations.

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In the case of the Xukuru, human rights abuses and the dangers of investigating them narrow the number of social scientists willing to risk such work. In addition, rural locations are often synonymous with isolation. Lack of financial resources allocated for studying rural peoples is common; for Indians in Brazil, this is a persistent problem. Additionally, lack of funding is often the cause of a litany of hardships commonly found in rural areas that include a lack of transportation for Indian peoples, hunger, poverty, alcoholism, drug addiction, poor health, mental health problems (including suicide), domestic violence and child abuse (Lima de Portal, 2009). In the case of the Xukuru, human rights violence perpetrated against them by the state for their human rights activism makes research, observation, and reporting difficult (and dangerous) for the social scientist. If the state is the perpetrator, quite often state and federal organizations charged with serving Indian people are also either somewhat indifferent to their plight or antagonistic against them as clients. Hence, the state is likely not to be supportive of research that exposes inequalities that harm marginalized peoples (Benson & O'Neill 2007; Bourgois, 1990; Feldman, 1995; Gledhill, 1999; Kovats-Bernat, 2002; Scheper-Hughes, 1995).

Second, the treatment of the Xukuru in terms of their land and their identity as marginalized people needs explanation. The identity of whom the Indian was, and as argued in this article still is, in the Brazilian national identity is intimately linked to their land and to their resistance to assimilate into Brazilian national identity at large. In part, Indian identity, including Xukuru identity, is contentious due to nation-state designations that define them, and also due to indigenous constructions about themselves which draw upon their history of social marginalization and human rights abuses (Jones, 2011; Melatti, 2007). Current international indigenous human rights documents articulate that Indian identities are understood to be as authentic as Western European identities (Basso, 1979; UNDRIP, 2008). As such, social justice research does not seek to authenticate Indian identities, but rather to support them through the practice of ethno-science using the methods of observation, documentation, and dissemination of fieldwork (Scheper-Hughes, 1995).

### **A Brief History of Portuguese Colonial Agendas, the Brazil Indigenous Movement, and the Xukuru**

According to anthropologist Guillermo de la Peña, the term *Indio* referred to the peoples found in the Americas; and during Portugal's colonial control over Brazil, the term came to define the Indian as a "lower-caste" human (de la Peña, 2005). Such pejorative meanings can be found in early human rights documents such as the assimilationist perspective of the 1957 International Labor Organizations (ILO, 1957) Convention 107, which defined indigenous peoples in terms of evolutionary cultural hierarchies. The ILO 1957 Convention designed notions of Indian rights based on colonial perspectives that rendered indigenous peoples as less advanced in terms of stages of cultural evolution. Based on these assumptions, state policies reflected racist assimilationist perspectives that embedded Indian people into national policies designed to assimilate or exterminate them (Gomez, 2000; Hodgson, 2002; Mikulak, 2011; Ramos, 1998). The formation of the Indian by nation-states and by early human rights documents in the United Nations were pejorative, constructed largely from Western European pseudo-scientific notions about sociocultural evolution. As this paper demonstrates, Indian identities have been, and continue to be, pejorative because it has benefited nation-states in their appropriation of territories and their resources. This research agrees with Souza Lima who defines the term "Indian" as "...a set of ideas concerning the incorporation of Indian peoples into nation-states" (Souza Lima, 1991, p. 239).

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After 1889 (slavery officially ended in 1888), the Republic's colonial agenda included an unofficial policy to "whiten" its population by homogenizing its diverse ethnicities. Historian Thomas Skidmore has written extensively on this polemical topic (Skidmore, 1999; Hoffman French, 2004), the complexities of which are relevant, but too lengthy for this article. The policy led to Brazil's *mestiço* population and to a new Brazilian national identity (Mikulak, 2011; Skidmore, 1995) valorizing the *mulatto*. In conjunction with the Brazilian government, the Indian Protection Service (SPI, founded in 1910) implemented a new state policy whose ultimate goals were to end Indian historical memory and identity, and to increase Indian labor, while aggressively controlling Indian activities and lands (Ramos, 1998; SPI, 1910). While the *mulatto* was ultimately the ideal Brazilian identity, Indians were problematic not only due to their isolation and resistance to Portuguese oppression, but also due to their status as wards of the state.

The Crown deemed Indians as ethnically distinct and developed civil codes that defined them as incapable of meaningful civil participation. Destroying Indian cultures and religions was seen as necessary if their assimilation was to occur. Part of the SPI's official responsibility was to "civilize" Indians by assimilating them, or by carrying out guerilla violence against those seeking claims for land used for Indian missions (MacDowell Santos, 2009). Indigenous language use, cultural practices, and religious rituals were forbidden and their use and practice were reported to the SPI. In 1944, a report was written by an SPI official stating that 2,191 *Xukuru do Ororubá* "...danced the 'Toré' and secretly partook in rituals to avoid threats and persecution by the Pesqueira city police" (MacDowell Santos, 2009, p. 6). The *Toré* is a fundamental element in the cosmological system of the *Xukuru* and its meaning is multifaceted. The relations between the sacred and the profane are mediated by a shaman who handles all aspects of *Xukuru* life including political decisions, social organizations, and healing. The *Toré* is the foundation upon which the *Xukuru* built their resistance movement, their *retomadas*, and their political organizations. Such cultural expressions were forbidden, feared, and viewed as pagan. Persecution of the *Xukuru* was ongoing and persistent (personal interviews with the *Pajé*, 2011).

In 1967, the SPI was officially terminated and replaced with the National Foundation of the Indian (FUNAI, *Fundação Nacional do Índio*, Brazil's governmental organization for Indian affairs). The continued purpose of FUNAI was to integrate and assimilate Indians into Brazil's national *mestiço* population. Indeed, the Minister of the Interior, Rangel Reis, stated in 1976:

Let us seek to fulfill the objectives fixed by President Geisel, so that, through concentrated work among various Ministries, within ten years, we can reduce to 20,000 the 220,000 Indians existing today in Brazil, and within thirty years all of them shall be duly integrated into the national society (Warren, 2001, p.54).

Today, the murder and assassination of Indian leaders and human rights defenders continues (Amnesty International Annual Report, 2011; 2014). These cases include the continuation of discrimination, threats, and violence particularly within the context of ancestral land disputes. Indigenous populations are at-risk due to their ethnicity AND their isolation in rural areas where they seek the return of ancestral lands. For example, President Dilma Rousseff presented a decree that facilitates the acquisition of licenses to large companies for environmental exploitation that will benefit development projects, many of which are on indigenous lands or lands of traditional non-Indian peoples in rural locations, including existing *Quilombola* communities. Indigenous peoples such as the *Guarani-Kaiowá* in the state of Mato Grosso do Sul continue to live in fear of being

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attacked. Amnesty International's (2005) "Foreigners in Our Own Country: Indigenous Peoples in Brazil" reported:

In areas where there has been an identified and recognized need for federal protection of Indians and their land, the authorities have failed to take action despite the warnings of senate commissions or the Organization of American States, as in the cases of the *Cinta Larga* in R ndonia and the *Xukuru* in Pernambuco. A failure to punish those who have carried out attacks and killings in the past, has laid the foundations for the violence of the present (Amnesty International, 2005, p. 1).

Debates in Brazil during the 19<sup>th</sup> century focused on the conundrum over Indian rights to land; that is, whether or not such rights were inherited or given to them by the state. For example, the 1934 Brazilian Constitution provided only a guarantee that Indian lands could be inhabited – not owned – by the Indian, and once vacated (as designed by the nation's assimilation and miscegenation policies), those lands revert to the state (Brazilian Constitution, 1934). Hence, such territories were conceived as "empty," available for possession by the state to use, develop, or exploit as it saw fit (Lombardi, Simoni, Estanislau & Arruti, 2013; MacDowell Santos, 2009).

Due to civil and federal laws and nation-state constructed identities about Indians, gaining title to their lands continues to be difficult, and at times impossible. Consequently, non-Indian land owners aggressively registered Indian lands in their names, a tactic that has proven successful for them. It was in this manner that the confiscation of *Xukuru do Ororub * communal lands by non-Indians occurred. Their marginalization within Brazilian society, their rural location and social and political isolation, and their staunch resistance against state mandated rights to their lands made their struggle a dangerous one. The importance of indigenous historical knowledge for social scientists and those working for social justice in the international sphere is critical since state policies evolve from historical social processes. Changing local perceptions that generate social inequalities requires addressing the historical, cultural and social processes that produced them.

Until the late 1980s, only a handful of Xukuru had small pieces of land where they scraped out a living while also paying rent to wealthy non-indigenous farmers for land that was once theirs. Since the mid-1980s, the Xukuru have endured threats, illegal arrests, beatings, and assassinations. During the period of this research, 2007 to 2011, the Xukuru faced the ongoing criminalization of their people within the Brazilian courts, and continued to live with the real potential of violence and additional assassinations from vengeful elites who continue to threaten them, yet they vowed to continue their activism (Amnesty International, 2005; 2011). Social scientists, social justice advocates, and NGOs play a critical role in bringing attention to the media and to national and international court systems regarding the perpetration of violence by state actors against indigenous human rights defenders seeking their national and international human rights.

### **International Human Rights**

Three years after the end of WWII, the 1948 Universal Declaration of Human Rights (UNDHR, 1948) laid the groundwork for equality under the law for individuals and collectives from the destructive capacities of fascist and nationalist regimes, and made it clear that all peoples could claim a right to social, economic, cultural, and political equality (Minde, 2008). The indigenous

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movement called for a special category for human rights that disempowered nation-states' ideologies of assimilation and homogenization of their peoples.

The Indian movement (Indian is used synonymously with indigenous in this research) made significant gains in challenging and broadening indigenous rights in the local, national, and global arenas. In 2007, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was ratified in an atmosphere of controversy (UNDRIP, 2008). The document addressed questions of the pragmatic meaning of self-determination, such as to which populations this term applies, and what self-determination means in terms of state rights, state sovereignty, and national security. More than any other human rights document originating within the United Nations, UNDRIP requires rather immediate pragmatic applications in terms of indigenous collective rights within nation-states, particularly regarding land rights, resource appropriation, health, educational, and economic rights, and political participation at national and local (particularly rural) areas where state and legal infrastructures are least likely to monitor rights abuses (UNDRIP, 2008).

The indigenous rights movement challenged 19<sup>th</sup> century constructed notions of racial inferiority about Indians, and demanded that collective rights apply across the board to all indigenous peoples: their sustainable living, food security, social cohesion, and cultural identities (Hanchard, 2005; Mikulak, 2015; Ramos, 1998). The movement also added depth to social science studies of individual agency identity formation, and everyday praxis, assisting researchers and professionals working for the welfare of Indian peoples. An important aspect of indigenous peoples' human rights is their need for social cohesion and cultural identity as a global community. Indigenous peoples share experiences of colonial practices that sought to eliminate their perspectives and cultural world views, and often led to the extermination of entire communities (Graham, 2002).

The Brazilian Indigenous movement shared the need for a global community. The Indian movement was supported and essentially launched by the creation in 1972 of the Non-Governmental Organization (NGO) *Conselho Indigenista Missionário* (CIMI, The Indigenous Missionary Council) in Brazil. CIMI recognized the isolation experienced by indigenous peoples who are separated by large distances between rural areas where they lived. CIMI emerged from the Liberation Theology movement in Brazil, and began providing assistance by organizing and sponsoring the first conferences of indigenous peoples, bringing diverse Indian peoples together to discuss the problems they had experienced by providing transportation, lodging, and food (CIMI, 1972; Ramos, 1998). The common issues shared by indigenous groups in Brazil led to the development of a powerful awareness about the similarities of the injustices that groups experienced – both individually and collectively. Accordingly, strong leaders emerged who spent time politicizing and educating their people about the legacy of colonial violence perpetrated against them, encouraging a resurgence of a collective historical memory about their ancestors, religions, rituals, and territories.

The geographically scattered and rural nature of Brazil's Indigenous peoples, and the lack of organizational structures that could have coordinated activists and directed policy and procedures back to local communities, explain why indigenous organization and politicization has been so difficult. The energy and political organizational capacities of (NGOs), social scientists, university professors, and social workers brought the Indian Movement to a point of effective action at the level of state policies regarding their rights, both in Brazil and in the international arena.

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### **Xukuru Activism, Reconstruction of Identity and Self-Determination, and State Violence Against the Xukuru**

Until the late 1980s, only a handful of Xukuru had even a scrap of land. “Most have for decades practiced subsistence farming, paying rent to *fazendeiros* for land of which they themselves were the traditional owners” (Hemming, 2003b, p. 597).

Archives dating to the 16<sup>th</sup> century provide proof of Indigenous Xukuru people living on their ancestral lands (Hohenthal, 1958). At the time of the first Portuguese contact in the 1500s in Brazil, Xukuru territory encompassed a vast area, which was slowly absorbed by the Portuguese Crown through colonial decrees, until completely appropriated in the 1700s (Hemming, 2003a).

In 1984, the Xukuru began active campaigns to regain territories that were confiscated by the Brazilian state since the 1700s. By the mid-1990s, death threats against Xukuru leaders by ranchers who would lose their land if the Xukuru were successful were common. In spite of these threats, no protection was offered by the state to those identified for execution. The Indian chapter in the 1988 Brazilian Constitution called for protection of Indian people by state agencies. The responsibility for protecting the rights of indigenous peoples falls on FUNAI, a federal organization that has a long history of internal corruption, misappropriation of funds and resources, and explicit violence against Indian peoples (Graham, 2002; MacDowell Santos, 2009; Stocks, 2005; Warren, 2001). While the new constitution provides for protections from human rights abuses against Indian people, the agency tasked with protecting them, is structurally flawed: FUNAI inherited and accepted the colonial notions about the inferiority of Indians assumed by the SPI. The federal government’s rhetoric about Indians as backward, childlike, undisciplined, and economically marginal justified their alterity in terms of Brazil’s progress as a developing nation. Hence, Indian people needed to be managed and given a protected status until such time that the state deemed them to be fully assimilated in to civilized Brazilian society. Both the SPI and FUNAI have left a litany of neglect, persecution, and abuse in their wake (Ramos, 1998; Warren, 2001). Indeed, the famous *Figueiredo* report of 1967 (ironically commissioned by the Brazilian Military Dictatorship) documented the degree to which violence against indigenous peoples was exposed. Brazil’s military regime, known for its brutal torture and oppressive practices, reported on the horrors perpetrated against indigenous peoples (Cockcroft, 1989; Davis, 1977). Unfortunately, the carnage continues today.

The Xukuru, referred to as *caboclos* by Brazilians-at-large in the 1980s, still had small parcels of land on which they practiced meager subsistence farming; moreover, they still paid rent to wealthy non-indigenous farmers. Their Indian language, traditions, rituals, and world views were virtually non-existent, with a couple of exceptions; they managed to maintain their traditional practice of the *Toré* (religious practice), and they held onto their passion to retain their Indian identity, and their reverence for their *Pajé* (spiritual leader) and their *caciques* (leaders) (Fialho, 1992; Hemming, 2003). Prior to Xicão’s assassination, he worked closely with the *Pajé* and a trusted female school teacher, walking the long distances to each of the 24 *aldeis* holding meetings with a few people who were willing to begin organizing their people to achieve the return of their land. The rural environment and mountainous regions of the *Serra do Ororubá* were inhabited by non-Indian farmers, mostly wealthy elites who spent time living in the city of Pesqueira, leaving the work of cattle ranching to their Indian *caboclos*. The long distances between ranches, and the danger of organizing his people to join together as a collective to claim their lands was dangerous and difficult. Ranchers threatened death

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to Indians who had been contacted, or promised they would never find work again (personal communication with Cacique Marcos Xukuru, 2010; 2011).

In 1989, traditional indigenous lands (including Xukuru land) were finally under consideration for the process of land delimitation and demarcation. The growing Indian movement in Brazil and the chapter on Indian rights in the new Brazilian Constitution required the fledgling Brazilian democracy to begin demarcating Indian lands. Cacique Xicão Xukuru was a key player in the fight for Indian rights in the Northeastern state of Pernambuco, and he forged the way for the long, bloody – but eventually successful – fight for the return of his people’s land (Fialho, Neves, & Figueiroa, 2011).

In 1995, the physical demarcation of their land was completed; yet by 2005, the Xukuru occupied only a fraction of their land due to compensation claims of wealthy and politically powerful farmers who contested the demarcation. At this point in time, Xukuru land was still not formally (legally) registered, leaving them vulnerable to increasing violence by ranchers, the intent of which was to intimidate and stop the Xukuru movement to continue their fight for their land. Xicão knew that their activism had to increase, since their ancestral lands were aggressively being purchased and developed by wealthy large-scale ranchers expanding their livestock herds. In Brazil, land is used for production, and increased livestock herds generated large sums of money for the region. These same ranchers were deeply entrenched in local politics and were supported by regional development groups and agencies with the aim of expanding upon the beef industry. The second economic industry in the region is religious tourism. The historic church in *Cimbres* was known as a religious pilgrimage site based on the supposed sighting of the Virgin Mary by two young girls in 1952 (personal communication with Cacique Marcos Xukuru, 2010; 2011; MacDowell Santos, 2009).

The village of *Cimbres* and its historic Catholic church, *Nossa Senhora das Graças*, is on Xukuru ancestral lands and was a main target for the development of a religious tourism site, supported by wealthy farmers, Politicians, and city councilmen. Due to the potential threats posed by farmers purchasing Xukuru land and the growing movement by politicians and city developers to increase religious tourism in Pesqueira in late 1989, several Xukuru leaders wrote a formal letter to FUNAI demanding protection from armed non-Indian cattle ranchers who threatened death to Xukuru leaders and community members. While their letter and their activism led to eventual demarcation in 1995, FUNAI did nothing to protect the Xukuru from death threats by local farmers.

Land demarcation often leaves indigenous peoples vulnerable to the special interests of local, national and multi-national corporations. Their rural locations make them even more vulnerable to violence and the impunity of their perpetrators. Businesses and corporations can seek to extract resources from land under consideration for homologation, most often with the support of the Brazilian government. The personal dangers many Indians have faced include assassinations, disappearances, rapes, and fatal beatings because they have participated in the *retomadas* (strategies to retake their lands by camping on them until the ranchers leave). By design, each phase of the process to return indigenous lands is complicated, and each phase has been plagued by local legal problems and violence (Fialho, Neves, & Figueiroa, 2011). The land demarcation process consists of five phases: a) identification and delimitation; b) challenges to third parties; c) decision of the Minister of Justice; d) approval by Decree of the President of the Republic; and e) recording of indigenous land (GAJOP, 2011).

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Yet another blockage in the demarcation process of Xukuru land occurred in 1988 when the federal government ruled in favor of an agricultural project submitted by a local farmer, Otávio Carneiro, in the region where the *Xukuru do Ororubá* live. This ruling led to a more intensive mobilization of the Xukuru by Cacique Xicão Xukuru, and the Xukuru *Pajé* (spiritual leader) (Mikulak, 2012). As part of their mobilization, they solicited the Federal Public Ministry to open a civil investigation into the failure of FUNAI to demarcate the territory Otávio chose for his agricultural business.

In 1989, Xicão's renewed efforts led to pressuring FUNAI to create a working group to investigate the identification and the demarcation boundaries of *Xukuru do Ororubá* land. At that time, the working group identified 282 residences inhabited by non-Indians who were living on 56.2% of the land that was demarcated as Xukuru territory. Most of the non-Indians were farmers and families of politicians (Almeida, 1997; Fialho et al., 2011; Marques, personal communication, June 25, 2010). During 1989, and in accordance with the 1988 Constitution and the processes of homologation, the 282 residents were to be removed, with the "owners" compensated for their loss. The ruling to remove non-Indian residents increased the violence against the Xukuru, who were not receiving the protection that FUNAI was mandated to provide them as the federal Indian agency. In retaliation, ranchers on Xukuru land registered their legal claims within the courts against the return of lands already demarcated to the Xukuru.

Additionally, in the 1990s the Xukuru political process of laying claim to their ancestral lands through the *retomada* process increased. Each *retomada* resulted in scores of Xukuru squatting on the ranchers' property until the courts homologated their lands. *Retomadas* occurred in isolated areas, where police protection is most often not available. FUNAI left the Xukuru to face the inevitable violence of ranchers that was, for all practical purposes, invisible. Without the NGOs and other non-Indian observers, evidence of such violence would not have been collected. Over 43 *retomadas* were carried out, and during this process farmers frequently shot at the Xukuru, which made it difficult – if not impossible – for food and supplies to get to those participating in the *retomadas*. Their isolated location often led to physical violence by ranchers who hired men to beat and verbally shout death threats at the participants.

After the intensity of the *retomadas* in the 1990s, the physical demarcation of Xukuru land was finally determined in 1995 to be 27,555 hectares (68,090 acres), which was far less than Xukuru historical memory requested (Brasileiro, Ferreira, & Fialho, 1998). The lands inhabited by the Xukuru Indians originally covered an area of approximately 40 square leagues (93,240 hectares or 230,399 acres) (Fialho et al., 2011). In other words, the Xukuru received only 30% of their original territories.

### **Political Context for the Criminalization of the Xukuru**

The Xukuru chose the strategy of using *retomadas* because they provided a more public form of resistance and increased the force of the Ministry of Justice's ruling in recognition of their territorial rights (Fialho et al., 2011; MacDowell Santos, 2009; Mikulak, 2012). The *retomadas* worked to solidify and reinforce Xukuru identity through the practice of the *Toré*, and the experiences and messages received through trance from the *encandadas* (spirits) who inhabit nature, and in particular the ancestral lands of the Xukuru. While the *retomadas* at times gained the attention of the local press, this period proved to be deadly for the Xukuru (personal communication with Cacique Marcos Xukuru, 2010).

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Soon after the first *retomada*, the first death associated in the Xukuru fight for their land occurred with the 1992 assassination of José Everaldo Rodrigues, the son of the man who is the Xukuru *Pajé* (spiritual leader). Only three years later in 1995, the second assassination occurred: Geraldo Rolim, the lawyer assigned by FUNAI to work on behalf of the Xukuru was murdered (Fialho et al., 2011; Mikulak, 2012).

In 1996, contrary to Article 231 of the 1988 Brazilian Constitution, President Fernando Cardoso set in motion a decree that stalled demarcating indigenous lands by introducing the “contradictory principle,” which allowed for non-indigenous claims against territories designated as historically indigenous. Dubbed the “genocide decree” by indigenous leaders, Decree 1.775 undermined the land rights that are essential for the survival of their cultures and allowed state governments and businesses to contest the jurisdiction of over 49 million hectares (over 121 million acres) (Hemming, 2003b). By the decree’s April 8, 1996, filing deadline, over 530 parties had challenges pending with FUNAI, and 272 claims had been made against land demarcated for the Xukuru (Decreto No 1.775, 1996; GAJOP, 2011; Hemming, 2003b; MacDowell Santos, 2009).

While it is perhaps difficult to comprehend how a legal constitutional article can be quickly overturned by President Cardoso’s decree, such flip-flops are historically not uncommon when indigenous peoples’ rights are at stake. Reasons for such actions are commonly justified based on the ideology of political parties in office and the economic practices supported by national and international interests. In the 1980s, for example, hydroelectric projects and mining for gold received large amounts of funding from the World Bank and the International Development Bank. Both national projects have been disastrous to indigenous peoples whose lands were exploited, flooded, and expropriated by the Brazilian nation-state (Ramos, 1998, p. 208). Indeed, the rights of Indian people as outlined in the new constitution, have proven to be a continuation of broken promises. Article 67 in the new constitution stated that all indigenous territories were to be demarcated within five years of its ratification. While the new constitution sought to redress the crimes of slavery, genocide, murder, racism, and land theft, indigenous peoples find that more than 20 years have passed and their lands remain out of their reach.

Formal objections to the demarcation of Xukuru land numbered 272. In other words, 272 *fazendeiros* were pressuring FUNAI to work with them and against the claims of the Xukuru. Among those who pressured FUNAI was the mayor of Pesqueira, the city council, and local farmers. Those objecting to the return of land to the Xukuru took their cases jointly to the supreme court of justice, which upheld them and opened their claims for further investigation (Fialho et al., 2011; MacDowell Santos, 2009; Mikulak, 2012).

Due to the invasion of new *fazendeiros* and their families, who bought and sold additional land that had been designated as Xukuru (in an obvious attempt to stop the land return process), the supreme court’s involvement spurred increased tensions and violence against the Xukuru. In reaction, the Xukuru began their *retomadas* with renewed vigor; numerous death threats against the life of Xicão began to intensify; Cacique Xicão Xukuru was assassinated on May 21, 1998. His death was a horrific setback to the Xukuru community, and for a time, their activism was slowed.

A new Cacique (leader) was chosen by the *Paje*, the spiritual leader, and Cacique Marcos Xukuru (son of Xicão) was chosen to lead his people. Despite his youth, Marquinho, who was in his early twenties when he became Cacique, has gained the respect, admiration, trust, and loyalty of his

people. Like his father, Marquinho is a leader in, and defender of, the indigenous human rights movement, not only in Brazil, but also throughout South America (Mikulak, 2012). Human rights observers argue that without the involvement of local NGOs such as CIMI (*Conselho Indigenista Missionário*), Amnesty International, and committed social scientists, more deaths would have been likely (Amnesty International 2005; 2011; CIMI, 2002). The participation in, and observation of, the *retomadas* by the Xukuru and those who have worked alongside them provided evidence of human rights violations by state and non-state actors.

During the 1990s when Xicão was the main protagonist in the articulation and promotion of Xukuru indigenous identity, the local political environment in Pernambuco sought to undermine and negate their authenticity in order to deny them the protection and legal rights outlined in the 1988 Brazilian Constitution's chapter on Indian rights (Brazilian Constitution 2010; Mikulak, 2012). In 1991, Francisco de Assis Santana (known as Chico Quelé), the leader of the *aldeia Pé de Serra* was murdered. The consecutive assassinations of Xukuru leaders and advocates have been documented by Amnesty International (2011), the Inter-American Commission for Human Rights (IACHR, 2009), The Cabinet for the Legal Assistance of Popular Organizations (GAJOP, 2011), and the Indigenous Missionary Counsel (CIMI, 2002). In March, 2003, a special commission to study the Xukuru situation was finally requested by the Defense Council for Human Rights (IACHR, 2004), Brazil. According to the Xukuru, CIMI advocates, and legal counsel for the Xukuru, their deaths are attributed to retaliation by non-Indian ranchers who felt justified in their actions – based on Brazil's long history of Indian assimilation policies. Indeed, it is common for large-scale farmers to argue that less than one-percent of Brazil's population is indigenous, and that they already "have" twelve-percent of the national territory. In reality, indigenous people own approximately 12 percent of Brazil's land, and they represent approximately 0.4 percent of the population (Ramos, 1998; USAID, 2011). To put this large distribution of land to such a small population of Indians into perspective, only one-percent of Brazil's population owns 45 percent of all of Brazil's territory (USAID, 2011). This analysis of land holdings corresponds to Brazil's national agendas for land production and development. Indigenous land use most often is in-sync with Brazil's aggressive, neo-liberal, global trade agendas of production and extraction of resources (Davis, 1977; Ramos, 1998; Silva, 2007).

Marquinho's responsibility as the new leader was to demand from the Brazilian authorities a continuation of the demarcation process of Xukuru ancestral lands and to achieve the removal of non-Indian ranchers who continued to inhabit their land. Following the path established by his father, Marquinho continued to lead his people in additional *retomadas*. The resident non-Indian ranchers responded by redoubling their resistance to ceding the land because of a growing interest in constructing the large religious tourism center in the *Aldeia de Cimbres* on Xukuru land. Needless to say, this project promised to be very profitable to local politicians and city councilmen.

The proposed tourism project was not accepted by the majority of the Council of Xukuru leaders, including Cacique Marcos Xukuru, since it would mean a renunciation of their ongoing effort to preserve Xukuru culture, land, and traditions, and would represent a betrayal of their collective historical memory and self-determination. Marquinho, representing his people, remained a strong objector to the interests of non-Indian ranchers, local politicians, and city councilmen, who proceeded to co-opt a small group of approximately 100 Xukuru, influencing them to support the tourism project, while promising them lucrative financial benefits. Events were to unfold that linked this rogue group to the attempted assassination of Cacique Marcos in 2003, the subsequent riot that

ensued by the Xukuru, and the burning of the suspected assassin's homes and cars. Cacique Marcos Xukuru was eventually wrongfully charged for leading the revolt and its subsequent violence.

Marquinho and his mother, Zenilda Maria de Araújo, a nominee for the 2005 Nobel Peace Prize, began to receive death threats, which prompted a 2002 order by the Inter-American Commission on Human Rights (IACHR, 2009) charging that the Brazilian government take full measures to protect them. Despite the requests for protection and intervention by the Xukuru and the IACHR, the Brazilian government did not comply with the cautionary measures ordered by the IACHR. As a consequence, Cacique Marcos Xukuru was ambushed in February, 2003, in an assassination attempt led by José Lourival Frazão, who, along with approximately 100 Xukuru aligned against their Cacique. In this incident, Josenilson José dos Santos and Ademilson Barbosa da Silva, two young Xukuru men, were killed while protecting Cacique Marcos. Their deaths, however, allowed Cacique Marcos to escape, but not without injuries, at which time he was taken to the hospital in Pesqueira. When news of the ambush and the murders spread, approximately 1,000 Xukuru members spontaneously revolted, resulting in the plundering of the cars and houses of the people assumed to be involved in the ambush.

In 2007, this researcher began to investigate the case of Cacique Marcos Xukuru. As a country specialist for Amnesty International (AI), requests were made again to provide protection for the Cacique. Acting alone as a social-action researcher – not as a country specialist for AI – who was investigating indigenous rights and social justice, provisions were made by this researcher through independent state actors to provide “twenty-four/seven” protection by the Military Police for the Cacique when he was not on Indian lands.

This social-action research, carried out since 2007 in collaboration with local NGOs and the defense lawyer for Cacique Marcos Xukuru, Gilberto Marques, resulted in the drafting of a dossier that identified important human rights abuses by the state's judicial system and by the Federal Police in their investigation of the attempted assassination of Cacique Marcos Xukuru and the deaths of the two Xukuru young men in Pernambuco (personal communication, Cacique Marcos Xukuru, 2011).

The purpose of this article is to demonstrate the seriousness of judicial oversights in the case of the Xukuru that stem from three principal aspects of the legal processes during his trial: the curtailment of the Cacique's right to use all legal means to defend himself; the noticeable presupposition of his culpability (assumed prejudices against the Xukuru and their Cacique due to historical bias against Indians based on national policies aimed at determining Indian identity and subjectivity); and the de-politicization of pre-existing conflicts between Indians and non-Indian ranchers over Xukuru ancestral lands.

In collaboration with CIMI, further research reported that elite politicians and economic interests within the region of Pesqueira played a part in ensuring the legal criminalization of the Xukuru and the targeting of Cacique Marcos Xukuru as a provocateur rather than a victim of an assassination attempt. Forensic crime scene evidence by Federal Police at the scene of the assassination attempt did not occur; moreover, interviews of witnesses were not conducted. Research suggests that the rural environment of the Xukuru enabled such faulty evidence collection due to lack of management and supervision of the federal investigation in the field (personal communication with Gilberto Marques, 2011; personal communication with Sandro Lobo, Assistant Legal Counsel to CIMI, 2011).

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During the court proceedings held in the city of Caruaru (approximately 74 miles west of Pesqueira), a clear restriction on the right to use all legal means available for Cacique Marcos Xukuru to defend himself was imposed; the court declined to hear the testimony of 152 witnesses, including the testimonies of Federal Deputy Fernando Ferro, and Assistant Head Federal Prosecutor Raquel Dodge. The elimination of witnesses ensured that questions raised regarding the actions and whereabouts of Cacique Marcos Xukuru – both during and after the Xukuru revolt – were not addressed. Indeed, the trial dismissed the occurrence of the attempted assassination altogether. Each witness that was excluded diluted the ability of the court to accurately analyze the alleged crimes against Cacique Marcos. The defense attorney (Gilberto Marques) and the Cacique's rights to a fair trial were left in an increasingly precarious state that eventually permitted the faulty construction of facts against him to be assumed correct by the judge. Both the Cacique and his defense lawyer's legal right to a fair trial were violated as outlined in the 1988 Brazilian Constitution's Indian Chapter, UNDRIP, and the ILO (Brazilian Constitution, 2010; ILO, 1989; personal communications, Gilberto Marques, 2010; 2011; UNDRIP, 2008).

Another important finding of this research is the presupposition of the culpability (presumption of guilt) of Cacique Marcos Xukuru, the *victim* of an attempted assassination. The federal police report stated that there was no attempted assassination, and that the deaths of the two murdered young men was due to internal feuds among the Xukuru, ignoring and/or suppressing evidence from the crime scene. In addition, the prosecution argued that Cacique Marcos was guilty based on the leadership he exhibited in advocating for his people as a human rights defender in his fight to regain Xukuru ancestral lands. Indeed, the assassination attempt on his life was not even considered, and the perpetrators of his assassination attempt were not sought. The involvement of political elites in attempting to develop a religious tourism site on Xukuru land was not allowed as evidence linked to the assassination attempt. Instead, the court focused on the destruction of the homes and property of the two male individuals who the Xukuru argued were the murderers that killed the two young Xukuru youth attempting to protect their Cacique (Fialho, Neves, & Figueiroa, 2011; personal communication with Sandro Lobo, 2011).

Evidence for the whereabouts of Cacique Marcos Xukuru's presence in the hospital in Pesqueira was not permitted; he was found by Xukuru farmers in the hills, his shirt and pants bloodied from injuries received as he ran through barbed wire fences while fleeing his assassins. The Cacique was not only unaware of the revolt, but also not present at the place and time during which it transpired, but the court considered him to be the principal actor who led his people in a revolt against those who were seen as his attempted assassins.

The argument in support of attributing responsibility to Cacique Marcos was additionally based on ideas that conflated his tribal leadership role (as an individual) and his supposed command over the Xukuru people (the collective). Evidence introduced in the trial, such as spent shell casings left at the scene of the crime, the bodies of the two Xukuru young men, and Cacique Marcos Xukuru's injuries (all of which would have palpably supported his defense), was either not collected, lost, or poorly processed, and was summarily dismissed by the court (personal communication with Gilberto Marques, 2011).

The Xukuru community, having experienced a spate of assassinations over a nine-year period and numerous death threats, reacted spontaneously with a justified sense of grief and anger as they evicted those suspected of attempting to murder their young chief. The deaths of two, unarmed young

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Xukuru men as they attempted to protect their chief, increased the sorrow experienced by the community. The accused assassin José Lourival Frazão spent one year in prison, and was released. According to Cacique Marcos Xukuru, the other perpetrator, Frazão, has disappeared, for which his whereabouts are currently unknown. Details of the attempted assassination are still unknown, and no further investigations have been forthcoming, ostensibly leaving others who may also be responsible free and at large.

Finally, the proceedings reveal a complete de-politicization of the underlying land rights conflicts between the Xukuru and non-Indian ranchers. Having considered the ambush of the Cacique a mere isolated, contingent occurrence with its true motives obscured – but assumed to be caused by internal feuding – the court interpreted the Xukuru tribe’s reaction as a disturbance lacking motive, and as an act of unprovoked hatred. The failure to consider any political context is one more example of a complete abdication of responsibility by the relevant authorities regarding conflicts in the region (personal communication with Gilberto Marques, 2010; 2011).

According to Gilberto Marques, lawyer for the defense of Cacique Marcos Xukuru, failures by FUNAI, the federal police and the public ministry historically contributed to the violence perpetrated against the Xukuru and their leaders. FUNAI repeatedly delayed the identification, compensation, and eviction of non-Indian farmers from demarcated Xukuru territories, and they failed to participate in the planning of *retomadas* and to provide critical information about potential threats that resulted in the deaths of leaders, activists, and of the two Xukuru youth who attempted to protect Cacique Marcos Xukuru.

Further violations of forensic criminal investigation procedures and judicial protocols were attributed to the failure of the federal police to investigate the attempted murder of Cacique Marcos Xukuru and the criminalization of additional Xukuru leaders. Lack of verification of facts under investigation, failure to provide a valid motive for crimes committed, and clear bias against the Xukuru was demonstrated by the federal police who “investigated” the attempted assassination of Cacique Marcos Xukuru. Indeed, the federal police prioritized the assessment of material damages that occurred in the Xukuru riot against those believed to have planned the attempted assassination of their Cacique, ignoring proper procedures for crime-scene evidence collection and accounts from eyewitnesses (personal communication with Gilberto Marques, 2011).

Finally, the Brazilian Secretariat of the National Council for the Defense of the Rights of the Human Person (CDDPH, 2003) and his team in Recife reviewed the proceedings of Cacique Marcos’s trial and determined that the legal processes against him and other Xukuru leaders were contaminated at their source by a botched and prejudiced investigation. The CDDPH argued that the trial and conviction of Cacique Marcos Xukuru was an act of institutional violence seeking to construe them (the Xukuru) as “. . . dangerous people who do not respect the state because of their human rights activism” (CDDPH, 2003; personal communication with Gilberto Marques, 2010). In addition, the CDDPH stated that the defense for the accused was pressured by the trial judge not to hear the testimony of 152 enrolled witnesses (all of whom had been scheduled by the judge to be heard on a single day; an obviously impossible feat!); all witnesses for the prosecution were allowed to give their testimony. Prior to the end of the trial, the judge was transferred to another federal court, and the sentence levied against Cacique Marcos Xukuru was issued by a newly arrived judge, violating the legal principle of knowing in advance the physical identity of the judge who will preside and levy a legal sentence against the accused (personal communication with Gilberto Marques, 2010; 2011).

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## Violations of International Human Rights Norms

This research found that the trial proceedings demonstrated a broad context of violations of international norms. These violations can best be understood in light of the provisions of the following international human rights documents of which Brazil is a state-party:

- The Declaration on the Rights of Indigenous Peoples
- The Universal Declaration of Human Rights
- The International Covenant on Civil and Political Rights
- The Convention for the Elimination of All Forms of Racial Discrimination
- The Declaration on the Right and Responsibility of Individuals, Groups, and Organizations of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms
- The International Labor Organization Convention on Indigenous and Tribal Peoples (ILO 169, 1989)

According to UNDRIP, Indian peoples are equal to all other peoples, and have the right to be free from all kinds of discrimination in the attribution and assurance of their rights and their identities. Indeed, Article 40 of UNDRIP guarantees that:

Indigenous peoples have the right to access to, and prompt decision through, just and fair procedures for the resolution of conflicts and disputes with States and other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration of the customs, traditions, rules, and legal systems of the indigenous peoples concerned and international human rights (UNDRIP Article 40, 2008).

This research provides evidence that the Xukuru case must not be isolated from the context of insecurity and unjustified delays in the process of demarcation of their indigenous lands and effective transfer of traditional territory to indigenous communities, and that trials against indigenous leaders for their activism for cultural, political, and self-determination rights must be historically contextualized within legal proceedings against them (Fialho et al., 2011; MacDowell Santos, 2009; Mikulak, 2011; 2012). Accordingly, Article 27 of UNDRIP affirms that:

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs, and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories, and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process (UNDRIP, 2008).

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## **Conclusions about State Violence against the Xukuru**

Associate Professor of Sociology Cecilia MacDowell Santos at the University of San Francisco states:

In the case of the Xukuru...a strong implementation and hegemony of a mono-cultural and individualist perspective of indigenous human rights has been demonstrated...[and] this perspective is legitimated by laws...that are still in effect and are linked to a colonial past of authoritarian power structures within the state and within Brazilian society (MacDowell Santos, 2009).

MacDowell Santos' scholarly article is one of the rare academic texts in English that addresses the Xukuru do Ororubás' human rights case from a human rights and historical perspective. Her article articulates Brazil's national policies related to the maintenance of a homogenous identity based on the policy of "whitening" this multicultural population (MacDowell Santos, 2009).

MacDowell Santos argues that social science research, particularly social action research, needs to conduct comparative analysis on state organizations that investigate, document, collect, and handle trial evidence, and bring to trial cases for the human rights of indigenous peoples. Such a body of research should include different states and regions, particularly rural, isolated regions, within Brazil and across Latin America. This researcher found that an examination of legal, social, and political processes used within Brazil's national courts can identify different situations and/or degrees of heterogeneous state actions that violate international human rights norms (personal communication with Gilberto Marques, 2011; Speed, 2006). Investigations of this kind could be especially helpful in identifying and comprehending obstacles and conditions linked to oppressive state actions against indigenous peoples. MacDowell Santos' research provided this researcher with helpful tools to collect data that assisted in the defense of individuals acting as human rights defenders seeking the collective rights of their peoples (MacDowell Santos, 2009).

The results of this research led to the submission of a dossier of findings of human rights abuses against the Xukuru to the American Anthropological Association's Committee for Human Rights (AAA-CfHR, 2010). Subsequent vetting by the AAA-CfHR led to the public support by the AAA of the Xukuru indigenous peoples with letters and appeals sent to the 5<sup>th</sup> Regional Tribunal in Recife and to the Governor of the State of Pernambuco. The good news in terms of the successful activism of the Xukuru, and the results of this social action research, came in October, 2012: the American Anthropological Association's public stance called for the inclusion of historical state violence against the Xukuru in terms of achieving a fair and just trial, notifying the Tribunal that the actions of the court were being observed internationally. Due in part to this research and the collaborative activism of Brazilian academics and social justice activists, the 5<sup>th</sup> Regional Tribunal in Recife, under appeal, dropped the criminal charges against all of the Xukuru leaders, including Cacique Marcos Xukuru.

The Brazilian judicial system's capacity and willingness to adjudicate – fairly and impartially – indigenous legal cases, especially those involving land demarcation rights, is unfairly biased toward a colonial model that favors land owned by wealthy productive farmers. International human rights norms that define the rights of indigenous peoples to use their lands according to traditional cultural values are often ignored and unacknowledged by Brazilian judges who, more than likely, are not

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encouraged to “bend the arch of justice” toward indigenous peoples’ rights, rather than toward nation-states capitalist production.

The assassination of Xicão Xukuru not only provided a catalyst in strengthening the Xukuru in their fight for the return of their traditional territories, but also led to the indignity and fear that drove the spontaneous riot after the attempted assassination of his son, Cacique Marcos Xukuru. Xicão’s tragic murder ignited a powerful engine for the continuation of the Xukuru fight for their land, as well as the right to determine the trajectory of their cultural lives as indigenous Xukuru.

While the government-sanctioned criminalization of the Xukuru has led to the judicial condemnation of many of their leaders by the federal justice system, such actions have fortified the Xukurus’ knowledge of their courage and led to the martyrdom of Xicão Xukuru. Xicão’s leadership, participation in the national Indian movement during the 1980s, and his willingness to stand for the legal rights of his people continues to inspire and inform the Xukuru.

Indeed, the *Plantacão* (planting of Xicão into the earth – the Xukuru do not “bury” their dead: they are planted in the ground and produce the continuation of the life force) of Cacique Xicão occurred on May 20, 1998 (Fialho, Neves, & Figueiroa, 2011). He was ritually planted in the symbolic location of *Pedra do Rei* (Rock of the King) in the village of *Pedra D’Água* (literal translation is Rock of the Water). For the Xukuru, death is not the final event of life; rather, it is perceived as a transitional continuation from one’s physical place in the world, leaving the visible or physical experience for the invisible actuality that brings life into concrete being. To the Xukuru, Xicão’s implanted body in the earth continues to produce the fruits of wisdom that inform Cacique Marcos Xukuru and his people in their daily life and potentially other indigenous peoples living in the northeastern regions of Brazil (personal communication with Cacique Marcos Xukuru, 2012).

While Xicão was planted in the sacred earth at *Pedra do Rei*, the perspective of the Xukuru remains: Their connection to the earth and their land is a fundamental principle that is pragmatically understood in their daily life. Land is, as non-Indian academics would claim, a “marker” of their identity. To the Xukuru, land *is* their relationship to the *encantadas* (spirits and ancestors). Accordingly, for the Xukuru successful community and social relationships can only occur through their relationship with the land, which passes wisdom through the bodies of their ancestors on to their progeny. For the Xukuru, communication with their ancestors occurs every day – it is emitted from the earth, and brought forth with each new infant. In this system, nothing exists without the realization and practice of their connection to their land. In actuality, the Xukuru live in perpetuity – both in the now, and in and through, their ancestors – via the earth (personal communication with Cacique Marcos Xukuru, 2011).

The importance of understanding Indigenous Xukuru perspectives about life and death are critical to the understanding of the events surrounding the attempted assassination of Cacique Marcos Xukuru and his subsequent trial. The world view of the Xukuru, their understanding of life in perpetuity, their conversations with their land and their ancestors, must be considered as authentic and actual within the Brazilian legal system if justice for ethnic diversity is to be achieved.

The successful outcome of the 5<sup>th</sup> Regional Tribunal’s appeal can be considered a victory for indigenous people not only in Brazil, but also around the world in terms of recognizing the inherent rights to land, dignity, justice, and equality within the nation-states where they live. The success of

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their appeal was in part made possible by social science applied research in collaboration with various NGOs and non-state actors, acting as witnesses to injustices occurring in rural locations, often hidden from public notice. While the paradigm that embodies and informs the Xukuru in terms of life and death was not part of the legal proceedings that criminalized and eventually decriminalized them, could it not be said that the leadership and social charisma of Xicão, the Xukuru extension of life into death, and the agency of ancestral discourses with the living proved to be effective in the end? As a consequence of justice being rendered to first-nation peoples, the injustices of colonial history are diminished, and the potential for new paradigms of justice are, in part, realized.

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