

# INDIGENOUS RIGHTS IN DEMOCRATIC BRAZIL

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## ABSTRACT

Paternalist approaches toward indigenous peoples' rights prevailed in Brazilian legislation and policies for most of the twentieth century. Brazil's re-democratization in the mid-1980s promised a new era in the relationship between the Brazilian state and indigenous populations. Have these promises been fulfilled? Has Brazil's democracy opened new avenues for indigenous peoples' exercise of their citizenship rights? I argue that, compared to other periods in Brazilian history, the last fifteen years have been marked by indigenous peoples' growing political activism, and a consequent increase in their capacity to demand and exercise their citizenship rights. Three factors have contributed to this outcome: indigenous peoples' growing understanding of Brazilian politics and willingness to operate within its institutional framework; the international attention and support that their struggles have received; and the emergence and consolidation of a network of domestic advocacy organizations committed to indigenous rights. This article also discusses remaining obstacles to the full establishment of indigenous peoples' citizenship rights.

In 1831, nine years after Brazil's independence from Portugal, the government enacted legislation addressing indigenous peoples' rights in the new country. The progressive set of laws revoked decrees by the Portuguese Crown that had authorized "total war" against indigenous peoples and servitude for war prisoners. The Brazilian law, instead, determined that Indigenous peoples' material and personal rights be placed under the protection of the "Justice of Orphans." Clearly, the legislator operated under the two prevailing assumptions about indigenous peoples at the time. First, that Indians were incapable of autonomous interaction with the Brazilian "civilized" society and thus needed the guidance and protection of the state (as did orphan children). Second, that such guidance and protection should ultimately lead to the eventual *assimilation* of indigenous peoples into the Brazilian society.

Such a paternalist and assimilationist approach remained dominant within Brazil's legislation and state institutions for most of the twentieth century. When, in 1919, the Brazilian Civil Code was approved, it included "Indians" among those considered "relatively incapable" to exercise their rights (together with minors and the mentally ill). In their interactions with the Brazilian society, indigenous peoples were to be assisted by the state, in a regime of "tutelage."<sup>i</sup> The 1973 Indigenous Peoples' Statute (Estatuto do Índio), issued during the most repressive period of the military regime that governed the country between 1964 and 1984, further extended the scope of the state's tutelage over indigenous peoples. The state was in charge of managing indigenous peoples' properties and income, oversee any dealings between indigenous peoples and members of the dominant society, and even determine whether an Indian could travel abroad.<sup>ii</sup>

Brazil's transition to democratic normality in the mid-1980s and the promulgation of the 1988 Constitution, promised a new era in the relationship between the Brazilian state, the Brazilian society, and Brazilian indigenous peoples. Have these promises been fulfilled? In other words, how has Brazil's return to democracy affected indigenous peoples' ability to exercise their citizenship rights? The answers to these questions are bound to be controversial for several reasons. First, one must face the challenge of conceptual definition: what constitutes indigenous rights? How does one define citizenship? Can citizenship rights, defined in the context of western democratic societies, address the material, cultural, and spiritual expectations of individuals with a different cultural heritage?<sup>iii</sup> Second, one must address the dilemma of the "glass half-filled or half-empty"; i.e., even if Brazilian democracy has created spaces for the exercise of indigenous peoples' citizenship rights, are these spaces enough? Is the glass still far from being filled? And finally, to what extent has the success of indigenous peoples in *formally* guaranteeing their rights (for instance, the articles 231 and 232 of the Brazilian Constitution, and the several

presidential decrees that have demarcated indigenous lands) affected indigenous peoples' every-day lives?

In this article, I have limited my analysis to the evaluation of the *political spaces* that indigenous peoples have obtained within the Brazilian political system since the mid-1980s. Thus, I will not discuss issues related to the prevailing economic, social, and cultural exclusion that still plagues most indigenous communities today.<sup>iv</sup> I will demonstrate that, when compared to other periods in Brazilian history, the last fifteen years have been marked by a significant increase in indigenous peoples' access to political spaces within Brazilian politics, and a consequent increase in their capacity to demand and exercise their citizenship rights. Three factors have converged to enhance indigenous peoples' capacity *vis-à-vis* the Brazilian political system. First, indigenous peoples have acquired a growing understanding of Brazilian politics, and have been willing to operate within its institutional framework. Second, Brazilian indigenous issues have attracted a great deal of international attention, which has often been translated into political and material support for their struggles. Third, indigenous peoples have benefited from the emergence and consolidation of a network of domestic advocacy organizations committed to indigenous rights. These organizations have been instrumental in providing legal and political assistance to indigenous peoples while educating the dominant society about their demands and expectations.

My claims regarding the indigenous peoples' increased political capacity, however, must be taken with a "grain of salt." The political space that indigenous peoples have carved in the Brazilian political and legal systems is not secure for at least three reasons. Brazil's democracy is often characterized as elite-dominated (Hagopian 1997). As such, it continues to impose enormous constraints on the participation of non-elite groups. International attention and support have been elusive and are driven by factors outside the control of Brazilian indigenous peoples. As a result, international mobilization constitutes, at best, a circumstantial advantage, rather than a dependable resource. Finally, ideological and political cleavages have sometimes constrained the activism of domestic organizations, thus depriving indigenous groups of an important source of political support.

The following section briefly describes indigenous policies and indigenous peoples' rights in Brazil during the period of authoritarian rule (1964-1984). It is followed by a comparison of indigenous peoples' struggles and accomplishments in Brazil's political and legal arenas during the periods of democratic transition (1985-1990) and democratic consolidation (1990-present). Data for this research were obtained from Brazilian legal documents on indigenous peoples' rights (such as the Brazilian Federal Constitution, summaries of debates in the Constitutional Assembly, law projects presented to the Brazilian Congress by

organizations representing indigenous peoples' interests and by Congress representatives linked to interests opposed to indigenous peoples' rights); reports, maps, publications, and internal documents issued by Brazilian and international organizations who support indigenous peoples; reports and internal documents from the Brazilian agencies linked to indigenous peoples' issues (such as the National Foundation for Indigenous Peoples, FUNAI, and the Brazilian Institute of Geography and Statistics, IBGE); articles in the Brazilian and international press, and a limited number of open-ended interviews with Brazilian and international indigenous rights activists.

### **Indigenous Peoples' Rights in Authoritarian Brazil (1964-1984)**

Indigenous peoples' rights during the period of military rule in Brazil were constrained by the state-sponsored ideology of national security that prevailed over any other political and socio-economic consideration, by the insulation of the policymaking process and apparatus, and by the 1973 Indian Statute.

The national security ideology affected indigenous peoples rights in two ways. On the one hand, it approached any claim for indigenous peoples' autonomy as a threat to Brazil's political and territorial unity. The condition of "indian" was seen as a temporary attribute, assimilation to the Brazilian culture was the goal, and the tutelage of the state the means toward that inevitable goal. On the other hand, the national security ideology prioritized economic development, particular of Brazil's frontier, the north and northwest Amazon regions. The idea of securing indigenous peoples' lands in any part of the Brazilian territory, but in particular in *Amazônia*, was anathema to the military's economic development plans. The creation of indigenous reserves would stand in the way of productive activities such as road and railroad construction, mining, and agricultural settlements. The negotiations between the World Bank and the Brazilian government for the financing of the Polonoroeste project illustrate the protectiveness of the latter *vis-à-vis* indigenous issues.<sup>v</sup> Brazilian authorities initially refused to discuss any measures to protect indigenous groups from the impacts of road construction and increased migration to the area. They argued that indigenous issues were a matter of national security and thus off limits to international actors' influence. Although Brazil eventually capitulated to the pressures of the project's major funding agency, it kept the Amerindians Special Project outside the legal scope of the Polonoroeste loan (and thus insulated from formal monitoring by the international agency). As a consequence, throughout the project's implementation, both Brazilian and World Bank's monitoring teams faced constant obstacles to their activities from the part of the Brazilian bureaucracy.<sup>vi</sup>

Policymaking processes and apparatus during the military rule were characterized by bureaucratic centralism and insulation from civil society. The state was the single actor responsible for defining policy priorities (Schmitter 1971) and it did so based on considerations of economic growth, sovereignty and national security, and technical expertise. Indigenous peoples' demands, instead of making their way to the government's agenda through pluralist channels of participation, were "filtered" by the technobureaucracy, mainly of FUNAI and the Interior Ministry. Thus, it should be no surprise that the indigenous policies formulated during the period, namely the 1973 Indian Statute, reflected the interests of the Brazilian state, rather than the genuine demands of indigenous peoples. The bureaucratic compartmentalization of the Brazilian authoritarian policymaking process kept social and environmental considerations from affecting decisions on indigenous peoples' rights. One of the most significant consequences of such a compartmentalization was the indiscriminate concession of authorizations for mineral research in indigenous lands previous to 1988, an issue that will be discussed later in this article.<sup>vii</sup>

Finally, the 1973 Indian Statute imposed constraints not only on indigenous peoples' pursuit of their political rights but also on the pursuit of their individual, social, cultural, and economic rights. The Statute provided the legal framework within which the state, through FUNAI, would fully implement its assimilationist policies. In fact, for some Brazilian lawyers, the Statute represented a step backward in relation to legislation that had regulated indigenous rights since the 1920s.<sup>viii</sup> The Statute expanded the scope of the state tutelage over the lives and property of indigenous peoples beyond what had been established by previous legislation. The Statute implicitly brought back the association between indians and orphan children (which had been abandoned in the 1920s). Orphans eventually become of age and independent on the state's protection. The same is expected to happen with indigenous peoples. When they become "Brazilians" – and here the assumption is that they will be assimilated into the Brazilian culture – indians also become independent on the state tutelage. Until then, however, the state determines the destiny of economic resources available in indigenous areas,<sup>ix</sup> whether or not an indigenous individual is able to travel abroad, and the type of education indigenous communities should receive (in Portuguese, rather than bi-lingual, for instance), among other things.

The assimilationist approach of the 1973 Indian Statute was put in practice by FUNAI during the Military years, and many of the agency's policies still prevail today, despite the legal and political changes of the past fifteen years. FUNAI's policy of establishing indian posts within the indigenous communities, exposing them to a permanent contact with the agency's staff and their outside supply sources, has undermined their traditional social structure (Treece 1987). Since the early 1980s, Brazilian

anthropologists have criticized FUNAI for introducing products such as cigarettes, alcohol, sugar, and carbonated drinks in the indigenous communities, affecting the diet and health of their members. FUNAI's policies have also been blamed for encouraging the dependence of indigenous peoples on state resources and patronage. This has happened whenever FUNAI has "promoted" communities' economic sustainability. Tractors, motor boats and pick-up trucks were donated to the communities only to create individual rivalries among their members and to disrupt their traditional subsistence practices.<sup>x</sup>

Despite the structural changes brought about by the 1988 Constitution regarding indigenous peoples' rights and the obligations of the Brazilian society toward them, the 1973 Indian Statute remains, to date, the main piece of ordinary law regulating the relationship between indigenous peoples and the state. This idiosyncrasy can only be resolved when the Statute is replaced by legislation in line with the Constitutional principles. The struggle of indigenous peoples and their supporters to replace the 1973 Indian Statute is among the issues discussed in the following sections.

### **Indigenous Peoples' Rights and Brazil's Transition to Democracy (1985-1990)**

In March 1985, after twenty years of military rule, a civilian president, José Sarney, was sworn in. The process of transition to democracy, however, was still far from completed. Among the priority measures to be undertaken was the replacement of the 1967 Constitution, enacted by the Military, with a new Constitution that would reestablish democratic principles and procedures in Brazil. Indigenous peoples participated actively in the process leading to the promulgation of the 1988 Constitution. In fact, their presence in Brazilian politics was visible since the beginning of the 1980s.

Given the impact of the authoritarian legacy on indigenous peoples, the pro-active participation of these populations in the Brazil's democratization process is all the more striking. Space constraints impose limits on the discussion of the many instances, at the local, regional, and national levels, that indigenous peoples attempted to demand their rights, articulate their priorities, and assert their autonomy *vis-à-vis* the Brazilian society during that period. An illustrative, albeit not representative, example of indigenous peoples' increased understanding of Brazilian politics and their skillfulness in dealing with it was the political trajectory of the indigenous chief Mário Juruna. Juruna became famous in the early 1980s for tape-recording the promises made to him and his people by Brazilian government officials. The gesture -- which quickly captivated media attention and was popularized by comedy shows on the Brazilian television -- indicated the awareness of indigenous peoples' about the lack of commitment of the Brazilian state to indigenous peoples' rights.

More significant than Juruna's individual struggle was the formal participation of eight indigenous candidates (including Juruna himself) in the 1986 elections for the Constitutional Assembly. Although none of them was successful, in part due to the lack of funding for their candidacies (CEDI 1991), indigenous candidates carved an important space within Brazilian leftist parties.<sup>xi</sup>

Once the Constitutional Assembly was elected, indigenous peoples, together with a coalition of support organizations, launched the campaign "Indigenous Peoples in the Constitutional Assembly."<sup>xii</sup> The campaign devised strategies that would eventually enshrine in the constitutional text the indigenous peoples' rights to land and to social and cultural autonomy. Possibly the most effective strategy implemented by indigenous groups was to maintain a permanent physical presence in the Brazilian Congress whenever there were scheduled discussions and voting sessions on issues of their interest. Although representatives of the Kayapó ethnic group often led mobilizations, at least 35 indigenous nations made themselves present in the constitutional debates during 1987 and 1988. Indigenous peoples not only witnessed the Constitutional process but also participated in it by organizing group visits to influential constitutional representatives, forwarding proposals, and celebrating conquests with traditional song and dancing.<sup>xiii</sup>

As significant as it was for the 1987-88 constitutional process, indigenous peoples' activism during the period was not restricted to it. Throughout the 1980s, different indigenous groups engaged in local and regional struggles to protect their lands, resources, and life styles. In the eastern amazon region of Carajás, for instance, the Gavião people blocked the Carajás railroad on several occasions to leverage state authorities and the Vale do Rio Doce Company, the manager and major user of the railroad, to demarcate their land. In the early 1990s, the Gavião would also join the Carajás Consulting Seminar, a regional initiative that brings together grassroots movements, domestic, and international non-governmental organizations (NGOs) to raise awareness about socio-economic, environmental, and citizenship rights.<sup>xiv</sup> In 1989, the Kayapó people organized the First Meeting of Indigenous Peoples of Xingu, bringing together 600 indigenous leaders, governmental officials, representatives of environmental and indigenous rights NGOs from Brazil, the US, and Europe, and over 300 Brazilian and international journalists.<sup>xv</sup> The goal of the meeting was to state the indigenous peoples' opposition to the plans of the state-owned electric company, Eletronorte, to build a major hydroelectric complex in the Amazon region of Altamira. Eletronorte eventually redesigned its plans for the hydroelectric complex, claiming budget constrains as the major reason for its decision. It is hard to believe, however, that the Xingu Meeting did not contribute, at least in part, to Eletronorte's decision, given the visibility that the Indians' position

gained in the national and international media and the support they obtained from different segments of the Brazilian society.<sup>xvi</sup>

The support of Brazilian organizations concerned with indigenous and human rights issues was a key element in the indigenous peoples' struggle for their citizenship rights in the late 1980s. The Conselho Indígena Missionário (Indigenous Peoples Missionary Council, CIMI), linked to the Catholic Church, the Centro Ecumênico de Documentação e Informação (Ecumenical Center of Documentation and Information, CEDI), and the Associação Brasileira de Antropologia (Brazilian Association of Anthropologists, ABA) were among the indigenous peoples' first and strongest advocates. Throughout the 1980s, these organizations played a crucial role in documenting injustices against indigenous peoples, providing technical and legal assistance, and criticizing, whenever possible (given the authoritarian context), the assimilationist approach of the Military's indigenous policies.

In 1986, CEDI, together with the Coordenação Nacional de Geólogos (National Coordination of Geologists, CONAGE), published a document that mapped the concession of titles for mineral research in indigenous lands. The extent to which the Brazilian state seemed to ignore the potential environmental and social impact of such concessions shocked Brazilian constitutional representatives.<sup>xvii</sup> In addition, it added further impetus to the efforts of indigenous peoples and their support organizations to include indigenous peoples' land rights in the constitutional text. In 1987, the Constitutional Assembly received two proposals for amendments of the chapter on indigenous rights. The first was presented by the União das Nações Indígenas (Union of Indigenous Nations, UNI), with the support of the eighteen organizations, among them CEDI and ABA, and contained 43,057 signatures. The second was presented by CIMI and contained 44,171 signatures. Both proposals highlighted the need to protect indigenous peoples from indiscriminate mining activities in their lands, restricting prospecting rights to the indians themselves.<sup>xviii</sup>

The impact of the CEDI/CONAGE report and of the popular constitutional amendments on indigenous peoples' rights can be measured by the reaction it generated from groups committed to mining interests inside and outside the Brazilian Congress. The conservative newspaper *O Estado de São Paulo* (ESP) launched a defamation campaign against CIMI, the Catholic Church and other organizations committed to the defense of indigenous rights. In a series of articles entitled "A Conspiracy Against Brazil," the newspaper accused those organizations of working in consortium with foreign companies to block access by Brazilian companies to Amazonian mineral reserves. It also charged international mining interests, through their "agents" in Brazil, of plotting to impose the concept of Brazil's "restricted sovereignty"



over indigenous lands. The series concluded that the goal of the Catholic Church, CIMI and associated organizations, and of foreign mining interests was to constrain Brazil's capacity of competing in international mineral markets.<sup>xxix</sup>

The charges by the ESP strengthened the opposition to the constitutional articles on indigenous' peoples rights, which was being orchestrated by conservative interests since the beginning of the debates in the Constitutional Assembly. Yet, the accused organizations as well as constitutional representatives associated to indigenous peoples' interests, among them Senator Severo Gomes, reacted quickly.<sup>xx</sup> CIMI and the Conferência Nacional dos Bispos do Brasil (National Conference of Brazilian Bishops, CNBB) released notes to the press denouncing the several inaccuracies, falsities, and even a forged signature that constituted the bases for the ESP's charges. They firmly denied any connection with foreign mineral interests. Finally, a parliamentary investigating commission (Comissão Parlamentar de Inquérito) was organized to investigate the matter and it became clear that the ESP's accusations had been fabricated with the support of anti-indigenous sectors, including the Brazilian mineral company Paranapanema<sup>xxi</sup> and the Conselho de Segurança Nacional (National Security Council, CSN).<sup>xxii</sup>

Although the ESP's charges were not sufficient to revert the progressive treatment given by the 1988 Constitution to indigenous peoples' rights, they seem to have contributed to the decision of treating the issue of mining in indigenous lands in a separate session. As a result, the articles of the constitutional amendments proposed by CIMI and UNI on the topic were ignored and mining on indigenous lands was left to be treated by ordinary legislation. The 1988 Constitution, however, secured one important gain to indigenous peoples: authorization for mining in their lands became the exclusive competence of the National Congress.<sup>xxiii</sup> This placed the process within the framework of a democratic forum, rather than keeping it under the control of bureaucratic agencies such as FUNAI and the Ministry of Mines.

The dilemmas generated by mineral resources located in indigenous lands are best illustrated by the first major struggle implemented by the indigenous peoples and their supporters after the promulgation of the 1988 Constitution – the demarcation of the Yanomami indigenous area. The defense of the Yanomami area also exemplifies the strategic importance of international support for the consolidation of indigenous peoples' rights in Brazil.<sup>xxiv</sup>

Due to the predominance of conservative interests in the Sarney Administration (1985-90) and the uncertainties of the constitutional process, the demarcation of indigenous lands was all but paralyzed during the period. As the strength of indigenous peoples' activism became visible in Brazilian politics,

political and economic interests in the state of Roraima (home of the Yanomami people), began to pressure the President to “settle” the Yanomami issue.

Tensions between indigenous peoples, settlers, and miners had been mounting in the area for years. In 1985, the situation was further aggravated due to the larger number of gold miners that came to the Yanomami area encouraged by the Calha Norte infrastructure and later, by the political support of Roraima’s governor Romero Jucá (elected in 1988). With the support of Roraima’s political leadership and the Brazilian Military, President Sarney signed decrees in 1989 reducing the area originally assigned to the Yanomami people by anthropological research. Instead of a continuous area, the Yanomami would have access to 19 “islands” of territory, interrupted by “national forests.” By designating part of the Yanomami territory as national forest, rather than as indigenous land, the government was able to circumvent the constitutional constraints to mining in indigenous lands.

Indigenous rights’ advocates were aware of the threat that gold mining represented to the Yanomami people since the mid-1980s. In 1987, Senator Severo Gomes had presented to the Brazilian Congress a project for the demarcation of the Indigenous Park Yanomami. In that same year, Davi Yanomami, one of the nation’s leaders, wrote to President Sarney denouncing the gold miners’ invasion and the threat to the Yanomami’s health and life style. For the next three years, the Brazilian and international media published information about the clashes between miners and indians, and epidemics among the indigenous population originated from their contacts with the miners (PIB/CEDI 1991). In 1988, the international community began to mobilize in defense of the Yanomami people. The United Nations awarded the Global Prize of its Environmental Program to Davi Yanomami, thus creating an opportunity for the Yanomami leadership to present its struggle to international audiences. In October, the organization Survival International led a network of environmental and human rights activists on a series of rallies in front of Brazilian embassies in 20 different countries expressing solidarity to the Yanomami people.

The international campaign for the Yanomami gained further impetus when it joined forces with the initiative “Ação pela Cidadania” (Action for Citizenship), organized by the Catholic Church, Brazilian organizations concerned with indigenous rights, and Congress representatives, among them Senators Severo Gomes and Fernando Henrique Cardoso. The “Ação pela Cidadania” provided first-hand reports, photographs, and video images on the plight of the Yanomami to international groups, who in turn were able to sensitize larger audiences to the problem.

When in 1990, president-elect Collor de Mello toured Europe and North America, he faced an international public opinion intensely aware of the plight of the Yanomami and critical of the Brazilian indigenous policy.<sup>xxv</sup> Upon his return to Brazil, Collor mandated the expulsion of the gold miners from the Yanomami area in a theatrical operation that bombed the miners' illegal air strips. The action was interpreted by many as part of a strategy to show Brazil's commitment to environmental and human rights thus guaranteeing the selection of the country as host of the United Nations Conference for Environment and Development, the UNCED, 1992.<sup>xxvi</sup> On the eve of the Conference, the President signed a decree demarcating the Yanomami land as a continuous territory. The new official policy toward the Yanomami was considered a response to international pressures as well as an illustration of a shift in Brazil's domestic balance of forces. With the promulgation of the new Constitution and the 1989 direct elections for the Presidency, democratic forces reached the peak of their mobilization, whereas the military and conservative forces moved to the back stage (Schwartzman et. al., 1996).

### **Indigenous Peoples' Rights and Brazil's Democratic Consolidation (1990-2000)**

The 1988 Constitution not only recognized and guaranteed indigenous rights that were never before acknowledged in previous documents or policies in Brazilian history, but it also encouraged the creation of indigenous peoples' organizations at local and regional levels. Article 232 of the Constitution states that "indians, their communities, and *organizations* are legitimate parties to demand juridical protection of their rights and interests..." (author's translation). Before the 1988 Constitution, indigenous peoples could only demand their rights in the Brazilian juridical and administrative systems if represented by FUNAI. By recognizing indigenous organizations as legitimate parties to speak for and represent the rights of indigenous populations, the Constitution created a new arena where indigenous peoples could autonomously articulate their interests and act on their own behalf.

It is no surprise then, that the "Diretório de Associações e Organizações Indígenas no Brasil" (Directory of Indigenous Associations and Organizations in Brazil), published in 1999, lists 290 of such organizations,<sup>xxvii</sup> whereas, at least by one count, until 1986, there were only 8 registered indigenous organizations in Brazil.<sup>xxviii</sup> The large majority of indigenous organizations have a local character, due to the very nature of Brazilian indigenous populations. Different from other Latin American countries, such as Bolivia, Ecuador, and Guatemala, Brazil does not have large indigenous populations who share the same language and traditions. On the contrary, Brazilian indigenous groups are usually small in numbers, ethnically and culturally diverse, speak 170 different languages,<sup>xxix</sup> and have established different (local) priorities for their struggles.

The 1990s were marked by the effort of indigenous peoples' organizations to force the Brazilian state and society to respect their rights to land, health, education, and cultural autonomy as determined by the 1988 Constitution. Indigenous peoples have been well aware that the Constitution, in and on itself, is not enough to change either the assimilationist practices of the Brazilian state or the deep-rooted disrespect for indigenous rights cultivated by certain economic and political groups in the Brazilian society. In establishing formal entities, indigenous peoples have several goals: to increase the visibility of their struggles, demands, and proposals; to build alliances with social movements, churches, and other organizations; to find interlocutors within the state and the Brazilian society; and to demand legal protection with the support of the General Attorney's office (Ministério Público).<sup>xxx</sup> Among the strategies used by indigenous organizations in defense of their interests are, for instance, law suits against logging and mining companies illegally operating within indigenous lands,<sup>xxxi</sup> the organization of congresses and conferences to discuss common problems and propose solutions,<sup>xxxii</sup> the promotion of rallies, sit-ins, and petitions to FUNAI and other governmental agencies to force them into the negotiation table, and the drafting of proposals for legislation on indigenous peoples rights, such as the project for the new statute on indigenous societies, discussed in detail below.

Since 1991, there has been an on-going effort among indigenous peoples' organizations and their support entities to create an umbrella organization at the national level, the Conselho de Articulação dos Povos e Organizações Indígenas do Brasil (Council of Brazilian Indigenous Peoples and Organizations, CAPOIB). The process has been slow and complex, particularly since a previous initiative failed in 1989.<sup>xxxiii</sup> CAPOIB has its origins in two national meetings (1991 and 1992) that brought together indigenous leaders and indigenous organizations from all regions of Brazil, to discuss the proposals for the new Statute of Indigenous Societies. The participants realized the need to establish an entity that would *facilitate* the struggle of the different peoples, without *representing* Brazilian indigenous peoples as a whole. CAPOIB started as an informal council composed of 33 members that have met periodically to facilitate indigenous peoples' positions on a number of issues. Finally, CAPOIB's First General Assembly occurred in April, 1995, bringing together 201 indigenous leaders from 77 nations and 40 indigenous organizations. The Assembly has approved CAPOIB's statutes as a national indigenous organization.<sup>xxxiv</sup>

Participation in the formulation of a new statute of indigenous societies was among the highest priority on the agenda of indigenous peoples' organizations and their domestic supporters during the early 1990s. A new statute, once approved as ordinary legislation, would not only regulate the Constitutional articles on

indigenous rights. It would also replace the 1973 authoritarian and assimilationist Indian Statute, which still coexists with the progressive principles of the Constitution. Aware of the contradictions created by the concurrent existence of the 1973 Indian Statute and the chapters on indigenous rights of the 1988 Constitution, the Brazilian House of Representatives created, in 1991, a Special Commission for Indians, in charge of drafting a new statute.<sup>xxxv</sup>

Technical assistance and the lobbying skills of the Brazilian organizations committed to indigenous rights were crucial resources for a meaningful participation of indigenous peoples in the discussions on the new statute. Based on the proposals that emerged from the 1991 and 1992 indigenous peoples' national meetings, the Núcleo de Direitos Indígenas (Nucleus for Indigenous Rights - NDI) and CIMI presented to the Special Commission two separate law projects for the new statute. A third project was also presented by FUNAI. In 1993, negotiations on the proposals' divergent points began. Some of the issues that the projects addressed differently were the rights of indigenous peoples to the subsoil, the criteria for mining concessions, the creation of new channels outside the control of FUNAI for the provision of health services, and the use of the terms "indigenous societies" and "indigenous peoples," which, according to sectors of the Brazilian government, imply a sovereignty status that challenged Brazil's sovereignty.<sup>xxxvi</sup> Finally, in 1994, as a result of successful negotiations, an alternative project emerged and was unanimously approved by the Special Commission. That same year, the project was presented to the House of Representatives, which also approved it. The last stage for the project to become law was to be approved by the Federal Senate. Yet, before that institution could examine it, the project of the Special Commission for Indians was sent back for further examination by the House of Representative. This political maneuver was implemented by House Representative Arthur da Távola, who was then the leader of the governmental majority in the House. The project's normal course has been paralyzed ever since.

Explanations for Távola's initiative vary. Some perceived it as a blatant attempt to create a legal vacuum that favors the continuation of the government's assimilationist policies and the disregard of certain economic interests for indigenous rights to land and resources.<sup>xxxvii</sup> Others saw it as an attempt from the government to transform the project in an instrument of political bargaining. The "game" involved leveraging representatives committed to indigenous rights to approve constitutional amendments proposed by the Executive. In return for their support, the project on indigenous societies would proceed to the Senate.<sup>xxxviii</sup> Finally, some analysts have stressed the fact that the project on indigenous societies, despite being the result of negotiations between the government, indigenous peoples, and advocacy organizations, remains unacceptable to many sectors within the government (namely, the military and the

Ministry of External Affairs). In addition, disagreements remain even between CIMI and NDI, the main sponsors of the original law projects on indigenous rights.<sup>xxxix</sup>

The cleavage between CIMI and NDI/ISA<sup>xi</sup> has grown since the interruption of the normal course of the law project on indigenous rights in the Brazilian Congress. In an effort to contribute to expedite the project's appreciation by the Congress, ISA has presented a new proposal, one that specifically addresses the government's original objections.<sup>xii</sup> CIMI has criticized the ISA's proposal on several counts, arguing that it represents a reversal of the progress that was to be achieved through the formulation of a new statute, it leaves too many issues to be determined by the Executive power through decrees, it extinguishes FUNAI, and it continues to use the term indigenous "societies" rather than "peoples" (the latter, according to CIMI, is the preferred term within the indigenous movement).<sup>xiii</sup>

Given the government's resistance to the proposals for a new law on indigenous rights, the permanent opposition of powerful economic sectors with significant representation within the Brazilian Congress,<sup>xiiii</sup> and the cleavages between indigenous peoples' main advocacy organizations, the perspectives for a new Statute on Indigenous Societies are not promising. Of these three obstacles, probably the most significant is the division among indigenous peoples' advocacy organizations. The recent history of indigenous peoples' struggles in Brazil has demonstrated that success has been usually linked to the existence of a working alliance between the key domestic organizations supporting indigenous rights. The indigenous peoples' struggle against the Executive Decree 1775/96, which is discussed below, provided yet another example of the importance of a unified network of domestic supporters. The campaign against the decree also illustrates the value of indigenous peoples' alliances with international groups.

In January, 1996, the Justice Minister Nelson Jobim enacted the Decree 1775, altering the process of demarcation of indigenous peoples' lands through the inclusion of the right of contradiction, or "contraditório." That meant that third parties now had the right to question and oppose the demarcation process. This decision not only increased the political content of land demarcation processes, but it also disregarded the constitutional principle that asserted indigenous peoples' *original* right to their land. The rationale for the decree was that, by not allowing third parties to manifest their opposition, a right guaranteed by the 1988 Constitution in its chapter on individual and collective rights,<sup>xlv</sup> the previous law regulating demarcations (Law 22/91) and all indigenous land demarcation processes regulated by it were unconstitutional. In addition, the Decree 1775/96 placed the final decision about demarcations in the hands of the Ministry of Justice (ultimately, a political decision), whereas before, it was FUNAI's (whose criteria were technical). Finally, the decree established a period of 90 days for parties that opposed

demarcations to file suits. Third parties could contest not only on-going and future demarcation processes but also those that had already been finalized, unless the area had been officially registered (the final stage of the demarcation process).<sup>xlv</sup> At the end of the 90 days period established by the decree for demarcations to be contested, FUNAI had received 531 suits, presented by 1,500 individuals, municipalities and states, as well as corporations. These challenged the boundaries of 83 indigenous lands.<sup>xlvi</sup>

The political implications of Decree 1775/96, the direct connections of Minister Jobim with anti-indigenous interests in Brazil, and the authoritarian nature of new demarcation process have been extensively discussed elsewhere.<sup>xlvii</sup> This article discusses mainly the extension and impact of the mobilization organized by Brazilian indigenous peoples and their domestic and international supporters against the decree.

In January, 1996, immediately after the decree was issued, CAPOIB organized a march in Brasília that brought together over 300 indigenous leaders. In July of that same year, it organized a national meeting to evaluate the initial consequences of the decree. Finally, it issued a series of public statements in the Brazilian media and through Internet channels rejecting the government's initiative.<sup>xlviii</sup> CAPOIB received strong support from domestic groups committed to indigenous peoples' rights. CIMI and ISA initiated a media campaign criticizing the government for the enactment of Decree 1775/96.<sup>xlix</sup> These organizations also lobbied the Congress to promote an open discussion on the main issues raised by the document. As a result, the Comissão De Minorias e Meio Ambiente (Commission on Minorities and the Environment) of the House of Representatives organized the seminar "O Estado e os Povos Indígenas" (The State and Indigenous Peoples) in June 11-12, 1996. Among the participants in the event were Congress representatives identified with indigenous rights as well as those linked to anti-indigenous interests, judges, anthropologists and indigenous rights activists from CIMI and the Comissão Pro-Índio, scholars, and CAPOIB's representatives. One of the conclusions of the seminar was that although the decree's intention was to weaken indigenous communities while benefiting anti-indigenous interests, such objective was not accomplished thanks to pressures of domestic and international entities committed to indigenous rights.<sup>1</sup>

Although it seems possible that the government had anticipated the level of protests against the Decree 1775/96 from the part of the Brazilian indigenous movement, it was clearly less prepared to face the intensity of the international reaction. Carvalho (1997) briefly describes some of the protest initiatives undertaken by the international community. Survival International and Oxfam requested that the European countries suspended the disbursement of funds for indigenous projects devised within the

context of the Rainforest Trust Fund; several organizations, among them the US-based Amanak'a Network and the Environmental Defense Fund (EDF) sent protest letters to Brazilian authorities; and Amnesty International, Survival International, and Oxfam organized a protest visit to the Brazilian Ambassador in London. The Brazilian newspaper *Folha de São Paulo* (23/7/96) informed that 43 US House Representatives sent a letter to the president of the World Bank indicating their concern with the consequences of the decree. The European Parliament eventually passed a resolution condemning the decree and so did the Pope. In a futile attempt to address the concerns of the international community, the Brazilian Ministry of Justice traveled to Europe in March, 1996.

The final balance of the process initiated by the Decree 1775/96 was that FUNAI rejected all of the 531 processes contesting demarcations, arguing that they were legally baseless.<sup>ii</sup> FUNAI's decision however, had to be ratified by Jobim, who supported the agency's decision in all but 8 cases. It is interesting to note that the 8 areas designated by Jobim as requiring revisions were precisely those who have been the object of interest of powerful politicians in the Brazilian Congress. The case of the Indigenous Area Raposa Serra do Sol (RSS), in the Amazon state of Roraima best illustrates the extent to which the Decree 1775/96 was used by the government to please powerful political forces. Roraima's entire delegation in the Brazilian Congress opposes the demarcation of the RSS as recommended by FUNAI. Gold miners invaded the area in the early 1990s, with the encouragement of local politicians and have since greatly disrupted the lives of local indigenous communities.<sup>iii</sup>

The legal and political strategies used by the government, local politicians, and mining interests to reduce the area of the RSS have been very similar to those that, in the 1980s, challenged the Yanomami territory. Miners have been encouraged to create villages within the indigenous areas. Once these villages were recognized as municipalities they would be legally outside the limits of the indigenous area, thus creating "islands" within the RSS that would permanently serve as spring-boards for further invasions. In addition, the presence of mining villages within the indigenous territory constituted a direct and permanent threat to the physical and cultural preservation of indigenous groups in the territory.<sup>iiii</sup>

The plight of the indigenous groups living within the limits of the RSS became of particular concern for international organizations. In part this was due to the parallels that were drawn between the challenges faced by the Yanomami in the 1980s and those affecting the groups in the RSS area.<sup>liv</sup> The Environmental Defense Fund in the US and Survival International in the United Kingdom took the lead in mobilizing international support for the demarcation of the indigenous area RSS in its entirety. EDF lobbied the American Congress and was supportive of Tom Lantos' (D- CA) and John Porter' (R-IL) initiative of



writing a letter to the Brazilian president, signed with other fifteen representatives, urging the demarcation of the RSS.<sup>lv</sup> Survival International organized a petition to the Brazilian government also calling for the demarcation. The petition contained more than 50,000 signatures. The same organization helped persuade the United Nations and the European Parliament to position themselves against the reduction of the area on the basis of the creation of mining villages.<sup>lvi</sup>

As a result of the intense domestic and international campaign against the reduction of the indigenous area RSS, and of the determination of the affected indigenous populations,<sup>lvii</sup> the Brazilian president issued a decree in December 11, 1998 demarcating the area in its entirety. The fact that in January, 2000 the indigenous populations within the RSS were anticipating the immediate registration of the indigenous area is evidence of the potential for resistance that the Brazilian indigenous movement, and its domestic and international supporters, have acquired over the years *vis-à-vis* the Brazilian government and opposition interests.

The demarcation of the RSS is all the more significant in light of the fact that the anti-indigenous coalition opposed to it remains mobilized and active.<sup>lviii</sup> The campaign for the RSS thus marks a new phase in the indigenous peoples' struggle for their land rights. Between 1990 and 1999 (despite the paralysis entailed by the polemic Decree 1775/96), 243 indigenous areas were demarcated in Brazil. In terms of hectares demarcated, this means a 140% increase over the total area demarcated prior to 1990 (see table 1). With the demarcation process practically completed, as it was mandated by the 1988 Constitution, the challenge that indigenous peoples now face is of protecting their lands from invaders and from exploitation by economic interests.

**Table 1: Demarcation of Indigenous Areas in Brazil**

| <b>PERIOD</b> | <b>NUMBER OF AREAS DEMARCATED AND REGISTERED</b> | <b>TOTAL SIZE OF AREAS DEMARCATED AND REGISTERED (hectares)</b> |
|---------------|--|---|
| Before 1990   | 282 *  | 44,547,665  |
| From 1990-99  | 243  | 63,182,232  |
| From 1990-94  | 128  | 31,837,656  |
| From 1995-99  | 115  | 31,344,576  |

Source: IBGE (1993) and [www.isa.org.br/provind/ondestao/placar.html](http://www.isa.org.br/provind/ondestao/placar.html)

\* (information available only for demarcated lands)

## Conclusions

This study has shown that the capacity of the Brazilian indigenous movement to successfully participate in the democratic process, to overcome the challenges imposed by opposition interests, and to assert indigenous rights is affected by three factors: indigenous peoples' understanding of and willingness to participate in Brazilian politics, the strength of the domestic coalition committed to indigenous rights, and the level of support provided by the international environmental and human rights community. In the period of Brazil's transition to democracy (1985-1990), these three factors combined to enhance the political position of the indigenous movement vis-à-vis anti-indigenous interests inside and outside the government bureaucracy. Indigenous peoples' active participation in the 1987/88 constitutional process guaranteed that the country's Constitution recognized their most vital rights – the rights to their lands and to cultural autonomy. The 1988 Constitution, by recognizing indigenous peoples' organizations, also opened up pluralist avenues for their political representation and for the pursuit of their rights. As a consequence, indigenous organizations proliferated at the local and regional levels, their demands and strategies fully reflecting the diversity of Brazilian indigenous peoples.

In the period of Brazil's democratic consolidation (1990-2000) however, the political capacity of the indigenous movement has been negatively affected by cleavages in the domestic coalition for indigenous rights and by a relative decrease in the level of international interest in environmental and indigenous issues in Brazil (when compared to the 1980s). As a result, the balance of the period mixes successes and set-backs for the Brazilian indigenous movement. On the one hand, indigenous peoples have been able to expand their avenues of participation in Brazilian politics through the creation of CAPOIB. The organization played an important catalyst role in the struggle against the Decree 1775/96, although it is too soon to assess how resilient, responsive, and effective it will remain in the long term. In addition, the Brazilian indigenous movement, with the support of Brazilian and international indigenous rights organizations, was able to minimize the detrimental effects of the Decree 1775/96 and, in particular, to guarantee the demarcation of the Raposa Serra do Sol Indigenous Area. Since 1997, indigenous land demarcations in Brazil have been expedited.

On the other hand, indigenous peoples have been unable to break the political stalemate that has led to the paralysis of the process of formulating a new statute on indigenous societies. The disagreements between ISA and CIMI, the main sponsors of a new statute, have weakened the indigenous peoples' position. In addition, international groups committed to indigenous rights have avoided any involvement in the issue. Their decision is appropriate since one of the most contentious points addressed by the new law is mining

in indigenous lands, a topic that in the past motivated nationalistic charges against international supporters for indigenous rights in Brazil (see above, p. 7).

Without a new law, the 1988 constitutional principles guaranteeing indigenous rights remain unregulated. The grievances of specific groups and communities (land invasions, illegal logging and mining activities, violence against individuals, and health needs) continue to be addressed on a case-by-case manner, usually by local organizations or directly through the FUNAI. Political and material resources available for these struggles vary, and so do their outcomes. In the absence of a new statute, the Brazilian indigenous movement remains limited in its ability to develop long-term strategies to address the structural threats to indigenous rights.

Brazil's redemocratization process has opened a new chapter in the relationship between indigenous peoples, the state, and the dominant society. Indigenous peoples' political gains in the period have no parallel in Brazilian history. Yet, the consolidation of such gains greatly depends on the existence of ordinary law that would make the constitutional principles operational. The struggle for indigenous rights in Brazil has thus come to a crossroad. The enactment of a new statute on indigenous rights has the potential to affirm the position of indigenous peoples as full participants in and beneficiaries of Brazilian democracy. Conversely, the delay in enacting such legislation creates a permissive environment in which anti-indigenous interests are free to use all available means to revert the gains obtained by the Brazilian indigenous movement in the past fifteen years.

## Bibliography

- Alvarez, Sônia, Dagnino, Evelina, and Escobar, Arturo (1998): *Cultures of Politics/ Politics of Cultures*, Westview Press, Boulder, CO.
- Carvalho, Georgia (1997): "Formation and Implementation of indigenist policy in Brazil since 1988: Demarcation of indigenous lands in the Carajás Area," Paper presented at the Annual Fall Meeting of the New England Conference of Latin American Studies, Mount Holyoke College, October 18, 1997 (mimeo).
- Centro Ecumênico de Documentação e Informação, CEDI (1991): *Povos Indígenas no Brasil 1987/88/89/90*, CEDI, São Paulo.
- Código Civil Brasileiro*, Ed. Forense, São Paulo.
- Conselho Indígena Missionário, CIMI (1999): "Primeiras Considerações Sobre a Proposta Alternativa do ISA ao PL 2.057/91 que dispõe sobre o "Estatuto das Sociedades Indígenas," (internet document, <http://www.cimi.org.br/plisa.htm>, March, 1999).
- Constituição da Republica Federal do Brasil de 1988*, Editora Lumen Juris, Rio de Janeiro.
- Damasceno, Felisberto (1997): "Congresso Volta a Discutir Estatuto e Convenção 169," *Porantim*, May.
- Equipe da Redação Aconteceu PIB/CEDI (1991): "Cronologia de um Genocídio Documentado," in Centro Ecumênico de Documentação e Informação, CEDI (1991): *Povos Indígenas no Brasil 1987/88/89/90*, CEDI, São Paulo, pp. 172-193.
- Gonçalves, Wagner (1993): "Natureza Jurídica das Comunidades Indígenas, Direito Público e Direito Privado. Novo Estatuto do Índio. Implicações," in Santilli, Juliana (coord.): *Os Direitos Indígenas e a Constituição*, Núcleo de Direitos Indígenas e Sérgio A. Fabris, Porto Alegre, Brazil pp 241-250.
- Grupioni, Luis (1999): *Diretório de Associações e Organizações Indígenas no Brasil*, Ministério da Educação (MEC) and Grupo de Educação Indígena da USP (Mari), São Paulo.
- Hagopian, Frances (1994): "Traditional Politics Against State Transformation in Brazil," in Migdal, Joel, Kholi, Atul, and Shue, Vivienne (eds.): *State Power and Social Forces*, Cambridge University Press, pp. 37-64.
- Hall, Anthony (1989): *Developing Amazonia - Deforestation and Social Conflict in Brazil's Carajas Programme*, Manchester University Press, Manchester and New York.
- Instituto Brasileiro de Geografia e Estatística, IBGE (1993): *Recursos Naturais e Meio Ambiente – Uma Visão do Brasil*, IBGE, Rio de Janeiro.
- Instituto Socioambiental, ISA (1997): "Um ano com o decreto 1775: Ambiguidade, juridicismo e manipulação política na demarcação das terras indígenas no Brasil," (internet document, 01/02/97).
- \_\_\_\_\_ (1999): "Projeto de Lei do Estatuto das Sociedades Indígenas (Proposta para Discussão).
- Magalhães, Antônio Carlos et al. (1985): "Os Povos Indígenas e o Projeto Ferro-Carajás: Avaliação do Convênio Companhia Vale do Rio Doce – FUNAI," São Paulo, December 11, 1985 (mimeo).
- Mindlin (1991): "Os Índios e o Programa Polonoroeste", in HEBETTE, J. (org.): *O Cerco Esta se Fechando*, Ed. Vózes, Petrópolis.

- Moore, Sara G. and Lemos, Maria Carmem (1999): "Indigenous Policy in Brazil: The Development of Decree 1775 and the Proposed Raposa/Serra do Sol Reserve, Roraima Brazil," in *Human Rights Quarterly* 21 (1999): 444-443
- Pietricovsky, Iara: (1995): "A Violência Mostra suas Várias Faces," *Informativo Inesc*, n. 54, March-April, 1995.
- Reis Fábio (1996): "The State, the Market, and Democratic Citizenship," in Jelin, Elizabeth and Hershberg, Eric (1996): "*Constructing Democracy - Human Rights, Citizenship, and Society in Latin America*, Westview Press, Boulder, CO.
- Ricardo, Carlos A. (1991): "Quem Fala em Nome dos Índios?," in Centro Ecumênico de Documentação e Informação, CEDI (1991): *Povos Indígenas no Brasil 1987/88/89/90*, CEDI, São Paulo.
- Ricardo, Fani (org.) (1999): *Interesses Minerários em Terras Indígenas na Amazônia Legal Brasileira*, Documentos do ISA n. 6, Instituto Socioambiental, Brasília.
- Rodrigues, M. and Lemos, M.: (1997): "Environmental and Indigenous Policies in Democratic Brazil," paper presented to the Annual Meeting of the New England Conference on Latin American Studies, Mount Holyoke College, MA, October 18, 1997.
- Santilli, Márcio (1991): "Os Direitos Indígenas na Constituição Brasileira," in Centro Ecumênico de Documentação e Informação, CEDI (1991): *Povos Indígenas no Brasil 1987/88/89/90*, CEDI, São Paulo, pp.11-14.
- Schartzman, Stephan, Araújo, Ana Valéria, and Pankararu, Paulo (1996): "The Legal battle Over Indigenous Land Rights, in *NACLA Report on the Americas*, vol. 24, n. 5, March/April.
- Schmitter, Phillippe (1971): *Interest Conflict and Political Change in Brazil*, Stanford University Press, Stanford.
- Souza Filho, Carlos Frederico (1993): "Tutela aos Índios: Proteção ou Opressão?" in Santilli, Juliana (coord.): *Os Direitos Indígenas e a Constituição*, Núcleo de Direitos Indígenas e Sérgio A. Fabris, Porto Alegre, Brazil, pp. 295-312.
- Treece, Dave (1987): *Bound in Misery and Iron - The Impact of the Grande Carajas Programm on the Indians in Brazil*, Survival International, London.
- Vilas, Carlos (1997): "Participation, Inequality, and the Whereabouts of Democracy," in Chalmers, Douglas et al. (1997): *The New Politics of Inequality in Latin America - Rethinking Participation and Representation*, Oxford University Press, Oxford.

## List of Acronyms

|        |  |
|--------|--|
| ABA    | Associação Brasileira de Antropologia (Brazilian Association of Anthropologists)   |
| CAPOIB | Conselho de Articulação dos Povos e Organizações Indígenas do Brasil (Council of Brazilian Indigenous peoples and organizations)                   |
| CEDI   | Centro Ecumênico de Documentação e Informação (Ecumenic Center for Documentation and Information)  |
| CIMI   | Conselho Indígena Missionário (Indigenous peoples' missionary Council)   |
| CONAGE | Conselho Nacional de Geólogos (National Council of Geologists)   |
| CNBB   | Conferência Nacional dos Bispos do Brasil (National Conference of Brazilian Bishops)   |
| CSN    | Conselho de Segurança Nacional (National Security Council)   |
| EDF    | Environmental Defense Fund   |
| ESP    | O Estado de São Paulo (newspaper)  |
| FIPE   | Fundação Instituto de Pesquisas Econômicas da Universidade de São Paulo (Foundation Institute of Economic Research of the University of São Paulo) |
| FUNAI  | Fundação Nacional do Índio (National indian Foundation)  |
| IBGE   | Instituto Brasileiro de Geografia e Estatística (Brazilian Institute of Geography and Statistics)  |
| ISA    | Instituto Socioambiental (Environmental and Social Institute)  |
| NDI    | Núcleo de Direitos Indígenas (Nucleus of Indigenous Rights)  |
| RSS    | Área Indígena Raposa Serra do Sol (Raposa Serra do Sol Indigenous Area)  |

<sup>i</sup> Código Civil Brasileiro (Brazilian Civil Code), Art. 60.

<sup>ii</sup> Souza Filho (1993) explains that when, 1980, the indian chief Mario Juruna was invited to travel abroad, the state vetoed his trip. Juruna was eventually able to leave the country after the Supreme Court intervened (p. 309).

<sup>iii</sup> In this paper, my approach to indigenous peoples' citizenship rights combines Vilas' (1998) rights of participation that compensate for socioeconomic inequalities with Reis' (1996) advice to shift the emphasis of the concept from the *individual's* autonomy vis-à-vis the State toward the insertion in and participation of the *community* in political life. In this sense, my approach to citizenship rights is narrower than Alvarez and Escobar's (1998), which includes social, economic, and cultural rights.

<sup>iv</sup> While my choice was primarily driven by space constraints it was also influenced by methodological difficulties. To what extent can one clearly isolate the causes for indigenous peoples' dire economic and social conditions from those that affect other minorities and dispossessed groups in Brazilian society?

<sup>v</sup> The Polonoroeste project was a development initiative in the Brazilian Amazon state of Rondônia. Its main components were the pavement of a national highway (BR 364) and the establishment of agricultural settlements. The project's impact on Rondônia's natural and human environments has been extensively documented.

<sup>vi</sup> José Juliano de Carvalho Filho and Betty Mindlin, independent consultants for the Polonoroeste project through the Fundação Instituto de Pesquisas Econômicas da Universidade de São Paulo (FIPE), and Jane Pratt, World Bank's Environmental Department, personal communications (September 1994, São Paulo and August 1993, Washington, D.C., respectively).

<sup>vii</sup> For more information on the compartmentalization of policymaking processes regarding environmental and indigenous rights issues in authoritarian Brazil, see Rodrigues and Lemos (1997).

<sup>viii</sup> Souza Filho (1993).

<sup>ix</sup> The FUNAI has acted as a broker and signatory party in mining and logging contracts between indigenous communities and private companies. In 1987, the agency actually kept an office in Brasília for this purpose (Mindlin, 1991). For a partial list of logging contracts in indigenous areas brokered by FUNAI in 1987, see CEDI (1991), p. 44.

<sup>x</sup> Ladeira, Maria E., anthropologist, Centro de Trabalho Indígena (Center of Indigenous Works, CTI), personal communication, September, 1994, São Paulo, Brazil and Magalhães, A. et al. (1985).

<sup>xi</sup> Ten years later, in the 1996 elections, the electoral results for indigenous peoples' candidates were more positive. Two indigenous mayors and several councilmen and vice-mayors were elected throughout Brazil. Most of them had direct links with the indigenous movement (SEJUP newsletter, n. 231, October 1997).

<sup>xii</sup> Santilli (1991).

<sup>xiii</sup> Newspapers articles in *Correio do Brasil*, 19/08/88, *O Liberal*, 19/03/88, and *O Estado de São Paulo*, 23/04/87.

<sup>xiv</sup> Benatti, J., consultant for the Sociedade Paraense Para Defesa dos Direitos Humanos (Society for the Defense of Human Rights of Pará (SPDDH), personal communication, Belém, Brazil, June, 1995.

<sup>xv</sup> "O Aviso dos Caiapó," *Veja*, 1/3/89, "Tensão no diálogo Eletronorte com a tribo Caiapó em Altamira," *Gazeta Mercantil*, 22/2/89, "On the Move Against Xingu Dams," *World Rivers Review*, v. 4, n. 1, Jan/Feb., 1989.

<sup>xvi</sup> See, for instance, the "Carta da Amazônia" (Amazonia's letter), a document issued in September 1, 1988, signed by forty one entities from different regions of Brazil (indigenous peoples, professional organizations, rural unions, grassroots groups, and scientific organizations), repudiating the state's energy plans in Amazônia.

<sup>xvii</sup> The impact of the CEDI/CONAGE can be illustrated by its receptivity by the members of the Constitutional Assembly (all members received a copy of the report) and by the impact that an oversized copy of its map had when it was presented in the Assembly's plenary session of March 16, 1988 (CEDI 1991, p. 23).

<sup>xviii</sup> Constitutional Amendment proposed by ABA/CONAGE/SBPC, with the support of UNI/CEDI/IECLB and others, article 3, paragraphs 3, 4, and 5. And Constitutional Amendment proposed by CIMI/ANAI-RS, article 7, paragraph 6.

<sup>xix</sup> "A Conspiração contra o Brasil" (parts I – VI), in *O Estado de São Paulo*, August 9-15, 1987.

<sup>xx</sup> See "Cronologia de uma Conspiração," by Senator Severo Gomes in the newspaper *Folha de São Paulo*, 16/08/87, clarifying many of the inconsistencies of the ESP's series.

<sup>xxi</sup> "A Campanha do jornal "O Estado de São Paulo" e os interesses das mineradoras," Supplement, *Tempo e Presença*, 1989.

<sup>xxii</sup> The CSN was directly involved with the project "Calha Norte," implemented since 1985 by the Brazilian military in the country's borders. The Calha Norte's conception was assimilationist and attempted to intensify the military "tutelage" over indigenous peoples (Santilli, 1991). Indians were to be colonized and settled around the military bases and other centers of Brazilian presence (airports, missions). Anthropologists and staff from indigenous



peoples' advocacy organizations were banned from the Calha Norte's areas of influence. Some observers argue that Calha Norte operations seemed to coincide with areas of known concentration of strategic mineral resources (Hall 1989).

<sup>xxiii</sup> Constituição Federal, Art. 49, paragraph XVI.

<sup>xxiv</sup> The Yanoami case only exemplifies, without exhausting, the several instances in which international environmental and human rights organizations have lent invaluable support to the struggles of Brazilian indigenous peoples. Support for the Kayapó's campaign against the Altamira Hydroelectric Complex, and the pressures against the World Bank-funded projects Polonoroeste and Carajás Iron Ore in the US Congress could also be cited.

<sup>xxv</sup> The newspapers *O Estado de São Paulo* of 17/03/90 and *A Crítica* of 23/03/90 published information about Survival International's rally in front of the Brazilian Embassy in Washington, D.C. on the day of Collor's arrival and about a petition given to the president-elect in London, containing 8,000 signatures collected in 16 countries.

<sup>xxvi</sup> *Jornal do Brasil*, of 26/04/90.

<sup>xxvii</sup> Grupioni (1999),

<sup>xxviii</sup> Ricardo (1991).

<sup>xxix</sup> Idem.

<sup>xxx</sup> <http://www.cimi.org.br/movimento.htm>

<sup>xxxi</sup> "Justiça Federal interdita estradas ilegais no Par," *Informativo NDI*, January/February, 1993; "TRF Proíbe exploração da madeira em área indígena no sul do Pará," *Informativo NDI*, March/April, 1994.

<sup>xxxii</sup> "Seminário resulta em manual contra roubo de madeira," *Informativo NDI*, March/April, 1994; "Semana dos Povos Indígenas," *Porantim*, March, 1998.

<sup>xxxiii</sup> The failed attempt aimed at extending the scope of the União das Nações Indígenas (Union of Indian Nations, UNI) to the national level. Despite UNI's leadership and activism on behalf of indigenous peoples as a whole in the constitutional process, it encountered difficulties in setting roots in local and regional contexts.

<sup>xxxiv</sup> <http://www.cimi.org.br/movimento.htm>.

<sup>xxxv</sup> Gonçalves (1993).

<sup>xxxvi</sup> Law Projects 2,057/91 (on the Statute of Indigenous Societies); 2,160/91 (on the Indian Statute), and 2,016/92 (on the Statute of Indigenous Peoples).

<sup>xxxvii</sup> "Semana dos Povos Indígenas – 1988," *Porantim*, March 1988.

<sup>xxxviii</sup> Pietricovsky (1995).

<sup>xxxix</sup> Damasceno (1997).

<sup>xl</sup> Since 1995, the NDI has merged its activities with sectors of CEDI and is now named Instituto Socioambiental, (Social and Environmental Institute, ISA).

<sup>xli</sup> ISA (1999).

<sup>xlii</sup> CIMI (1999).

<sup>xliii</sup> Among the best known examples of Congress representatives committed to anti-indigenous interests are Romero Jucá (Partido Social Democrata Brasileiro (PSDB, Roraima), Salomao Cruz (PSDB, Roraima), and Elton Rohneit (for the Partido da Frente Liberal (PFL), Roraima), who have proposed law projects that attempt to invalidate most constitutional restrictions to mining in indigenous lands.

<sup>xliv</sup> Constituição Federal do Brasil, Art 5o, paragraph LV.

<sup>xlv</sup> The demarcation of indigenous lands in Brazil occurs in four stages: identification, demarcation, ratification, and registration.

<sup>xlvi</sup> ISA (1997).

<sup>xlvii</sup> See Schwartzman et al (1996), Moore and Lemos (1999), and Carvalho (1997).

<sup>xlviii</sup> "CAPOIB Manifesto," Brasília, July 10, 1996, "We do not accept the revision of indigenous territories"

(Internet documents, [www.cimi.org.br](http://www.cimi.org.br), July 19, 1996).

<sup>xlix</sup> Carvalho, (1997).

<sup>1</sup> "Cresce o repúdio ao Decreto 1755/96," *Porantim*, June/July, 1996; "Árduas Lutas Frente ao Estado," *Porantim*, December, 1996.

<sup>ii</sup> FUNAI's rejection of third parties' claims over indigenous lands illustrates the process of institutional change that the agency has undergone since the end of the military rule. From its inception until 1991, FUNAI's 18 presidents were either military officers or had direct ties to the military government. In 1991, Sydney Ponsuelo became the first of FUNAI's presidents whose professional history indicated a sincere commitment to indigenous rights. Since then, 3 of FUNAI's 6 presidents, have held previous positions in major indigenous rights advocacy organizations (Márcio Santilli (1994-1995), Márcio Lacerda (1999-2000), and Carlos Marés (Present)). Unfortunately, the

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political liberalization of FUNAI's administration has been accompanied by a weakening of its position vis-à-vis other governmental instances in charge of indigenous policies (namely the Ministry of Justice).

<sup>iii</sup> The first to encourage the miners' invasion of RSS was, once again, Romero Jucá, Governor of Roraima between 1988 and 1992 and currently Senator for the state.

<sup>liii</sup> Five different populations live within the indigenous area Raposa Serra do Sol: the Macuxi, Ingariko, Wapixana, Taurepang, and Patoma.

<sup>liiv</sup> Both indigenous areas are among the largest ever demarcated in Brazil, indigenous groups face the same coalition of antagonistic interests, i.e., Roraima politicians and mining corporations and cooperatives, and the legal strategies to reduce the size of the areas and transform them in discontinuous areas interrupted by non-indigenous villages were very similar.

<sup>liv</sup> EDF news release, October 7, 1996 "Members of Congress Urge Indian Land Protection in Brazilian Amazon."

<sup>lvi</sup> "Jubilation in Raposa Serra do Sol," February, 1999, [www.survival.org.uk/index2.htm](http://www.survival.org.uk/index2.htm)

<sup>lvii</sup> One of the strategies used by the Macuxi group during the period of dispute over the boundaries of the RSS was to start, themselves, the physical demarcation of the area. This was a novel strategy as efficient as it was dangerous due to its potential for direct confrontation between indigenous peoples, gold miners and ranchers.

<sup>lviii</sup> The latest strategy devised by the Roraima politicians as of 1999 was to force the establishment of a Comissão Parlamentar de Inquérito (Congressional Investigative Commission) to investigate FUNAI's operations. According to CIMI this strategy aims at pressuring FUNAI so that the agency agrees in revising the demarcation of the RSS area in return for the dismissal of charges and extinction of the Investigative Commission ("CPI Chega Tarde em Maturuca," Internet document, [www.cimi.org.br/airasol.htm](http://www.cimi.org.br/airasol.htm), October, 1999).