

Brazil, June 24th, 1987.

Dear Friends:

The Brazilian National Constitutional Assembly, in session since early this year, is about to give its consideration to the question of indigenous rights in the new Constitution.

For several months, a national campaign has been underway - led by the Union of Indian Nations (UNI), the only national level indigenous organization in Brazil, and sponsored by the Brazilian Anthropological Association (ABA), the National Coordination of Geologists (CONAGE), and the Brazilian Society for the Progress of Science (SBPC), with the support of numerous pro-Indian, religious, labor, and human rights organizations - on behalf of a Popular Amendment to the Constitution concerning Indigenous Populations. Enclosed you will find a copy of the Proposed Popular Amendment in its original Portuguese, along with an English translation.

Without doubt, this Amendment is the most comprehensive and rigorously formulated in the history of Brazilian constitutional legislation on indigenous rights. If accepted and approved, it will represent a major advance in the movement to guarantee Brazilian Indian rights. At the present moment, the Amendment is in the hands of the President and Relator of the Commission on Systemization, the final stage of elaboration before being taken to a vote in the plenary session of the Assembly. For that reason, we are asking that international support from organizations and individuals be given to this Amendment, through telegrams, telexes, and letters sent to the President of the Commission on Systemization throughout the month of July utilizing the following terms (in English or Portuguese):

Senador Afonso Arinos de Mello Franco
Presidente da Comissão de Sistematização
Câmara dos Deputados
Praça dos Três Poderes
70.160 - Brasília - DF - Brasil

Deputado Bernardo Cabral
Relator da Comissão de Sistematização
Câmara dos Deputados
Praça dos Três Poderes
70.160 - Brasília - DF - Brasil

Attentive to the consideration being given to indigenous rights by the Brazilian National Constitutional Assembly, we wish to express our support for the terms and conditions of the popular Amendment presented by the UNI/ABA/CONAGE/SBPC and other institutions, the essence of which is contemplated in the preliminary project approved by the Commission on Social Order and sent to the Commission on Systemization.

Atentos ao tratamento dispensado aos direitos indígenas pela Assembleia Nacional Constituinte Brasileira, gostaríamos expressar nosso apoio aos termos da Emenda Popular encaminhada pela UNI/ABA/CONAGE/SBPC e outras instituições cuja essência está contemplada no ante-projeto aprovado pela Comissão de Ordem Social e enviado a Comissão de Sistematização.

Please send copies of your communications to the Union of Indian Nations (UNI):

UNI - União das Nações Indígenas
Rua Ministro de Godoy, 1484 sala 57
05015 - São Paulo - SP - Brasil

Thank you for your collaboration and support.

Ailton Krenak
- UNI -

Carlos Alberto Ricardo
- CEDI -
Pela Coordenação Nacional
Povos Indígenas na Constituinte

POPULAR PROPOSAL FOR AMENDMENT TO THE PROJECT OF THE CONSTITUTION
Chapter on Indigenous Populations

Article 1. - Brazilian society is a pluri-ethnic society.

Article 2. - The Indians will enjoy the special rights foreseen in this chapter, without impairment of others instituted by law.

par. 1 - There are recognized to the Indians their social organization, usages, customs, languages, traditions, and their original rights to the lands they occupy.

par. 2 - It is the competence of the Union to protect the lands, institutions, persons, estate, health, and education of the Indians.

Article 3. - The lands occupied by the Indians are inalienable, destined for their permanent possession, independent of demarcation, being recognized the Indians' right to exclusive usufruct of the natural wealth of the soil and of the subsoil, of the utilities existing on them and of the waterways, being guaranteed the right of navigation.

par. 1 - Lands occupied by the Indians are those inhabited by them, those utilized for hunting, fishing, extraction, gathering, agriculture and other productive activities, and the areas necessary for their physical and cultural reproduction, according to their usages, customs, and traditions, being included those lands necessary for the preservation of the environment and of their cultural patrimony.

par. 2 - Indigenous lands are the estate of the Union, inalienable, imprescriptible, and non-transferible by any title, being prohibited any other purpose for them than the possession and usufruct by the Indians themselves.

par. 3 - It is permitted to the Indians exploration, panning and prospecting of minerals on their own lands.

par. 4 - In exceptional circumstances, exploration and working of mineral resources on indigenous lands will only be able to be undertaken by the Union, under system of monopoly, with previous authorization of the Indians that occupy them, when there is relevant national interest, so declared by the National Congress in each instance, and having been proved the non-existence of reserves, known and sufficient for internal consumption, of the mineral wealth in question in other parts of Brazilian territory.

par. 5 - In the cases foreseen by the previous paragraph, the profit resulting from mining will be returned in entirety to the Indians.

Article 4. - The Union will formalize, within a period of four years, the recognition of, and will execute the demarcation of, indigenous lands still not demarcated, according to the disposition of par. 1, article 3.

par. 1 - The disposition of the head paragraph above does not exclude, from the recognition and demarcation by the Union, the lands of Indians contacted after the period of four years.

par. 2 - The relocation of indigenous groups from their lands and the application of whatever measure that limits their rights to possession and exclusive usufruct are forbidden.

Article 5. - They are null and void, and will have no juridical effect, acts of whatever nature, even those already put into effect, that may have as their end the dominion, possession, use, occupation, or concession of lands occupied by the Indians.

par. 1 - The extinction and annulment with which this article is concerned do not give the right to indemnification against the Union or the Indians.

par. 2 - Acts that make possible, authorize, or constitute invasion of indigenous lands or illegal restriction to any of the rights herein foreseen, constitute a crime against the public patrimony of the Union.

Article 6. - The Indians, their communities and organizations, the Public Ministry and the National Congress are legal parties to enter in trial in defense of the interests and rights of the Indians.

Article 7. - It is the competence of the Public Ministry to defend and protect the rights of the Indians, judicially and extra-judicially, having to act by office or by means of provocation.

par. 1 - Protection includes the person, material and non-material patrimony, the interest of the Indians, the preservation and restoration of their rights, the reparation of damages, and the promotion of responsibility of the offenders.

par. 2 - In all contractual relations that may result in injury to the rights of the Indians, intervention of the Public Ministry will be obligatory, under penalty of annulment.

Article 8. - It is the competence exclusively of the National Congress to pass legislation on the guarantee of the rights of the Indians.

JUSTIFICATION

There must be recognized to the Indians:

- the right, as culturally differentiated Brazilians, to their forms of social organization;

- the right, as first inhabitants of Brazil, to the lands they occupy and to their natural wealth, of the soil and of the subsoil;
- the right, as vulnerable survivors of centuries of extermination and spoliation, to a special protection of the Union.

Relação de correspondência enviada:

- . Indian Rights Association
- . National Indian Y. Council
- . Natural Resources D. Council
- . Tribal Sovereignty Program
- . Friends of the Earth
- . Indian Law Resource Center
- . National C. of Churches
- . American Friends S. Committee
- . Washington O. on Latin America
- . American Indian Program
- . Steve Schwartzman
- . AICOM
- . Resource Center for Nonviolence
- . International Indian T. Council
- . International Human R. Law Group
- . Human Rights Internet
- . Center for Alternative M. D. Policy
- . Akwesasne Notes
- . International League for H. Rights
- . Presbyterian Church
- . ARC
- . Terence Turner
- . Survival International
- . Cultural Survival
- . Anti-Slavery Society
- . Amnesty International
- . OXFAM
- . Survival International
- . Rene Fuerst
- . DOCIP
- . PCR/CMI
- . Gesellschaft F. B. Volker
- . Dene Nation
- . Project North
- . ICIFID
- . Georg Grunberg
- . Werkgroep I. Volken
- . ICCO
- . Solidaridad
- . Lars O. Lavold
- . NORAD
- . Norwegian Church Aid
- . PPM
- . Gesellschaft F. B. Volker
- . Fundação Lelio Basso
- . MLAL
- . IWGIA
- . Fundação Ford