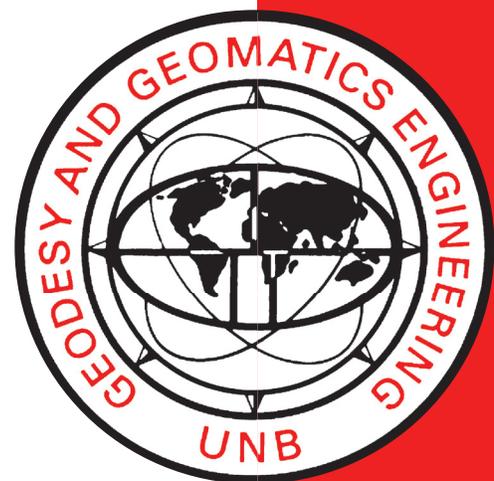


DEMARCATIION AND REGISTRATION OF INDIGENOUS LANDS IN BRAZIL

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PREFACE

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ABSTRACT

11 years after the demarcation deadline mandated by Brazil's 1988 promulgated constitution, over 45% of indigenous territories have still not been demarcated. To explore how the demarcation process continues to be physically obstructed the current framework under which indigenous territories are demarcated and registered, and the conflicting interests that impede this process will be explored. Later, to illustrate the magnitude of this problem, a historical overview of the government's prioritisation of indigenous issues will also be examined. In sum, this report will explore why Brazil's demarcation delay has persisted, despite the fact that indigenous people desperately require secure land tenure to protect their unique lifestyles.

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CHAPTER 1

INTRODUCTION

In 1988, the Brazilian Government introduced a new constitution for the nation. Article 67 of this document read, “The Union shall conclude the demarcation of the Indian lands within five years of the promulgation of the Constitution.” [Federative Republic of Brazil, 1988]. However, 11 years after this deadline passed, over 45% of indigenous territories have still not been demarcated. The process of demarcating and registering indigenous lands has been slowed by a combination of third party interests in the traditional territories and a lack of political will to resolve these conflicts.

The purpose of this report is to examine the current framework under which indigenous territories are demarcated and registered, and the conflicting interests in indigenous lands that impede this process. The methods by which indigenous people traditionally use their lands will be outlined, and compared with the uses of third parties that directly and indirectly affect these lands. A historical perspective over the past forty years will outline the way in which the Government has prioritised indigenous issues, and balanced these with other interests, primarily economic concerns. Ultimately, indigenous people require secure land tenure to be assured that they can continue to live in their preferred way of life.

1.1 A Brief History of Brazil

Brazil has a very long history of colonisation, some of which is essential background to understanding the indigenous people and the Brazilian Government today. The following section will briefly outline the political history of Brazil, to place the indigenous issues of the country in context.

The official date of Brazil's discovery by Europeans is April 22nd, 1500 A.D. [Schmink and Wood, 1992], though there is conjecture that the land was discovered a few months prior by a different expedition [Farlex, 2004]. A treaty signed by Portugal and Spain prior to this discovery had created the Tordesilhas Meridian, a line that divided the known world and all subsequent discoveries between the two kingdoms. Lands to the west of this line fell under the dominion of Spain, while lands to the east, such as Brazil, became the property of Portugal [Embassy of Brazil, 2004a].

Towns were established to protect the land from being overtaken by the French, and colonisation of the land by Europeans began soon afterwards. The emergence of both coffee and gold as exploitable commodities aided the spread of colonisation throughout the country [Skidmore, 2004]. In the early 1690's gold was discovered in Minas Gerias and Mato Grosso, and the 18th century was subsequently defined by the rise and fall of the mining industry. The administration of the colony was defined by the southward movement of the population in search of the precious resources, with the Crown creating new captaincies as the gold rush spread [Skidmore, 2004]. Little gold was to be found in

the coastal areas, and so the colonists moved inland, interrogating the native people to locate the precious commodities.

Brazil soon became the world's largest gold producer, with exports increasing in the 1720's with the discovery of diamonds. This also caused the population of Brazil to increase, as more and more immigrants arrived from Portugal at the promise of wealth. In 1705 the Crown was so concerned at the decline in the Portuguese youth population that they attempted to slow the emigration (albeit unsuccessfully). The Brazilian gold rush was also the major catalyst for the African slave trade in the region [Skidmore, 2004]. Brazilian gold was shipped to Lisbon, and was used to finance textiles from London. Once in London, this great wealth greatly contributed to financing the industrial revolution [Embassy of Brazil, 2004a].

Gold mining did not promote industrialisation in Brazil, however, as it did not provide for broad-based economic growth. The same was experienced with the boom in agricultural products such as cotton, sugar and tobacco. These resources were largely invested in Portugal, to repay debts incurred in the trade deficit with England, as well as ensuring that the lifestyles of the Portuguese royalty and religious orders were maintained [Skidmore, 2004]. Nearly 1000 tons of gold and three million carats of diamonds were removed from Brazil between 1700 and 1800 [Embassy of Brazil, 2004a]. At the end of the 18th century, gold production was in decline, as the remaining gold was no longer as easily accessible.

During this time Brazil was ruled from Lisbon as a colony of Portugal. However the invasion of Napoleon Bonaparte into Portugal in 1808 forced the Portuguese royal court and seat of government to relocate to Brazil. Although the royal family returned to Portugal only thirteen years later, the loss of privileges accorded to Brazil during their presence engendered in Brazilians a desire for independence [Farlex, 2004]. The following year (1822) the Prince Regent of Brazil (and heir to the Portuguese throne) declared Brazil's independence from Portugal and became its first Emperor, Pedro I of Brazil. A scant nine years following this Pedro I abdicated in favour of his 5 year old son, and left Brazil to succeed his father as King Pedro IV of Portugal. The young boy would become Pedro II when he reached his age of majority, and would abolish all slavery in Brazil in May of 1888 [Farlex, 2004].

In 1889 a military coup deposed the emperor and reformed the country to a Republic. Though not without some friction, Brazil was ruled as a constitutional democracy until 1930 [Embassy of Brazil, 2004a]. The government was overthrown by force for the first time in 1930, largely in response to corruption in the presidential electoral processes. This new government remained in office until after the Second World War. Brazil had taken part in the war in response to a pro-Allies stance from the public and the presence of German U-boats along the Brazilian coast, and sent some 25 000 men to Europe.

In 1945 a new government was elected, and a new constitution enacted. From 1956 – 1961 a new President was in office who founded the capital of Brasilia, and launched a period of accelerated economic growth, which culminated in unbridled inflation and

social unrest. Finally in 1964 the military overthrew the government, largely due to fears of a Marxist regime [Embassy of Brazil, 2004a].

The military regime ended in 1985 after nationwide demonstrations demanding that the people of Brazil be able to elect their own government. The first civilian President elected in twenty years, President Tancredo de Almeida Neves was also a member of the opposition party. However Neves was never inaugurated, as he succumbed to an illness on the eve of his inauguration from which he never recovered. President José Sarney, the elected Vice President was sworn in upon the death of Neves. One of Sarney's top priorities was the drafting of a new constitution, which was promulgated on October 15, 1988.

In 1989 President Fernando Collor de Mello was elected, however he saw only three of his five years in office, before being impeached on allegations of corruption. Mello's final two years in office were completed by the Vice President, who oversaw a plan to curb rising inflation rates. Inflation continued to decline under the new president, Fernando Henrique Cardoso, who was elected in 1994 for a four year term, which was later renewed. In 2002, Luiz Inácio Lula da Silva was elected President, in Brazil's first handover between two directly democratically elected Presidents in over 40 years [Embassy of Brazil, 2004a].

CHAPTER 2

INDIGENOUS PEOPLE IN BRAZIL

Prior to discussing indigenous land tenure, it is necessary to convey some aspects of indigenous groups in Brazil. This chapter briefly discusses the demography of indigenous groups in Brazil, and gives a historical account of the way indigenous people have been treated by Government and colonists since European settlers arrived.

2.1 Indigenous Groups in Brazil

Estimates of the indigenous population prior to colonisation of the country vary between five million people [Pinheiro, 2004] and eight million people [World Bank, 1995]. Since the beginning of the 20th century alone, approximately 90 ethnic groups have become extinct [Tresierra, 1999], primarily due to a lack of immunity to foreign disease.

Today, the indigenous people of Brazil are comprised of some 200 ethnic groups, with a total estimated indigenous population of 180 000 – 350 000 [Pinheiro (2004), and Survival International (2004), respectively]. This is the second highest indigenous population in the Amazon Region next to that of Peru, who's indigenous people number some 300 000 [Tresierra, 1999]. The size of indigenous groups varies greatly, with some, such as the Yanomami and Guarani tribes, numbering in the tens of thousands. However 73% of tribes have less than 1 000 members, some having only a few dozen members each [Carneiro da Cunha, 2004].

The level of contact and acculturation of these groups also varies considerably. While some tribes have been in contact with Europeans for hundreds of years, many tribes have

only been exposed to modern Brazilians in the last 40 years. It is estimated that there are more than fifty tribes in Brazil that remain uncontacted, the most of any country [Survival International, 2004]. Tribes are acculturated to modern Brazilian society in varying degrees. The Kayapó and Shavante tribes have been active in lobbying the Brazilian Government in regard to Indigenous rights. Other tribes, however, such as the Awá and the Maku, remain largely nomadic, living from the products of their hunting and gathering.

2.2 Political Treatment of Indigenous People since Colonisation

When Brazil was ‘discovered’ in 1500, the ‘right of conquest’ accorded that all lands fell under the dominion of the Portuguese Crown [Embassy of Brazil, 2004b]. Pero Vaz de Caminha was the scribe of Pedro Álvares Cabral, the European man credited with the ‘discovery’ of Brazil. He saw the Indians as innocent in body and soul by virtue of their naked appearance with “ingenuous and virginal minds” [Ramos, 1998]. Caminha viewed their simple native customs as intellectually inferior. He saw the land as being “so gracious that, if we want to use it, it will yield everything”, and believed that both the land and the Indians could be improved by European command [Ramos, 1998].

In the mid-16th century the Jesuits arrived as missionaries to the indigenous people and the Portuguese drafted legislation that ensured the Indians were not viewed as equals due to their “mental undevelopment” [Ramos, 1998]. As in other parts of colonised North and South America, Indians were viewed as children whom the colony had a responsibility to for education and protection. This was particularly identified due to the lack of appreciation the Indian people had for gold:

“(The Indian) is inferior to the European because he is not, as the European is, capable of having a responsible relationship with this gold that surrounds him, and hence the European appropriation of it is justified... We must love and help the Indians as much as we can. But their base and imperfect character requires that they should be ruled, governed, and guided to their appointed end by fear more than by love... these people do not know how to judge the gravity of their sins other than by the rigour of the penalties with which they are punished.” Quoting Fray Pedro de Feria, Bishop of Chiapa, in a Memorandum to the Third Mexican Provincial Council, 1585. [McGrane, 1989].

The Jesuits established missions along the major tributaries of the Amazon, and became both the defenders of the indigenous people, and the catalysts for the complete upheaval of indigenous life [Schmink and Wood, 1992]. The Indian people were relocated into large settlements called *aldeias*, where they could be supervised and taught the ways of the ‘civilised’ world. While the *aldeias* protected the indigenous people from the slavers and the gold rush, they also facilitated the spread of European diseases due to their high density. Ten’s of thousands of Indians had been killed by epidemics of disease by the end of the 17th century, and many of those who escaped fled into less accessible regions of the Amazon [Schmink and Wood, 1992].

In the Mid-17th Century, the Portuguese Law of Liberties was altered such that Indian slaves were converted to indentured servants [Ramos, 1998]. This intensified the conflicts between the missionaries and colonists for indigenous workers, until the Jesuits were expelled in 1759 [Schmink and Wood, 1992]. The *aldeias* were taken over by colonists who attempted to turn the remaining mission Indians into a work force. However the indigenous people revolted, even as their numbers further decreased due to disease. This,

combined with an ever-increasing white population and improvements to communication and transportation, led to intensified military action against the indigenous people.

In Grão-Pará, a province and colony separate from Brazil, former slaves were charged to remain with their former masters for six years with payment. This would allow them to become accustomed to their freedom. However a further clause also placed the Indians under the Regulation of Orphans, ostensibly for their protection, but in reality to ensure that the Indian labour force would continue. Indians who earned a living as artisans or who remained in their traditional villages were exempt [Ramos, 1998].

Although the need for an Indian labour force declined over time, indigenous people were still seen as childlike in their society and lack of conformation to Western ways. As such in 1916, Indians were placed into the Civil Code as “objects of guardianship to last until they became adapted to national society” [Ramos, 1998], along with other groups including prodigals, minors between 16 and 21 years and married women. In 1928 their guardianship was transferred from the judge of orphans to the Indian Protection Service, which was created in 1910. Despite married women being removed from this category in the 1960’s, Indians are still legally recognized as having “relative legal capacity” today [Carneiro da Cunha, 2004]. The Government argues that this permits indigenous people to be protected from harm, particularly in economic transactions [Carneiro da Cunha, 2004].

However, because the Indian people do not qualify for full citizenship, they retain exclusive use of their land, by virtue of their inability to be a part of modern society. Only legally recognized civil minors can retain their inalienable lands. If the Indian people gain full citizenship, thereby emancipating themselves of their incapability, they will lose the rights to their land. As a result of this Catch-22, the Indian people can or will not seek emancipation, as they prefer to retain their communal lands rather than be recognized as full citizens and adults. Drawbacks to this status exist, however, including the inability for Indians to enter into contracts, start businesses and even exercise control over their lands and resources, which are often placed under the control of FUNAI [Blore, 2004].

In 1988, Brazil drafted a new Constitution, which recognized Indians as no longer being children, but entitled to their own society, customs, language, beliefs and traditions. In addition, they are entitled to exclusive rights for the lands they traditionally occupy. However the Civil Code still exists, suggesting that it is still expected that Indians will conform to the ways of non-Indian society. The Constitution makes no mention of guardianship, and as such the Indians are still regarded as wards of the state.

The issue of incapability was raised recently when 12 Cinta Larga Indians allegedly took part in the massacre of almost thirty diamond miners. It is possible that the Indians may not be punished, particularly as the group were uncontacted prior to the 1960's [Blore, 2004]. Understandably this lack of accountability creates considerable concerns amongst

other Brazilians who feel that Indians should be subject to the same rights as the rest of the population.

A full discussion of the rights of indigenous people today is contained in Chapter 3.

CHAPTER 3

INDIGENOUS LAND DEMARCATION & REGISTRATION TODAY

There are two primary features of indigenous land rights today: the Brazilian Constitution of 1988, and Decree 1775.

3.1 A New Constitution (1988)

In 1988 a new Constitution for Brazil was drafted, which was greatly concerned with human rights, in particular the rights of the indigenous people. Article 231 (contained in Appendix 1) of the document acknowledged the pre-existing rights of indigenous people to their traditional lands, and further established that they had usufruct rights to the land, as well as “riches of the soil, the rivers and the lakes existing therein” [Chapter VIII, Article 231, Paragraph 8, Federative Republic of Brazil, 1988]. It should be noted that the indigenous people *do not* have usufruct of the subsoil (which is, under Brazilian legislation, different to the soil), and as such do not possess mineral resources on their lands [Ramos, 1988].

The Constitution also contained provisions to prevent or reduce invasion of these traditional lands, by registering the lands under a regularised system and providing legal protection for the land. The lands would remain vested in the state, however indigenous groups would have exclusive usufruct rights as stated above.

The process of registration was composed of a number of steps. Firstly indigenous territories were identified and declared, following which they were demarcated (the

boundaries were defined). Once demarcation was completed, lands were homologated (approved by the President) and registered at a title registry office.

Article 67 of the Constitution ordered that all traditional lands be demarcated within the subsequent five years. However by 1993, less than half the territories had established boundaries [Borges & Combrisson, n.d.].

3.2 Decree 1775

When the 1988 Constitution was drafted, Article 231 ruled that any rights to indigenous lands claimed by non-indigenous third parties were annulled. Compensation to these third parties would only be made for improvements made “in good faith” (World Bank, 1995), that is, improvements made without knowledge that there were indigenous interests in the land. In one case quoted by the World Bank (1995), a parcel within traditional lands was sold to a third party, however the court rendered the rights of the third party null and void, refusing compensation to the individuals involved.

In 1995, a large cattle owner brought a case the supreme court claiming that land owners were entitled to property rights despite the occupancy of indigenous people. The President of the time, Fernando Henrique Cardoso, feared that the case would be upheld on the grounds of a citizen’s right to due process of law under the Brazilian Constitution of 1988.

“...litigants, in judicial or administrative processes, as well as defendants in general are ensured of the adversary system and of full defense, with the means and resources inherent to it;” - Article 5, s. 55 Brazilian Constitution [Federative Republic of Brazil, 1988].

Cardoso’s government argued that the previous system of demarcation, whereby all third party rights could be annulled without contestation, was unconstitutional. Under the process of juridical review, judges may refuse to comply with unconstitutional rulings, and as such this could potentially undo the entire demarcation process and potentially challenge even those lands that had already been registered with the title registry office [Embassy of Brazil, 2004e].

In 1996, Presidential Decree 1775/96 was signed. This decree allows any demarcated indigenous territory not yet registered in the land registry to be challenged by an individual who believes they have an interest in the land. The procedure for this decree is shown in figure 3.1.

This new decree was not well received by indigenous groups or international NGO’s. Not only was the legal reasoning deemed specious [Turner (1996), Ramos (1998)], but the retroactive feature of the decree would allow *any* identified indigenous parcel to be contested provided it was not registered. Shortly after the decree was signed, some 800 appeals were received, of which half were considered. Eight territories had their demarcations altered or removed all together [Ramos, 1998].

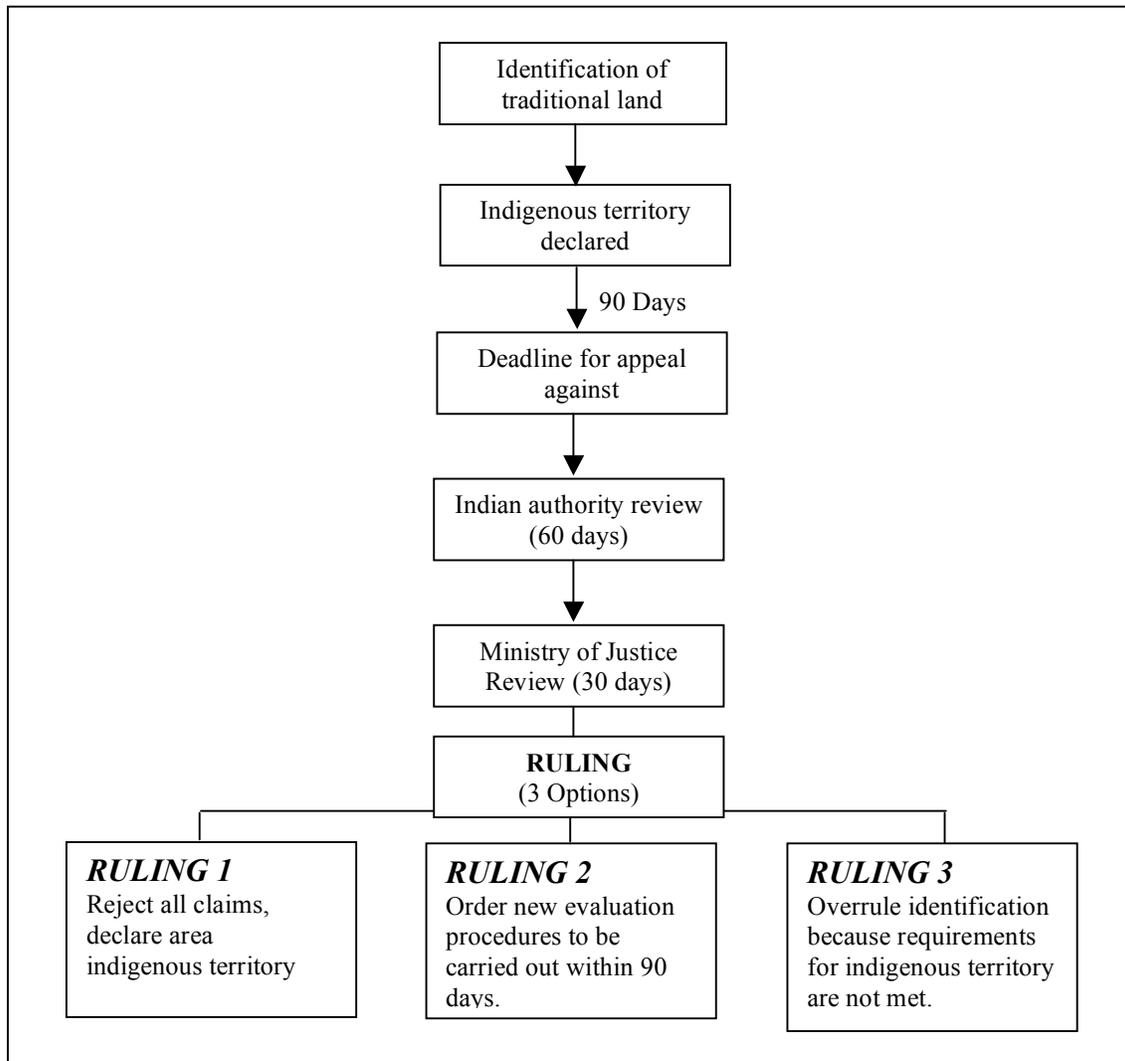


Figure 3.1. The contestation process allowed by Decree 1775. The identification and declaration of the indigenous territory is as with the original process under the 1988 constitution

This decree is still in effect today, giving great weight to the interests of third parties, and greatly increasing the cost of indigenous land demarcations. It is a combination of these factors that has resulted in less than half the indigenous land claims being registered in the titles office. The current state of indigenous land claims in Brazil can be seen in Figure 3.2.



Figure 3.2. Indigenous Lands in Brazil. Total Area of the National Territory: 851,196,500 ha, Total Area of Indian Lands: 94,701,113 ha (11.13%) (after Embassy of Brazil [2004d]).

CHAPTER 4

TRADITIONAL LAND USE

Indigenous groups have been operating under their own land administration frameworks for centuries prior to the arrival of Europeans. Although tribes are unique in their customs and traditions, there are some fundamental similarities in the ways in which they utilise and view the land.

4.1 Traditional Land Tenure Systems

The survival of indigenous people and societies depends upon collective ownership. This lifestyle has been engendered by the very nature of subsistence living, and has become a core aspect of traditional cultures and ethics. The following aspects of indigenous life lend themselves to collective ownership:

1. Resources that the indigenous people rely on are frequently indivisible, such as water sources and biodiversity. Forests and agricultural land, as managed in the indigenous way, are seen as whole ecosystems, and are not suited to Western parcelisation [McKean, 1999], or indeed jurisdictional boundaries
2. In the process of succession management, crop yield will be different in different areas depending on the soil quality and the season. The yield of hunters will also vary depending upon the breeding season and weather. Most tribes will treat gathered food as a shared resource, again requiring that the land from which it is gathered is owned collectively [Tresierra, 1999].

3. In treating an ecosystem holistically, and having multiple uses for the land, it is possible that one use may directly inhibit another. For example the planting of a particular crop may deter wildlife from entering the area, and as such inhibit the hunters in finding food. Collective ownership ensures that such externalities are internalised and can hence be solved for the greater good of the tribe [Tresierra, 1999].

4.2 Traditional Indigenous Land Use

The majority of tribes traditionally subsist off the land through a mixture of hunting, gathering and cultivating plants for food and medicines. Other tribes are completely nomadic, and sustain their lifestyle solely by hunting and gathering. Hunting and gathering require large areas of land for a small population, which ensures sustainability of the ecosystem to provide for generations.

Indigenous agriculture varies greatly from Western techniques. This is partly to do with the nature of soils within the Amazon, as well as a lack of heavy machinery and a desire to preserve biodiversity. Indigenous groups have used slash-and-burn techniques effectively for centuries. Larger, useful logs are removed for other purposes before small areas are burned. The burning improves the soil quality, while the remnant debris helps to prevent subsequent erosion in the area [Wright and Wolford, 2003]. The quality of the soil will directly determine how many seasons of annual crops can be cultivated. Crops are watched closely, and when the yields decline, it indicates that the soil is beginning to lose its fertility. Rather than stretching the soil to exhaustion, this area is abandoned and left unsown to rehabilitate naturally. Seed within the soil, or carried by wind and animals

may germinate, but no active effort is made by the indigenous people to plant new crops on the abandoned patch. A new area is then developed in the same way. Areas left fallow will be used again once the forest has sufficiently recovered.

Unlike the Western system of land use, where land is divided into separate areas for agriculture, forestry and conservation, indigenous groups typically combine land uses both spatially and temporally [Tresierra, J.C., 1999]. A variety of crops are also usually planted, which have become adapted to Amazon conditions over millennia, including both annual and perennial species, to ensure a year-round food supply [Wright and Wolford, 2003]. Diverse speciation also allows the soil quality to persist for a longer duration. Disruption of the soil system is minimised by using digging sticks rather than Western plows, which also aids in prolonging the fertility of the soil.

In other parts of the Amazon indigenous strategies incorporate *várzea* to aid in their crop cultivation. By virtue of being a basin, 3 – 7% of the Amazon is flooded each year, a result of which is the deposition of very fertile sediments called *várzea* [Wright and Wolford, 2003]. Indigenous groups in these areas possessed a great amount of knowledge in regard to planting their crops to accord with the flooding patterns, and dealing with drought, which drastically changes the system accustomed to copious amounts of water. It is because of climate variations such as this, in addition to a complete diet, that indigenous people traditionally supplement their annual crops with fishing, hunting and collecting other forest products.

4.3 Changes to the indigenous way of life

One of the main drivers for indigenous land rights, besides the obvious claim indigenous groups have to their traditional territories, is to preserve the native way of life. The cultural barriers between modern Brazilian society and traditional Indian society are enormous, and many indigenous peoples prefer to retain their traditional ways. It has been well documented that once Indians are absorbed into the Brazilian way of life it is difficult to go back to their traditional societies.

“Some of us have only been in touch with the white man for twenty years, or less. Twenty years ago, we had nothing. But we had enough. And we were never sick. Now, suddenly, we have become people who need things. We eat your food. We wear your clothes. We use your tools, your guns, your radios and cassette recorders. We travel in your cars. We own things. But we cannot own all the things we want, because we do not have the money. Everything must change. We must produce things so that we can have the money to buy other things. The rhythm of our lives must change. We used to hunt when we were hungry, rest when we were tired, feast when we were happy. Now we eat your food and we grow fat and lazy, and we are no longer strong like we used to be. Before, we were rich; now, we are poor.” - Antonio Apurinã, Union of Indigenous Nations [Le Breton, 1993].

This is echoed by Tresierra [1999], who states that tribes absorbed into the monetary economy often turn to unsustainable uses of their lands and forest resources. When these resources are depleted, individuals leave their groups and find work with mining or logging companies, worsening the situation by joining the very industries that continue to degrade their traditional lands.

The Suruí are an example of this situation [Le Breton, 1993]. Contacted only in the 1970's, the tribe was disrupted by a Government settlement established near their traditional lands. FUNAI negotiated with the settlers to leave the site after their coffee crop was harvested, however the Suruí took over the land prior to this in the hopes that they could sell the coffee themselves, and then purchase their desired goods with the money. However coffee cultivation was not as simple as the tribe thought, and the time required to care for the crop did not allow for the other necessary hunting and gathering of food. When the price of coffee went down, the Suruí needed to make more money to continue to live with their quality of life. They began selling trees from their reserve to loggers, however because the Indians were not well versed in such transactions and the market value of the wood they were often cheated. The distribution of goods within the communal society was also a source of conflict for the Suruí, and the end result was a group worse off than before, still looking for ways to generate money.

CHAPTER 5

OTHER STAKEHOLDERS AND INTERESTS IN INDIGENOUS LANDS

The arrival of the original colonists, and now modern Brazilians, in the Amazon has affected the indigenous people in many ways, including disease, relocation of people and villages, reduction of resources, direct conflict, and loss of the indigenous way of life. However despite the growing acceptance of indigenous rights in Brazil, traditional lands are still affected by other interests and activities. This chapter will highlight some of the other stakeholders with interests that directly and indirectly affect indigenous people.

5.1 Colonisation of the Amazon: Roads and Settlement

The military rule (1964 – 1985) began with a plan for economic development in the region, called Operation Amazônia [Pedlowski, 1997]. This plan centred around increasing economic capacity for natural resource exploitation in the region, and encouraged immigration and independent investment in infrastructure. The need for occupation of the area was driven not only by economic reasons, but by concerns for the sovereignty of the land on account of its remote location [Carvalho et al, 2002]. It was for this reason that development poles were established, with roads to connect them to the existing settlements. These roads included the BR-364 (Cuiabà – Porto Velho – Rio Branco – Cuzeiro do Sul) and the BR-163 (Cuiabà – Santarém) [Carvalho et al, 2002]. The scale of these roads within the country can be seen in Figure 5.1.



Figure 5.1. Map of roads in the Amazon region. This map highlights some of Brazil’s main roads through the Amazon region (after University of Texas at Austin [2004]).

In the 1970’s the focus shifted to settlement [Pedlowski, 1997], and the Government espoused opening up the Amazon region, under the slogan “land without people, for people without land” [The Economist, 2004]. This scheme was known as the National Integration Program (PIN), the centerpiece of which was the Transamazônica Highway (or BR-230), a 4800 km road along which small-scale agriculture was planned [Carvalho et al, 2002]. See figure 5.1.

The settlement program along the Transamazônica Highway was largely unsuccessful. The goal had been to settle half a million people over 5 years, however after 4 years only

8% of the anticipated settlers had taken up land [Pedlowski, 1997]. The failure of the settlement scheme was due to the Government's change of perspective, which, after a policy review following the BR-230's completion, switched from assisting small farmers and the landless, to accommodating large corporate settlements and *latifundios*, or large cattle ranches [Carvalho et al, 2002]. Some smaller farms were sporadically established, but a lack of secure titles, their remote location and a lack of Government support resulted in many of these being bought up by the cattle ranchers.

The construction of these roadways was the means by which some indigenous groups had their first contact with modern Brazilians, leading to the spread of disease to which the native peoples had no immunity. The roads were also the catalysts for other interests to enter the area, and create the conflict over indigenous land that exists today. There is continual talk of paving the BR-163, however lessons learned from the paving of BR-364 show that the environmentally detrimental effects and increased resource extraction prove difficult to manage [Reid and Bowles, 1997]. While improving the road quality would increase the economic yield from resources in the Amazon region, the conflict over indigenous demarcations would increase as further individuals gained an interest in the land concerned.

5.2 Logging

It is now recognized that 85% of deforestation in Brazil occurs within 40km of a road [The Economist, 2004] due to the reduced cost of transporting the lumber to points of sale. A proximal roadway will also increase the value of land that has been cleared, as it is usually sold for pastoral or agricultural purposes. Deforestation has been the principal

element changing tribal life over the past 40 years [Tresierra, 1999]. Indigenous groups proximal to areas of deforestation are affected by the loss of diversity. Their hunting patterns and access to traditional resources are affected, resulting in changes to their way of life. When the land has been cleared, the soil conditions in the region change, and can result in the subsequent degradation of indigenous lands.

In some cases, the indigenous groups themselves are contributing to the logging problem [Tresierra, 1999]. The forests provide a source of quick income, and where indigenous groups have had their territories demarcated they are able to sell the logging rights on their land to third parties. In many cases the prices the indigenous people are given for the resources are far less than their market value. However, either through a lack of education or cultural barriers, they appear unaware that third parties are taking advantage of them.

In other cases, money gained from logging indigenous territories is invested poorly, again either through cultural barriers, or through deception. The Kayapo, for example, world renowned for their land battle and the involvement of musical artist, Sting, are active in the deforestation of their own lands for mahogany. The profits from this venture appear to be managed poorly, however, being invested by the Chiefs in luxury items such as cars and ranches [The Economist, 1993]. While the annual profits of one Kayapo village was over a million dollars in 1988, one in four children still died during infancy [The Economist, 1993].

5.3 Ranchers (latifundios)

One of the most controversial interests in land within the Amazon is large scale cattle ranching. These properties, known as *latifundios*, are often enormous in size, (up to 2.4 million acres for a single property owner [Le Breton, 1993]) being the product of many smaller farms that have failed as a result of poor appreciation for the limitations of agriculture in the Amazon. Some *latifundios* are alleged to have their own militias to ensure the large landholdings are secure. Many of these allegations have been made by indigenous people who have been threatened or forced off their land by violence. In the 1980's, when Brazil's inflation was rampant, holding onto land appeared to be a sound investment. That the new roads gave the opportunity to gather such land with relative ease, only encouraged large multinational corporations and experienced ranchers to occupy as much land as was possible [Wright & Wolford, 2003].

5.4 Mining Companies & Garimpeiros

In the 1980's new problems arose for indigenous groups with the discovery of gold deposits. Landless workers turned to gold for income and their livelihood; some becoming small-scale surface miners, or *garimpeiros* [Schmink and Wood, 1992]. Confrontations arose between the *garimpeiros*, large-scale mining corporations with exploitation rights to state lands, and the Indians who had rights to reservation lands. The *garimpeiros* grew both in number and in political and economic power. In 1980, when *garimpeiros* contested the rights of a state mining company to Serra Pelada, a particularly rich deposit, the Government found in the *garimpeiros* favour providing they remained under military supervision. This decision was largely intended to foster a political

constituency, however it backfired when *garimpeiros* stood up to the army in 1984 and overran Serra Pelada [Schmink and Wood, 1992].

The Yanomami people, the traditional lands of which straddle the Brazil – Venezuela border, are one of the most infamous cases of indigenous people who were nearly decimated by mining interests. Miners, who brought with them diseases to which the Yanomami had no immunity, inundated this large population of indigenous people. Violence erupted between the indigenous people and the miners, and resulted in the massacre of at least 16 Yanomami, including women, children and the elderly. The issues surrounding the Yanomami are discussed further in Section 6.2.

The Greater Carajás project is another example of mining interests taking precedence over traditional indigenous lands. Grande Carajás, as it is known, occupies an area the size of Britain and France combined, or 10.6% of Brazil's landmass [Treece, 1987] (See figure 5.1). This land was appropriate by the Government for a huge development that would include agricultural projects, cattle-ranching, forestry, heavy industry and, principally, mineral exploitation. The programme was seen as a chance to quickly pay off Brazil's national debt, and to invite international investment. The development was touted as a means of gaining financial support for the poor, landless and unemployed. Despite the perceived financial gains, however, little has been seen by the people of Brazil and the impact on the 13 000 affected indigenous people has been enormous.

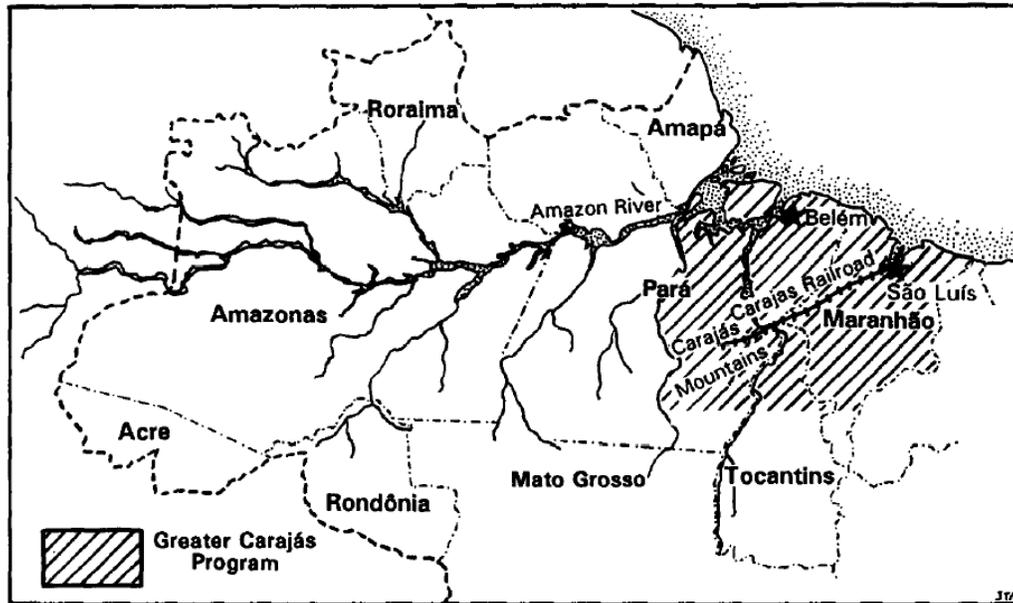


Figure 5.1. The Brazilian Amazon region with the Greater Carajás Programme hatched (from Timmons Roberts [1995]).

5.5 Rubber Tappers (seringueiros)

Rubber tapping was originally developed by the Indian people, and the technique spread to Belem in Para, where production of rubber products for New England and Europe was underway by the end of the 1700's. Indigenous people were forced into labour for the rubber tappers, which resulted in the loss of whole tribes, due to disease and maltreatment [Le Breton, 1993]. As a result, the tribal lands were taken over by the rubber tapping "bosses". When the Second World War began, America put out tender for 100 000 tons of rubber from the Amazon (3 times the annual production today). The Brazilian Government recruited the rubber tappers required to collect this rubber, promising free transport, clothing, housing, medicine, military pensions and more. After the war, however, the rubber market again crashed, leaving the rubber tappers without income, and the Government did not pay out the promised military pensions.

When ranchers began to commandeer the lands, the rubber tappers were displaced despite their squatters' rights. The Government was not supportive of the rubber tappers, particularly as a large area of natural forest is required to sustain the industry, preventing progress and more profitable resource exploitation. As the rubber tappers began to receive education from the priesthood, they formed a union through which they lobbied the Government for extractive reserves, vested in the union. These reserves would protect the rubber tappers from the ranchers, and provide some security in the form of 30 year leases for individuals [Le Breton, 1993].

There are a lot of similarities between the rubber tappers way of life and that of the indigenous people. Firstly there is the large area with a sparse extracting population required for a viable rubber tapping lifestyle. This makes the need for teachers and health professionals difficult to justify economically. Secondly there is a need for extractive reserves whereby the interests of the rubber tappers can be protected from ranchers, miners and those with logging interests. It is for this reason that the rubber tappers have made an alliance with indigenous groups, known as People of the Forest [Le Breton, 1993], who promote a shared interest in forest preservation [Wright and Wolford, 2003].

CHAPTER 6

PRIORITISING INDIGENOUS ISSUES ON THE NATIONAL AGENDA

This section will examine the way in which the Brazilian Government has prioritised indigenous issues over the past forty years.

6.1 The military regime (1964 – 1985)

Brazil's political governance has changed greatly over the past forty years. In 1964 the military overthrew a democratic republic in which accelerated economic growth led to unbridled inflation and social unrest [Embassy of Brazil, 2004a]. The military regime lasted until 1985 when nationwide demonstrations demanding that the people of Brazil be able to elect their own government.

Priorities under the military regime centred national security and economic growth, both of which were detrimental to the interests of the indigenous people. The Amazon region was seen as an enormous unpopulated region, which constituted a risk to national security. The presence of the Indians was ignored, possibly because their sparse populations did not fit with the military vision of mass colonisation to secure the border regions [Ramos, 1998]. The road networks, mentioned in Section 5.1, were planned and rumours of foreign plans for development were frequently stirred up to reinforce concerns for national security. In the late 1960's, a large agribusiness laid claim to 9 million hectares within the state of Mato Grosso [Ramos, 1998]. When international opposition arose to the displacement of the indigenous groups in the region, the Minister of the Interior stated that the "Indian has to stay in the minimum space possible" [Ramos,

1998]. This, and many of the large developments to come in the 1970's, was just the sort of business the Government approved of – using land for economic growth, while ensuring mass colonisation for jurisdictional security.

6.2 President José Sarney (1985 – 1989)

The first civilian President elected in twenty years, President Tancredo de Almeida Neves was also a member of the opposition party. However when Neves fell ill and failed to recover the elected Vice President, José Sarney, was sworn in his place on the condition that he continue to follow the party line.

There were two main priorities during President Sarney's office. The first was the new Constitution as previously mentioned in Section 3.1. This endeavor was favorable for Brazil's indigenous people, however the second priority of President Sarney was very different.

The Calha Norte project built upon the national security concerns of the military regime, and was prepared in secret only months after the military Government stepped down from power. The project was made public in 1986, and outlined the way in which the military would establish colonies along the border areas and improve the northern transportation routes. This project was being enacted ostensibly due to concerns for drug trafficking and guerrilla activities along the border regions [Schmink and Wood, 1992]. The added economic benefits of mineral resources, and the impact this scheme would have on the indigenous groups occupying the areas of interest was not emphasised by the Government, however. In fact, the potential for some indigenous groups to form their

own independent state was one of the drivers for this action. The Yanomami people, who also happened to occupy territory of immense economic interest, were chiefly suspected of planning to pursue independence from Brazil by virtue of their traditional territory straddling the border between Venezuela and Brazil.

Prior to commencing the construction of military outposts and air bases, the Government began to demarcate indigenous territories in a systematic manner along the 150 km wide, 6 500 km northern border of Brazil. This would include 63 000 indigenous people in 83 different areas [Ramos, 1998]. Indigenous people were confined to the smallest territories possible, and in many cases discontinuous areas that would permit resource extraction between the territories. While garimpeiro activities were not permitted within the region, major mineral extraction companies were permitted to operate within indigenous territories following consultation with the communities involved. This was a somewhat farcical arrangement, however, as the indigenous people had no veto power over the activities [Ramos, 1988].

When the westward moving Calha Norte demarcation project reached the lands of the Yanomami – a traditional territory of almost 9.5 million hectares, and a large population that contradicted the Government portrayal of the land as ‘uninhabited’ – problems with the scheme intensified. The Yanomami were confined to 19 discontinuous territories with ‘national forest’ space between them, which were to function as resource extraction zones. However despite this and the military presence in the area, the Yanomami territories were inhabited with up to 150 000 garimpeiros in June, 1989 [Ramos, 1998].

Not only did this bring disease to the Yanomami people and result in mercury pollution of the rivers, but extensive conflicts between the garimpeiros and indigenous people began to occur. This brought extensive international and national attention, and a court order to remove the garimpeiros from the lands. Instead of removing the miners altogether, however, the Sarney administration ordered the 'natural forest' between the demarcated, discontinuous Yanomami territories to be open to garimpeiros, giving them free reign of this unexploited territory [Ramos, 1998].

Despite the good intentions towards indigenous welfare promoted through the revised Constitution, the overarching priorities of the Sarney Government were national security and economic development.

6.3 President Fernando Collor de Mello and President Itamar Franco (1989 – 1994)

The following presidential reign appeared to make concerted efforts to balance indigenous concerns and economic development. In 1989 President Fernando Collor de Mello was elected, and upon entering office worked to expel the garimpeiros by dynamiting their airstrips and quickly saw to the demarcation of a contiguous Yanomami territory [Le Breton, 1993]. The former was hailed largely as a means of appeasing the media and international NGO's, however the latter stood the President in good stead and the Calha Norte plan gradually faded from the political agenda. Mello saw less than 3 years in office before being impeached on allegations of corruption. He was succeeded by the Vice President, Itamar Franco, who concentrated on curbing Brazil's rising interest rates. Yet despite this rocky political road, Collor oversaw the demarcation of 58

territories, and homologated 112 more, while Franco was responsible for the homologation of 55 territories in his short span of Government.

6.4 President Fernando Henrique Cardoso (1994 – 2002)

Although President Cardoso was responsible for the controversial Decree 1775, indigenous issues were not a high priority on his political agenda. The Cardoso administration did not issue *any* new demarcations in the first two years of office [Turner, 1996]. However at the same time as issuing the new decree, Cardoso confirmed the demarcation of 21 new indigenous areas. This would appear to be more of an effort to gain public approval than a firm political priority. In addition, the Government had also refrained from registering the many reserves that had already been homologated and were simply awaiting formal registration at the titles office. These were then made open to appeal under the new Decree.

The main emphasis of Cardoso's Government was economic growth, which was so successful that it ensured him re-election for a second term.

6.5 President Luiz Inácio Lula da Silva (2002 -)

In 2002, Luiz Inácio Lula da Silva (better known as Lula) was elected President, in Brazil's first handover between two directly democratically elected Presidents in over 40 years [Embassy of Brazil, 2004a]. Lula was also the first elected leftwing President. Little has been written thus far regarding Lula's stance on indigenous issues, however according to the Brazilian Home Office (2003) the administration has already ratified 21

different territories (whether this includes registration at the land titles office is not mentioned, however).

What is clear is that the main political concern of this government is working to resolve economic disparity. As a former blue-collar worker, Lula was well regarded for his efforts towards this prior to gaining the presidency. It would seem unlikely that major endeavours will be made towards indigenous land registrations under this government.

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APPENDIX 1

CHAPTER VIII INDIANS

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

Paragraph 1 - Lands traditionally occupied by Indians are those on which they live on a permanent basis, those used for their productive activities, those indispensable to the preservation of the environmental resources necessary for their well-being and for their physical and cultural reproduction, according to their uses, customs and traditions.

Paragraph 2 - The lands traditionally occupied by Indians are intended for their permanent possession and they shall have the exclusive usufruct of the riches of the soil, the rivers and the lakes existing therein.

Paragraph 3 - Hydric resources, including energetic potentials, may only be exploited, and mineral riches in Indian land may only be prospected and mined with the authorization of the National Congress, after hearing the communities involved, and the participation in the results of such mining shall be ensured to them, as set forth by law.

Paragraph 4 - The lands referred to in this article are inalienable and indisposable and the rights thereto are not subject to limitation.

Paragraph 5 - The removal of Indian groups from their lands is forbidden, except *ad referendum* of the National Congress, in case of a catastrophe or an epidemic which represents a risk to their population, or in the interest of the sovereignty of the country, after decision by the National Congress, it being guaranteed that, under any circumstances, the return shall be immediate as soon as the risk ceases.

Paragraph 6 - Acts with a view to occupation, domain and possession of the lands referred to in this article or to the exploitation of the natural riches of the soil, rivers and lakes existing therein, are null and void, producing no legal effects, except in case of relevant public interest of the Union, as provided by a supplementary law and such nullity and voidness shall not create a right to indemnity or to sue the Union, except in what concerns improvements derived from occupation in good faith, in the manner prescribed by law.

Paragraph 7 - The provisions of article 174, paragraphs 3 and 4, shall not apply to Indian lands.

Article 232. The Indians, their communities and organizations have standing under the law to sue to defend their rights and interests, the Public Prosecution intervening in all the procedural acts.

[Federative Republic of Brazil, (1988)]