



Advances and Setbacks

in territorial rights in Brazil



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Advances and setbacks in territorial rights in Brazil

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Contents

Acronyms and abbreviations

Executive summary	5
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Part 1 The construction of territories of Brazilian diversity

1.1 A development model opposed to traditional peoples	8
1.2 Civil society, social movements, and the 1988 Constitution	8
1.3 Advances in legislation and the territorial rights of traditional peoples.....	9
1.4 The role of protected areas in reducing deforestation	14

Part 2 Changes in economy, changes in rights

2.1 Deindustrialization and the strengthening of the extractive economy.....	17
2.2 More money, more political influence.....	19
2.3 For hydroelectric dams, the government reveals its contempt for environmental laws	21

Part 3 The current siege of indigenous lands and other protected areas in Brazil

3.1 Congress pushes for weaker land rights	23
3.2 Slowdown in new land-rights recognition.....	23

Conclusion	30
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Acronyms and abbreviations

CIMI	Indigenist Missionary Council [<i>Conselho Indigenista Mission</i>]
GNP	gross national product
CNS	National Rubber Tappers Council [<i>Conselho Nacional dos Seringueiros</i>]
CPT	Pastoral Land Commission [<i>Comisión Pastoral de la Tierra</i>]
GW	gigawatt(s)
IBAMA	Brazilian Institute of Environment and Renewable Natural Resources [<i>Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis</i>]
ICMBio	Chico Mendes Institute for Conservation of Biodiversity
ILO	International Labour Organization
Imazon	Institute for People and the Amazon Environment [<i>Instituto do Homem e do Meio Ambiente na Amazônia</i>]
INCRA	National Institute for Colonization and Agrarian Reform [<i>Instituto Nacional de Colonização e Reforma Agrária</i>]
SNUC	National System of Nature Conservation Units [<i>Sistema Nacional de Unidades de Conservação</i>]

EXECUTIVE SUMMARY

Today, Brazil is poised to reverse the considerable gains made between 1988 and 2008 in the land rights of Indigenous Peoples and other traditional communities. Such a reversal would have disastrous consequences for such communities in Brazil and elsewhere, and also for the globally important Amazonian forests. This paper looks at the historical development of land rights in Brazil and explains why Brazil is now at a critical turning point.

Until the first few decades of the 20th century, the vast savannas of central Brazil and the tropical forests of the Amazon were predominantly the lands of Indigenous Peoples. Between 1930 and 1960, however, new public financing and incentives promoted colonization and the economic exploitation of the Brazilian interior, and many Indigenous Peoples and other traditional communities were dispossessed of their lands. When the military came to power in 1964, vast areas of land that had been occupied by Indigenous Peoples and other traditional communities were turned over to colonization projects and cattle-ranching ventures. By the time the military ceded power to a civilian government in 1984, the Brazilian interior had become a region of agricultural expansion and the Amazon a territory subject to growing land conflicts, violence against Indigenous Peoples and other traditional communities, fire, and large-scale deforestation.

Indigenous Peoples and traditional communities affected by the development policies of the military government reacted to the advance of these economic fronts through direct action, and mobilization of alliances to demand the demarcation of indigenous lands and the creation of extractive reserves and other protected areas in the Amazon to protect the forest.

The development of a new constitution in 1988 enabled these demands to be taken up as part of a new democratic proposition for the country. Despite opposition by certain political and economic actors, the new Federal Constitution recognized the ancestral rights of Indigenous Peoples, the right of all to an ecologically balanced environment, and the territorial rights of rural black communities (*quilombos*).

It took some time after the approval of the 1988 Federal Constitution for the federal government to begin a meaningful process of indigenous land recognition. Nevertheless, between 1995 and 2002, 41 million hectares of indigenous lands were demarcated nationally, and another 13.3 million hectares of indigenous lands were recognized between 2003 and 2010.

Conservation units for sustainable use – including extractive reserves, sustainable development reserves, and national forests – were also developed to protect both ecosystems and the ways of life of traditional peoples.

Coinciding with the demarcation of large areas of forest as Indigenous lands and sustainable-use units, the annual deforestation rate in the Amazon fell by 74 percent between 2004 and 2012. Most recently, data show that a total of 43,700 hectares were deforested in the Amazon in August 2014, of which only 400 hectares (0.9 percent) were on Indigenous land, even though such land comprises 24 percent of the Amazon region. This shows the effectiveness of the recognition of land rights for forest peoples as a way of controlling deforestation.

The Brazilian economy has shifted dramatically towards agriculture and mining in the last two decades, increasing demand for both land and infrastructure development—including hydroelectric schemes—in the Amazon. The economic growth of the agricultural, mining, energy, and civil-construction sectors has increased their political power in the National Congress and given them enormous influence over the policies and decisions of the federal government.

This has created a highly unfavorable political environment for the rights of traditional peoples. Proposals to gut environmental legislation and extinguish land rights of Indigenous Peoples and other traditional populations have gained ground in recent years. Lobbyists argue that current environmental regulations and the granting of land rights are a hindrance to national economic growth. For example, Constitutional Amendment Proposal No. 215 calls for the reassignment, to Congress, of the powers currently vested in the executive in demarcating Indigenous lands and creating protected areas.

Under the pretext that greater power generation was needed to propel economic growth, attention has turned back to hydroelectric projects in the Amazon. The urgency conferred by President Luiz Inacio Lula da Silva and then by President Dilma Rousseff to such hydroelectric projects prompted the government to violate processes for environmental licensing and consultations with people directly affected by development projects.

The effects of this political pressure are being felt. The pace of demarcation of indigenous lands has plummeted since 2011, reaching the lowest levels since the return of civilian government. Currently, 101 indigenous lands are pending official recognition by the federal government. Only 10 areas were declared between 2011 and 2014 and only 11 were approved, the lowest figures in nearly 30 years.

The creation of conservation units has also suffered an unprecedented decline, especially for those intended for use by traditional peoples. By June 2014, with less than six months left in office, the Dilma government had created only three conservation units, none of them in the Amazon. Moreover, the Dilma government issued Provisional Measure No. 558, which excluded 86,000 hectares from seven federal conservation units in the Amazon to accommodate four major dams on the Madeira and Tapajós rivers. Between 1995 and 2013, the federal government reclassified 2.5 million hectares of the Amazon region originally intended as conservation units and indigenous lands, in large part to make way for agricultural land and infrastructure projects.

If the National Congress passes bills intended to undo already recognized land rights and open up indigenous lands to hazardous projects, human rights in Brazil will have reached a turning point. The country stands poised to reverse hard-won human rights, with likely negative knock-on effects for the political agendas of other countries in Latin America and the world whose economies depend on the expansion of commodity production.



part 1

Construction of territories of Brazilian diversity

Tucumã-Rupitã indigenous village, Baniwa people, Alto Rio Negro
Indigenous Land, São Gabriel da Cachoeira, Amazonas, Brasil.
© Beto Ricardo/ISA

The construction of territories of Brazilian diversity

1.1. A development model opposed to traditional peoples

The colonization of Brazil began on the coast and spread inland, its intensity fluctuating with various cycles of natural resource exploitation. Until the first few decades of the 20th century, however, the vast savannas of central Brazil and the immense tropical forests of the Amazonian flood plain to the north were still predominantly the lands of Indigenous Peoples, along with some other traditional communities that had developed as a consequence of two main economic surges – mining and rubber. There were just a few urban areas in those regions, and communities were mostly dispersed and isolated.

Between 1930 and 1960, new public financing and incentives promoted colonization and the economic exploitation of the Brazilian interior. Various expeditions were organized to settle Indigenous Peoples into villages so their lands could be redistributed to settlers. Many Indigenous Peoples were dispossessed of their lands in this way.

In the late 1950s and early 1960s, the construction of the new national capital, Brasília, and the subsequent opening up of new roads between the interior and the more industrialized regions to the east facilitated the migration of people into the interior and the flow of goods from it into national and international markets. After the military came to power in 1964, vast areas of land that had been occupied by Indigenous Peoples and other traditional communities were turned over to

colonization projects and cattle-ranching ventures. Large areas of forestland were made available to loggers and miners, placing them in direct conflict with people whose livelihoods depended on forests.

By the time the military ceded power to a civilian government in 1984, the Brazilian interior had become a region of agricultural expansion and the Amazon a territory subject to growing land conflicts, violence against Indigenous Peoples and other traditional communities, fire, and large-scale deforestation. The military vetoed the creation of protected areas in regions they considered strategic, such as near national borders, and it promoted the territorial displacement and resettlement of Indigenous Peoples.

1.2. Civil society, social movements, and the 1988 Constitution

Inside the forest, groups affected by the development policies of the military government reacted to the advance of the economic fronts. Rubber-tappers in Acre state, for example, began actions called *empates* in the 1970s to protect their subsistence areas. These actions, which were designed to stop the clearing of forests for cattle pastures, involved dismantling the campsites of ranch hands and even standing between bulldozers and the forest. The first *empate* took place in 1973; by 1988, more than 40 had been carried out. At the same time, the first civil-society organizations representing groups affected by development policies began to form, including the National Indigenous Union, led by Ailton Krenak, and the National Rubber Tappers Council (*Conselho Nacional dos Seringueiros*, CNS), led by well-known rural workers' union leader Chico Mendes (who was later murdered by ranchers opposed to his attempts to protect the forest and its peoples).

In the second half of the 1980s, a convergence of movements in support of Indigenous Peoples and the environment succeeded in halting external financing for certain infrastructure projects in the Amazon. This

From the 1930s, governmental policies aimed to redistribute land and exploit natural resources in areas occupied by traditional peoples.

Led by Indigenous Peoples and rubber-tappers, the Alliance of Forest Peoples brought the tenure rights of Brazilian Amazonian peoples into the political debate.

convergence gave birth to the Alliance of Forest Peoples (*Aliança dos Povos da Floresta*), an attempt to link the protection of Amazonian forests and the recognition of land rights for Indigenous Peoples and other traditional peoples living in those forests.

The Alliance protested against the forest destruction and violence promoted by military-led development projects and advocated for a rights-based development model. Among the Alliance's demands were the demarcation of indigenous lands and the creation of extractive reserves and other protected areas in the Amazon to protect the forest from agricultural expansion and timber extraction.

The development of a new national constitution enabled these demands to be debated as part of a new democratic proposition for the country. Despite intense opposition from certain political and economic actors in the constitutional debate, the ancestral rights of Indigenous Peoples, the right of all to an ecologically

balanced environment, and the territorial rights of rural black communities – *the quilombos*¹ – were all embedded in the 1988 Federal Constitution.

1.3. Advances in legislation and the territorial rights of traditional peoples

The adoption of the 1988 Federal Constitution inaugurated a new phase in the political battle over land use and the exploitation of natural resources, especially in the Amazon. The opportunity to regulate development through norms aligned with new constitutional precepts led both informal and organized civil-society movements to concentrate their attention as much on legislative processes as on the agencies responsible for establishing public policies.

Despite opposition in the agriculture and mining sectors, major advances were made in the 1990s and 2000s in the legal recognition of the territorial rights of Indigenous Peoples and other traditional communities.

In the 1990s and 2000s, a new set of norms enabled advances in the territorial rights of Indigenous Peoples, quilombolas and extractivists.



Rubber tappers, indigenous people and environmentalists gather to protest against forest destruction and advocate for land rights. First National Meeting of Forest Peoples, Brasília, 1985. © João Roberto Ripper/Imagens Humanas

→ Indigenous lands

It took some time after the adoption of the 1988 Federal Constitution for the federal government to begin a meaningful process of indigenous land recognition. Faced with an alleged lack of budgetary resources to meet demand, the demarcation of indigenous lands was made possible by financial support provided by international aid. Between 1995 and 2002, during the two presidential terms of Fernando Henrique Cardoso, 41 million hectares of indigenous lands were demarcated nationally. Another 13.3 million hectares of indigenous lands, including several large areas (some of which, such as Raposa-Serra do Sol in Roraima, were subject to conflict) were recognized between 2003 and 2010 during the two presidential terms of Luiz Inacio Lula da Silva (TABLE 1).

As of June 2014, 693 indigenous lands covering 113,187,884 hectares had been demarcated, equivalent to 13.3 percent of the Brazilian territory. Most of these lands (422, and 98.42 percent by area) are located in the Amazon. The remaining indigenous lands (1.58 percent) are outside the Amazon and predominantly comprise small areas, often with insufficient natural resources to meet the subsistence needs of the indigenous communities

Indigenous rights under the Federal Constitution

When European colonization began in the 16th century, an estimated 2 million–4 million Indigenous Peoples lived in the territory that today comprises Brazil. By the 1980s, their numbers had declined to only 250,000, the majority in the Amazon. According to the most recent official population census, this number had increased to 897,000 (0.47 percent of the Brazilian population) by 2010, of whom nearly two-thirds (63.7%) lived in non-urban areas.²

Historically, official policies towards Indigenous Peoples have often resulted in either massacres or detribalization and assimilation as a cheap labor force. The 1988 Federal Constitution represented a departure from this pattern, however, because it recognized the right of Indigenous Peoples to live on the lands they traditionally occupied according to their ways of life, beliefs, languages, and traditions (Article 231). According to the Constitution, the federal government has a duty to recognize, identify and protect indigenous lands. These lands belong to the state but can only be used by their original owners—the Indigenous Peoples—who enjoy exclusive usufruct rights to the wealth of the soil, rivers, and lakes existing on their lands. Note, however, that the Federal Constitution allows the National Congress to grant authorization to third parties to explore resources such as water (rivers and lakes), including for energy generation, and subsoil minerals on an exceptional basis, following consultation with affected communities.

Table 1. Demarcation of Indigenous Lands (TI), 1986-2014

Presidents	Indigenous Lands			
	Declared		Registered	
	Nº	Area (hectares)	Nº	Area (hectares)
Dilma Rousseff (2011-October 2014)	10	1,094,276	11	2,025,406
Luiz Inacio Lula da Silva (2 nd term)	51	3,008,845	21	7,726,053
Luiz Inacio Lula da Silva (1 st term)	30	10,282,816	66	11,059,713
Fernando Henrique Cardoso (2 nd term)	60	9,033,678	31	9,699,936
Fernando Henrique Cardoso (1 st term)	58	26,922,172	114	31,526,966
Itamar Franco	39	7,241,711	16	5,432,437
Fernando Collor	58	25,794,263	112	26,405,219
José Sarney	39	9,786,170	67	14,370,486

Note: Columns should not be summed because various lands registered by one government were redefined and registered again by other governments.

Source: Instituto Socioambiental, October 2014

Kayapós leaders during the discussions about the new Constitution in the National Congress. Brasília, 1988 © Beto Ricardo/ISA



→ **Extractive reserves and sustainable development reserves**

The concept of extractive reserves arose from a dialogue between the rubber-tapper movement in the Amazon and elements in society who supported the rubber-tappers' struggle to maintain their livelihoods and retain their territories. Together, the rubber-tappers and their supporters were able to introduce a conservation "lens" to the debate, arguing that because Amazonian peoples depend on forest resources for their livelihoods they are potential partners in conservation. The recognition of their territories, it was argued, would result in greater forest protection while ensuring access by traditional rubber-tapper communities to the resources they needed for their subsistence.

Ten areas amounting to 889,548 hectares were created between 1987 and 1989 as "extractive settlement projects." Starting in 1989, extractive reserves became part of the National Environment Program, regulated as

Extractive reserves are territories within the public domain designated for the sustainable use and conservation of natural resources.

part of the National System of Nature Conservation Units (*Sistema Nacional de Unidades de Conservação, SNUC*).

Extractive reserves are one of several SNUC reserve types in which sustainable use ("sustainable-use conservation units") are permitted (SEE BOX).

According to the SNUC, extractive reserves are territories within the public domain designated for the sustainable use and conservation of natural resources. Use rights for the natural resources in these areas are granted and regulated through contracts and statements of commitment that must align with management plans formulated with the producers and approved by the government agency responsible for the area. At the federal level, this agency is the Chico Mendes Institute for Conservation of Biodiversity (*Instituto Chico Mendes de Conservação da Biodiversidade - ICMBio*).

Although they are also meant to protect the rights of traditional communities, sustainable development reserves arose in a different context from that of extractive reserves. The first of these – the Mamirauá Sustainable Development Reserve – was created in 1996 by the government of Amazonas state as a result of the personal commitment of Brazilian primatologist José Márcio Ayres (1954-2003), who conducted research in this seasonally flooded area. Sustainable development

reserves are areas in the public domain where natural resource use is permitted but regulated.

Both extractive reserves and sustainable development reserves were conceived originally in the Amazon, but they have since been adopted in other parts of Brazil as well. In the Amazon, 69 extractive reserves (44 federal and 25 state) have been created to date, along with 20 sustainable development reserves (1 federal and 19 state). Outside the Amazon, 15 federal extractive reserves have been created, but information on those under state jurisdiction is incomplete. National forests are another category in the SNUC in which extractive communities are permitted; there are 32 national forests in the Amazon. Table 2 shows the extent of federal sustainable-use areas in the Amazon.

Table 2. Status of federal conservation areas (sustainable-use areas) available for extractivist communities in the Amazon

Category	Nº of areas	Area (hectares)
Extractive reserves	44	11,802,215
Sustainable development reserves	1	64,735
National forests	32	15,701,767

Source: Instituto Socioambiental, June 2014

The National System of Nature Conservation Units

The fruit of a troubled debate in the National Congress lasting more than a decade, the law regulating the National System of Nature Conservation Units (SNUC) was approved in July 2000. It categorizes protected areas into two groups: those under full protection and in which natural resource use is not permitted; and those under sustainable use, harmonizing conservation objectives with the sustainable use of natural resources.

The SNUC does not allow the presence of traditional communities in fully protected areas, but people were already living in many such areas when they were created, especially in the Amazon and other regions less affected by urbanization and economic development. According to the SNUC, traditional communities in fully protected areas should be resettled and compensated, and the government must make an agreement with local communities to regulate the use of natural resources. However, some state governments have opted to re-categorize these areas instead, converting them into sustainable-use areas.



Extractive Reserves are public lands designated for the sustainable use of forests. Rubber tappers working in the Extractive Reserve Riozinho do Anfrísio, Altamira, Pará. © Marcelo Salazar/ISA

The National Plan for Protected Areas recognized the role of *quilombolas* communities in the protection of biodiversity. Pilões *quilombola* community, Iporanga, São Paulo. © Felipe Leal/ISA



→ Lands belonging to *quilombolas*

Quilombos are rural communities formed by escaped slaves of African origin during the slavery period and by former slaves freed after the abolition of slavery in 1888. The 1988 Federal Constitution recognizes the tenure rights of such communities to the lands they occupy, and the government is required under the Act of Transitory Constitutional Provisions to issue definitive land titles (Article 68). Communities self-define as *quilombos*, and land titles can be issued by either the federal or state government.

The first titling of *quilombo* lands occurred in 1995. However, only 207 of the more than 3,000 *quilombos*

in Brazil have had their lands recognized, according to official data. In the case of the federal government, this delay is due to various factors, including a lack of data on the situation of *quilombo* lands, and disputes between federal agencies over the implementation of the Constitutional provision.

Fundação Cultural Palmares is in charge of issuing certificates that officially designate communities as *quilombos*. The National Institute for Colonization and Agrarian Reform (*Instituto Nacional de Colonização e Reforma Agrária, INCRA*), the body responsible for executing federal agrarian reform policy, heads the demarcation and titling of these certified lands if they belong to the federal government. Table 3 summarizes

Table 3. Regularization of *quilombo* lands in Brazil

	Situation as of June 2014	Source of information
Nº of communities	3,000 (estimated)	INCRA
Nº of certified communities	2,435	Fundação Cultural Palmares
Nº of cases opened	1,281	INCRA
Nº of communities with land title	217	INCRA

data from *Fundação Cultural Palmares* and INCRA on the recognition of *quilombo* lands.

Other laws and policies also support the implementation of territorial rights in Brazil. One of these is the 2002 ratification, by the National Congress, of Convention 169 of the International Labour Organization (ILO); this convention reinforces a series of rights of Indigenous Peoples and other traditional communities.

1.4. The role of protected areas in reducing deforestation

Until 2006, only conservation areas were legally considered as “protected areas” in Brazil. Under the leadership of the federal environment minister and former rubber-tapper, Marina Silva, however, the federal government approved the Strategic National Plan for Protected Areas, which recognized indigenous lands and *quilombo* lands as areas that contribute to biodiversity conservation. Today, the state recognizes both national parks and indigenous lands as protected areas. These are areas that safeguard Brazil’s cultural diversity while performing sociocultural and ecosystem services for the country and the rest of the world. Such areas support an inestimable cultural heritage that includes music, narratives, legends, dance, and cuisine. They house traditional wisdom that is often little-known to science, such as artisanal and environmental management techniques, and knowledge of biodiversity and agricultural practices, including the genetic improvement of local crops.

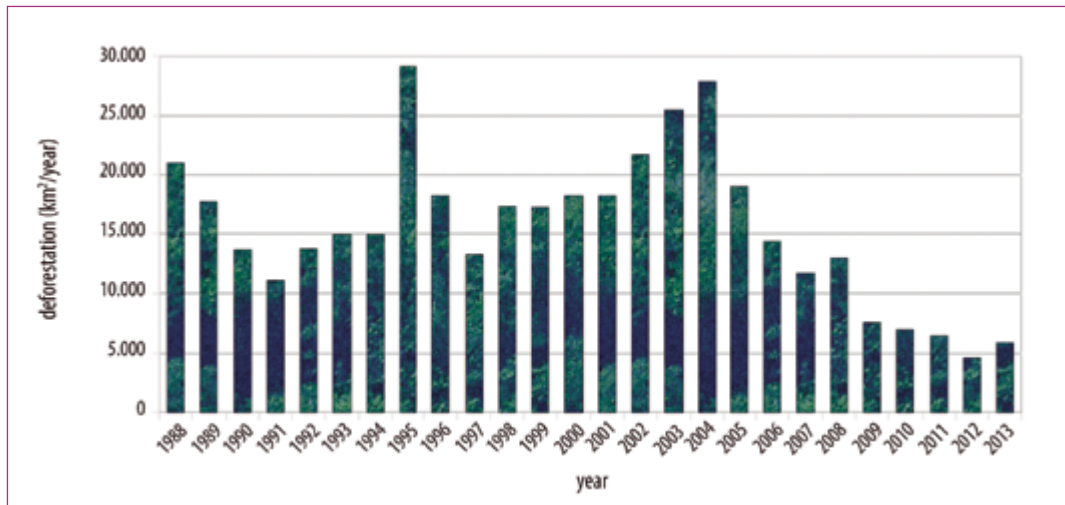
Since 2003, the creation of new protected areas has been used as tool, under the Action Plan for the Prevention and Control of Deforestation in the Legal Amazon (*Plano*

de Prevenção e Controle do Desmatamento na Amazônia Legal), to secure land rights and avoid the unplanned expansion of agriculture in the Amazon at the expense of forests. Among other things, this plan has sought to create protected areas in regions where deforestation and land-grabbing are most prevalent. It has also invested in the development of satellite systems for monitoring forest cover and in operations to subdue economic activities that are driving illegal forest clearing.

Between 2003 and 2010, 56.66 million hectares in the Amazon were converted into federal and state conservation areas for biodiversity protection and sustainable use; most of this land was in areas of economic expansion. In the same period, 18.8 million hectares of indigenous lands were officially recognized in the region.

The Action Plan for the Prevention and Control of Deforestation in the Legal Amazon is credited with reducing deforestation. Between 2004 and 2012, the annual rate of deforestation in the Amazon dropped by 74 percent, from 2.78 million hectares (an area almost the size of Belgium) to 460,000 hectares per year. More than 98 percent of forests on indigenous lands are intact.³ Data from the Institute for People and the Amazon Environment (*Instituto do Homem e do Meio Ambiente na Amazônia, Imazon*) show that, in August 2014, a total of 43,700 hectares were deforested in the Amazon, of which only 400 hectares (0.9 percent) were on indigenous land,⁴ even though such land comprises 24 percent of the Amazon region. This illustrates the effectiveness of the recognition of land rights for forest peoples as a way of controlling deforestation.

Graphic 1. Anual deforestation in the Amazon between 1988 and 2003



Source: Instituto Nacional de Pesquisas Espaciais - INPE



part 2

Changes in economy, changes in rights



Mundurucu indian looking the construction of Belo Monte dam,
in Xingu River, © Leticia Leite/ISA

PART 2

Changes in economy, changes in rights

2.1. Deindustrialization and the strengthening of the extractive economy

As Brazil made gains in forest protection and the recognition of land rights, its economy underwent deep changes, increasingly focusing on agriculture and mining to the detriment of the manufacturing sector.

In the 1980s, Brazil had been a significant producer of industrial goods, and the manufacturing industry contributed 32 percent of the gross national product (GNP). A combination of poor industrial policies, high and persistent inflation, unfavorable exchange rates, and the growth of the Chinese economy – which flooded the international market with cheap goods and significantly increased demand for agricultural and mineral commodities– lowered the economic contribution of the

manufacturing sector. By 2012, its share of GNP had fallen to 13.3 percent, the same as it had been at the beginning of the industrialization phase in 1955.⁵

In the meantime, Brazilian agribusiness has grown dramatically. Today, Brazil is the world's main producer and exporter of oranges, coffee, beef, chicken, and sugar. It is also the world's leading exporter and second-largest producer of soybeans.

International demand for commodities such as meat, soybeans, grains, and minerals is rapidly transforming the Amazon, increasing pressure on the land and resources of traditional peoples.



Cattle cross the Transamazon road in Uruará, Pará. © Marcelo Salazar/ISA

Brazil has been the world's leading exporter of beef since 2008, a position it is likely to retain for some time. The high beef output can largely be attributed to cattle-raising in the Amazon, where the total herd has increased 16-fold since the 1960s. Amazonian cattle accounted for 35 percent of the national herd in 2010, up from 18 percent in 1990.

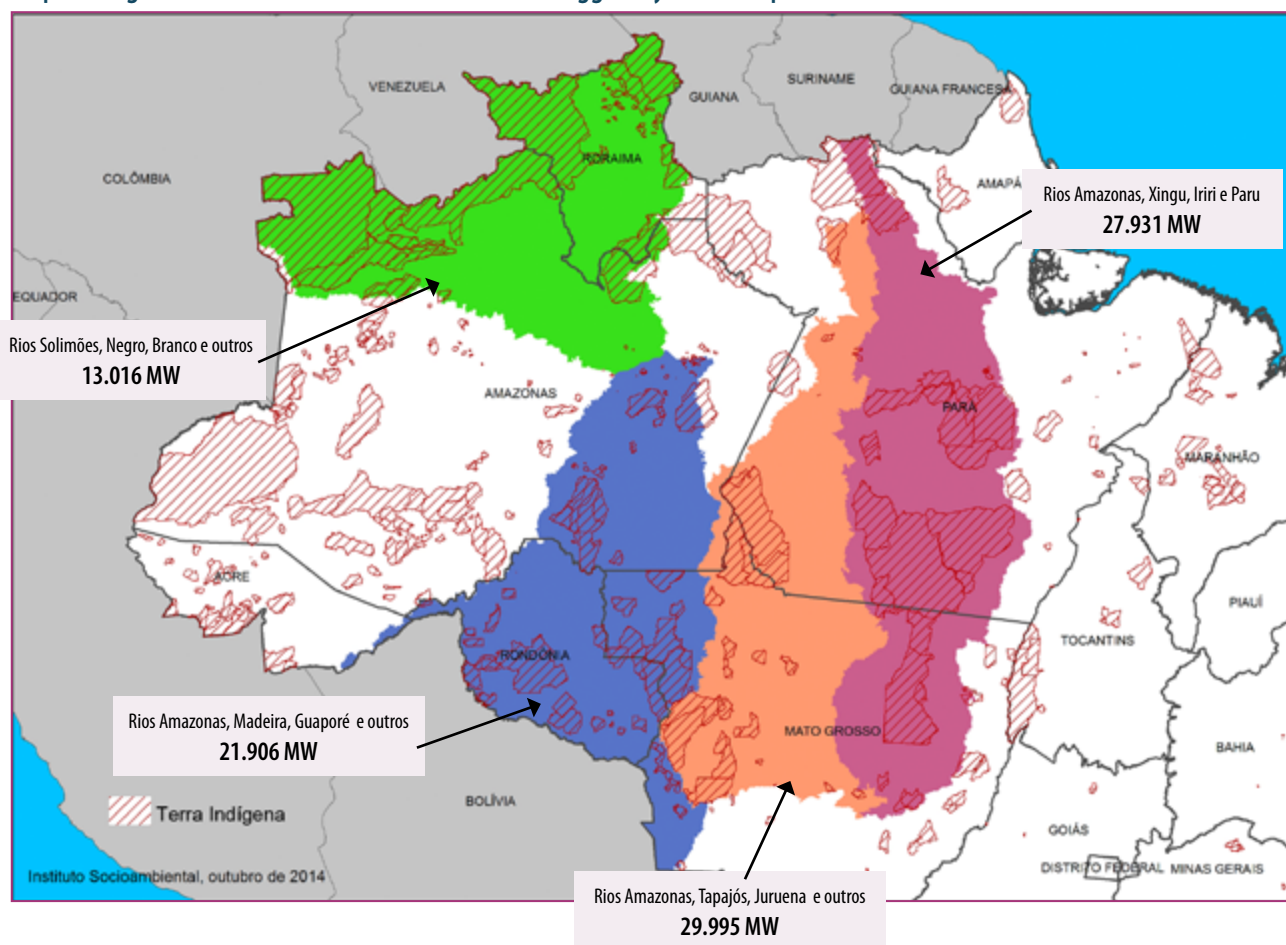
Mineral production has also surged in the last two decades. Brazil is now the largest producer of minerals in Latin America and, since 2008, it has been the world's largest exporter of iron ore. The contribution of the mining sector to the Brazilian economy increased from 1.6 percent of GNP in 2000 to 4.1 percent in 2010. The share of minerals in national exports increased from 7.1 percent in 2006 to 17.3 percent in 2011.

This shift in the Brazilian economy towards the production of commodities and the intensive use of natural resources stirred demand for both land and

infrastructure, such as hydroelectric power stations, highways, waterways, railways, and ports. Most of the land still available for agricultural expansion (i.e. forested land) is in the Amazon and its periphery, where most indigenous lands and other protected areas, such as extractive reserves, are located. Most unexploited mineral reserves are also in the Amazon, many on indigenous lands. Almost 37 percent of all indigenous lands by area in the Amazon have been requested for mining purposes,⁶ despite the lack of suitable federal regulation.⁷

Demand for energy has grown with the expansion of mining and its associated industries (e.g. the manufacture of aluminum and steel), coupled with improved income distribution nationally (which led to an increase in consumption by previously poor people). Today, hydropower accounts for 75 percent of electricity consumed in Brazil,⁸ a country with many large rivers.

Map 1. Indigenous lands in the four watersheds with biggest hydroelectric potential in the Amazon



According to official plans, new dams will contribute 67.5 percent (88.2 gigawatts) of all new electricity projected to be generated in the country by 2030.⁹ Because most of the rivers in the south and northeast of the country have already been dammed, a race is on to construct big dams on the main Amazonian rivers, including the Madeira, the Xingu, the Tapajós, and the Branco. According to official plans, the Amazon region will provide 80 percent of the country's new hydroelectricity – 74 gigawatts – by 2030.¹⁰

A major problem for the federal government and the electricity companies, however, is that all the main Amazonian rivers pass through indigenous lands. The Federal Constitution (and ILO Convention 169) stipulates that, while it is possible to construct dams that affect indigenous lands, it is necessary to consult the affected people before any such construction. Such consultation takes time and may substantially alter the projects, and many companies and even the federal technocracy are reluctant to undertake it. Dams cannot be constructed in national parks or extractive reserves unless the National

Congress approves a law to extinguish or change the boundaries of such reserves.

2.2. More money, more political influence

The growth of agricultural, mining, energy, and civil-construction companies and business groups has increased their political power inside and outside the National Congress and given them enormous influence on the federal government. This has particularly been the case since 2008, when, during the term of President Lula, a political crisis caused the center-left (Workers' Party) government to join forces with such groups in order to stay in power.

The political representation of rural interests in the National Congress grew from around 20 deputies in the first two legislatures after re-democratization (1986 – 1990 and 1990 – 1994) to 117 in the third legislature. Today, 158 parliamentarians represent agribusiness interests, comprising 140 deputies (out of a total of 513) and 18 senators (out of 72).¹¹ Today, these parliamentarians collectively make up the most powerful

Agribusiness representatives command the approval of the new Forest Code by the National Congress, 2012. © Leonardo Prado/Agência Câmara





35 million hectares of forests illegally cleared won't be restored due to the new Forest Code. River without protective riparian forests in São José do Xingu, Mato Grosso. © Marisa G. Fonseca/ISA

supra-party coalition in the National Congress, known as *bancada ruralista* (the “rural caucus group”).

In the 2014 general election, the agribusiness sector was the second-largest donor to presidential candidates, contributing a total of R\$46.7 million to the three main candidates in the first round, the majority (R\$29 million) to the Workers’ Party campaign. The largest donor was the infrastructure sector, which contributed R\$63.1 million to presidential candidates, 65 percent of which went to the incumbent president, Dilma Rousseff.¹²

The increase in political power of these economic interest groups in the National Congress has enabled them to begin an agenda of “revision” of environmental and land-rights statutes and policies they see as obstacles to their economic activities.

In 2008, with considerable help from the executive branch, the *ruralistas* changed the law that regulates the granting of public lands to private farmers in the Amazon, allowing lands up to 1,500 hectares in size to be granted

with relatively few conditions or obligations, facilitating the legal expansion of big farms over public (forested) lands.¹³

In 2011, led by agribusiness representatives and with federal government backing, the National Congress passed a law that weakened the federal environmental agency, the Brazilian Institute of Environment and Renewable Natural Resources (*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis, IBAMA*), by taking away its power to impose fines on illegal deforestation in farms licensed by the states.

In 2012, the *ruralistas* achieved what even they had thought was impossible: they changed the Forest Code. According to this law, which was enacted in the 1930s, every farmer must conserve a portion of the native vegetation on his or her land because of the ecosystem services this vegetation provides to society, such as the regulation of rainfall and the purification of water. In the 2000s, after many decades of minimal enforcement and

widespread deforestation, the state (at both the federal and state levels), pushed by public opinion, began to monitor and punish those who had illegally cleared more forest than was allowed by law. This, along with the creation of new protected areas, led to the first consistent decrease in Amazon deforestation since the 1980s. It also brought fierce opposition from agribusiness interests, however, who were unhappy about paying fines for past illegal deforestation and having to restore forest on their lands. After a long fight with environmental groups, who were generally supported by Brazilian public opinion, the *ruralistas* led the approval of a new law that gave amnesty to farmers who had illegally cleared forest up to 2008.¹⁴ The result of this law is that at least 35 million hectares of deforested land won't have to be restored, and billions of dollars in fines will be forgiven.¹⁵

2.3. For hydroelectric dams, the government reveals its contempt for environmental laws

Large-scale hydroelectric schemes in the Amazon were controversial in the 1980s because of their grave social and environmental impacts. In addition to flooding large areas of forest, hydroelectric projects swiftly and profoundly change social dynamics in the regions where they are built.

To prevent a recurrence of the disastrous experiences of the past, laws were enacted to mitigate the negative impacts caused by large-scale energy ventures as well as to compensate those affected by dam construction and operation. Hydroelectric (and other) projects must therefore adhere to certain conditions to obtain an environmental license (SEE BOX), but the determination of the federal government to “carry forward gigantic infrastructure projects that transform the geography

Military forces have been mobilized against Indigenous Peoples and other groups that protest against noncompliance with agreements made between government agencies and construction companies.

Environmental licensing of large projects

Environmental licensing is a legal prerequisite for any activity or venture with the potential to cause harm to the environment. Legislation mandates in-depth technical studies, at the expense of the proponent, so that government agencies may evaluate the potential social and environmental impacts. Based on these environmental impact studies, measures are established to minimize or repair expected damage. The conclusions of these studies should be presented in a simplified document, called an environmental impact report that is made accessible and clear to the public.

In the case of projects or activities affecting indigenous lands, the Federal Constitution stipulates that users of water resources, including for their energy potential, must first seek “authorization of the National Congress, after hearing the affected communities.” At the same time, while prohibiting the removal of Indigenous Peoples from their lands, the Federal Constitution opposes projects that will flood indigenous lands. In addition, ILO Convention 169 guarantees the participation of Indigenous Peoples in the planning of projects that affect their lands and traditional ways of life.

Citing delays to infrastructure projects caused by the licensing process, in October 2011 the Dilma Rousseff government published Inter-Ministerial Ordinance No. 419, which restricted the timeframe for agencies responsible for environmental, indigenous and *quilombola* policies to produce impact studies. This decision negatively affects not only the right of affected people to prior consultations but also the demarcation of indigenous lands in areas where new projects are planned.

The political influence of economic actors involved in large projects causes confusion in the application of environmental licensing rules and may induce leniency within the agencies responsible for environmental protection. In the case of hydroelectric dams, one technique is to plan construction near or bordering indigenous lands, even when such proximity would obviously negatively affect the way of life of the resident Indigenous Peoples.

and economy of the country”¹⁶ has led it to steamroll environmental assessment regulations, pressuring the agencies in charge of granting licenses and failing to consult affected communities. The government even mobilized the Federal Police and the National Security Force to subdue protests by Indigenous Peoples and others affected by projects, an action without precedent in Brazilian democratic history. The use of force or general coercion against Indigenous Peoples violates Article 3 of ILO Convention 169.

part 3

The current siege of indigenous lands and other protected areas in Brazil



Monte Roraima National Park, in the Brazil-Guiana border.
© Taylor Nunes/2007

The current siege of indigenous lands and other protected areas in Brazil

3.1. Congress pushes for weaker land rights

The spread of agribusiness across the Amazon Basin, increasing demand for subsoil minerals on indigenous lands, and the expansion of federal government infrastructure projects indicate a bleak future both for the land rights of traditional peoples and for protected areas in Brazil.

After changing many of the key national environmental and land-use laws in their favor, the agribusiness, mining, and construction lobbies now want to change the rules that protect the lands of Indigenous Peoples and other traditional communities, as well as the laws that regulate the creation of new protected areas. More than 50 bills are before the National Congress seeking such changes. The intent of the majority of these bills is to transfer the authority to recognize and demarcate indigenous lands, as well as to create new protected areas, from the executive branch of government to the National Congress, where parliamentarians opposed to protected areas, especially those allied to the agribusiness sector, are becoming increasingly powerful. This is the case of Constitutional Amendment Proposal No. 215, which calls for the reassignment, to Congress, of the powers currently vested in the executive branch in demarcating indigenous lands and creating protected areas. A legislative commission in the Chamber of Deputies, which is dominated by agribusiness-aligned representatives, is analyzing the proposal and, as of July 2014, had carried out nine public hearings in various regions of the country in an attempt to legitimize the process.

Other bills have been proposed with the intention of authorizing natural resource use on indigenous lands by third parties. This is the case of Complementary Bill 227/12, which was almost approved in the plenary of the Chamber of Deputies in June 2013 and which, among other provisions, would allow indigenous lands to be

subdivided to create agrarian reform settlements and, for those situated in borderlands, to be colonized by farmers. According to the *ruralista* leader in the House of Deputies, Luis Carlos Heinze, “the demarcation of Indigenous land is a problem we have to solve.”¹⁷

And that’s not all. Approval of a law regulating the exploration of subsoil assets on indigenous lands – a condition established by the Federal Constitution for such economic activities – has returned with force to the agenda of the National Congress, increasing unease among Indigenous Peoples and their supporters. A commission created to analyze the bill convened many public hearings, mostly with miners and companies, and a new draft has been presented to the public. Various groups have condemned the bill for favoring companies and offering few guarantees to affected Indigenous Peoples. If the text of this bill were approved as it stands, Indigenous Peoples would be left vulnerable to mining company and government interests, and they would be unable to refuse mining activities on their lands. The bill also weakens the environmental assessment process. Nor does it include the need for a periodic independent audit of a venture’s economic returns, which should be mandatory because, according to the Federal Constitution, Indigenous Peoples have the right to participate in the proceeds of such ventures on their lands.

According to monitoring by the Socioenvironmental Institute (*Instituto Socioambiental*) 104 licenses have been issued for research or mining concessions, and more than 4,000 requests overlap with 152 indigenous lands.¹⁸

3.2. Slowdown in new land-rights recognition

→ The worst numbers in history for indigenous lands

Indigenous Peoples and other traditional communities are awaiting a response from the federal government



In the face of government inaction, Guarani genocide continues

In Mato Grosso do Sul in the center-west of Brazil, the Guarani Kaiowá, Nandeva and Terena Indigenous Peoples are engaged in a struggle with farmers over their territories, from which they have been banished in recent decades. The assassination of indigenous leaders and public threats of violence against Indigenous Peoples have become routine in the region.

The Indigenous Peoples of Mato Grosso do Sul are confined to improvised camps and live in extremely precarious conditions: only 800,000 hectares have been recognized to 77,000 Indigenous Peoples, the second-largest indigenous population in the country. In the Dourados indigenous land, for example, 12,000 occupants are confined to 3,400 hectares, and this overcrowding is a factor in the high rate of suicide among young Guarani there.

Even in the six officially recognized indigenous lands, conflicts persist with farmers who continue to live inside these areas.

According to the Indigenist Missionary Council (CIMI), of the 123 lands claimed by indigenous Peoples in the state, 71 have not even been granted the first step towards demarcation (as of August 2013). At the same time, some demarcation cases are blocked by judicial action taken by farmers. Even though tension between Indigenous Peoples and farmers is growing, the only concrete action taken by the federal government has been the acquisition of a mere 17,200 hectares for demarcation as indigenous land — and this only after police killed a Terena Indian in an eviction action.

on the following urgent demands: the demarcation of lands pending official recognition, the removal of non-indigenous occupants from already-demarcated lands, and respect for the prior and informed participation and

consent of Indigenous Peoples in the licensing processes of projects that affect them.

The rate of demarcation of indigenous lands has fallen drastically since 2011 as a result of pressure exerted

Table 4. Demarcation of Indigenous Lands (TI), 1986-2014

Presidents	Indigenous Lands			
	Declared		Registered	
	Nº	Area (hectares)	Nº	Area (hectares)
Dilma Rousseff (2011-October 2014)	10	1,094,276	11	2,025,406
Luiz Inacio Lula da Silva (2 nd term)	51	3,008,845	21	7,726,053
Luiz Inacio Lula da Silva (1 st term)	30	10,282,816	66	11,059,713
Fernando Henrique Cardoso (2 nd term)	60	9,033,678	31	9,699,936
Fernando Henrique Cardoso (1 st term)	58	26,922,172	114	31,526,966
Itamar Franco	39	7,241,711	16	5,432,437
Fernando Collor	58	25,794,263	112	26,405,219
José Sarney	39	9,786,170	67	14,370,486

Note: Columns should not be summed because various lands registered by one government were redefined and registered again by other governments.

Source: Instituto Socioambiental, October 2014

on the government by economic actors interested in exploiting indigenous lands, especially in the Amazon. Never, in the democratic era, has an elected government recognized so few indigenous lands.

In these last four years only 10 new indigenous lands were declared, although 34 indigenous lands await certification from the Ministry of Justice. This number is 80 percent less than under the previous presidential term, and the area is 65 percent less when compared with the last term of Lula, or 88 percent less than the second term of Fernando Henrique Cardoso.

Although 67 indigenous lands, some of them already demarcated, await official registration – the last step in the process of official recognition – the Federal Government registered only 11 lands in the last four years, a significant decrease compared with previous democratic governments, as indicated in the table 4.

→ **Decrease of more than 89 percent in the creation of conservation units in the Amazon**

Although there are no official data, it is well known that the demand for new extractive reserves is significant. Between 2011 and 2013, the extractivist producers' movement, through the CNS, mobilized large groups of producers in the Amazon under the banner of "Call of the Forest."

These groups demanded that the federal government develop agrarian reform policies that take into account

their specific needs. In November 2012, the CNS delivered a document to federal authorities calling for the creation of nine extractive reserves and one sustainable settlement project, as well as for the expansion of another 16 reserves. The document also demanded:

- The identification of other extractive reserves in the southern part of Amazonas state, where agricultural expansion is causing growing conflicts over land.
- The regularization of extractivist producer lands occupied by farmers and other producers in the region.
- The adoption of measures to improve the welfare of extractivists and their access to public policies, such as by granting a collective use rights contract – a document important for assuring land tenure and use of these territories – for all the reserves in southern Amazonas state.

Despite further increases in violence against smallholders and extractivist communities in the Amazon, the federal government has given no response to this document. In October 2014, a few days before the run-off of the presidential elections, with only three months to go before the end of its term, the Dilma Rousseff government created its first conservation units in the Amazon.¹⁹ Even with this, the area protected in this presidential term is 99 percent less than in the previous one. This is surprising given that numerous conflicts over

Table 5. Creation of conservation units in the Amazon, per presidential term

President	Nº of conservation units	Area (ha)
Dilma Rousseff (2011–October 2014)	4	726,570
Luiz Inacio Lula da Silva (2nd term, 2007–2010)	13	6,458,215
Luiz Inacio Lula da Silva (1st term, 2003–2006)	36	19,956,865
Fernando Henrique Cardoso (2nd term, 1999–2002)	26	10,379,835
Fernando Henrique Cardoso (1st term, 1995–1998)	12	4,371,600
Itamar Franco (interim) (1992–1994)	0	0
Fernando Collor (1990–1992)	6	631,650
José Sarney (1985–1990)	34	15,462,875
1959–1985	26	11,870,679

Source: Instituto Socioambiental
(<http://uc.socioambiental.org/amaz%C3%B4nia-legal/ucs-federais-por-per%C3%AAdodo-presidencial>).

land tenure and land-grabbing in public areas in the Amazon could be mitigated or remedied by the creation of new conservation areas. According to data obtained by Instituto Socioambiental from ICMBio, 14 processes for the creation or expansion of conservation areas in the Amazon were stalled, as of June 2013.

→ No advances in the protection of *quilombos*

Rural black communities initially expected that, under President Dilma Rousseff, their lands would finally be recognized and protected. Those expectations have been dashed.

At the federal level, the titling of *quilombo* lands is held up by budgetary and personnel difficulties at INCRA, the bureaucratization of the regularization process, and the growing opposition of private interests and, in some cases, of the government itself. Actors with vested interests often appeal to local courts for decisions against the *quilombolas*, with the common result that the granting of definitive land titles is deferred for years.

The *quilombolas* have encountered greater difficulty in obtaining title to their lands since 2011. According to INCRA, the current federal government titled only 19,772 hectares in the period 2011–April 2014. This contrasts with the 212,615 hectares titled during Lula's term (2003–2010) and the 775,441 hectares titled under Fernando Henrique Cardoso (1995–2002).

The slowness of the land-titling process makes these communities vulnerable to violence by private and government agents; there are reports of military intimidation in disputed *quilombola* areas. At the same time, the lack of certainty compromises production and prevents *quilombolas* from making use of public policies that would help them improve their living conditions.

→ The Ministry of Environment turns its back on traditional communities

Personnel changes at the Ministry of Environment at the beginning of 2012 strengthened a conservative faction in the Brazilian environmental movement, which

Table 6. *Quilombos* lands titled by the federal government, by presidential term

President	<i>Quilombo</i> land titled by federal government (ha)
Dilma Rousseff (2011–April 2014)	19,772
Luiz Inacio Lula da Silva (2003–2010)	212,615
Fernando Henrique Cardoso (1994 – 2002)	775,441

Source: INCRA

historically had been opposed to policies assigning areas such as extractive reserves and sustainable development reserves to traditional communities.

The presence of traditional communities in fully protected areas that prohibit natural resource use, such as national parks, became controversial after the establishment of the SNUC. Some 45 national parks and other fully protected conservation areas have traditional communities living within them, and many of these communities are in conflict with the overseeing agencies.

In recent years, ICMBio and INCRA officers and community representatives have negotiated seven agreements in an attempt to resolve conflicts between fully protected areas and quilombo lands. The Ministry of Environment suspended all these agreements, however, even those that had been signed and formalized. This suspension led to protests by the affected communities, who, without such agreements, are not permitted to even plant subsistence crops.

The Ministry of Environment also declared that it may revoke the Strategic National Plan for Protected Areas, which formally designates indigenous and *quilombo*

lands as protected areas. The Ministry's justification for this is that "the plan did not prove to be adequate, since its inception, as a policy for the protection of the Brazilian natural heritage."

→ Reduction in protected areas

Even worse than a failure to create conservation areas, the Dilma Rousseff government sent Executive Order No. 558 to the National Congress, the effect of which was to exclude 86,000 hectares from seven federal conservation areas in the Amazon. This was to make room for four large dams on the Madeira and Tapajós rivers, even though no technical studies or public debate had been conducted on the Tapajós hydroelectric complex. Moreover, the Federal Constitution specifies that protected areas may only be altered or annulled by law, leading the Office of the Attorney General to enter a petition of "direct unconstitutional action" in the Supreme Federal Court against the use of this executive order.

A survey carried out by Imazon concluded that, together with the Rondônia, Mato Grosso and Pará state governments, the states and federal government effectively reduced the area destined to become

Table 7. Reduction in Federal Protected Areas between 2003 and 2013

Protected area type	Name	Area degazetted (hectares)	Year of alteration	Justification
Environmental Protection Area	Tapajós	19,915	2012	Hydroelectric dam
National forest	Bom Futuro	182,643	2010	Hydroelectric dam/occupation/overlap with indigenous land
National forest	Itaituba I	6,796	2012	Hydroelectric dam
National forest	Itaituba II	34,799	2012	Hydroelectric dam
National forest	Tapajós	17,851	2012	Occupation
National Forest	Crepore	855	2012	Hydroelectric dam
National park	Amazônia	43,759	2011/2012	Hydroelectric dam/occupation
National park	Campos Amazônicos	34,149	2011/2012	Hydroelectric dam/occupation
National park	Mapinguari	8,470	2010/2011/2012	Hydroelectric dam
Indigenous land	Apyterewa	202,440	2004	Occupation
Indigenous land	Baú	303,038	2003	Occupation

Source: Imazon, 2013 - <http://www.imazon.org.br/publicacoes/outros/desmatamento-em-areas-protegidas-reduzidas-na-amazonia>

conservation areas and indigenous lands in the Amazon by 2.5 million hectares between 1995 and 2013. In 74 percent of cases, the reduction occurred to legalize the occupation of public land – in other words, areas subject to land-grabbing; in 42 percent of cases, the reductions were for the installation of hydroelectric projects. Sixty-seven percent of the degazetted protected areas were under state jurisdiction, and the other 33 percent were under federal jurisdiction, including indigenous lands, which, by definition, belong to the Federal Government (TABLE 7).

Emblematic of the current federal government's position is the case of the Jamanxim National Forest, a

sustainable-use area of 1.3 million hectares. Located in the area of influence of the BR-163 highway, Jamanxim was created in February 2006 to control illegal occupation and land-grabbing. In 2009, the Ministry of Environment announced its intention to reduce this area rather than remove illegal occupants, as required by law. This caused settlers to believe that the land they had possessed illegally would be regularized, encouraging further illegal logging and illegal settlement. In 2013, 6,500 hectares of forest were felled inside the Jamanxim National Forest, which was 35 percent of the total deforestation that occurred in conservation areas in the entire Amazon in that year.

Rural violence increases

Setbacks in land rights have coincided with increases in rural violence. According to the CIMI, 38 Indigenous People were assassinated in the first nine months of 2013, 27 of them in Mato Grosso do Sul, the location of tense land-rights conflicts. At least eight family farmers or extractivists were also assassinated in the same period as a result of disputes with land-grabbers, principally in northern Brazil.

A survey by the Pastoral Land Commission (CPT) found that 46 percent of the 1,360 cases of assassinations, death threats, and other abuses, including slave labor, in rural areas of Brazil in 2012 were in Amazonian states; 17 people were assassinated in the region in 2012. The survey found that violence against peasants, Indigenous Peoples, fishermen, and quilombolas in

the Amazon was caused by mining and timber companies as well by certain large-scale development projects underway in the region. In 2012, cattle ranches in the Amazon were responsible for more than one-third of the 150 cases of slavery documented by enforcement actions in Brazil, according to the CPT.²⁰

A survey by the CIMI and the CPT showed that the number of assassinations of Indigenous Peoples was substantially higher during the governments of Lula and Dilma than during the government of Fernando Henrique Cardoso (TABLE 8).

Table 8. Assassinations of Indigenous Peoples in Brazil, 1995 and 2012 (by presidential period)

President	Nº of assassinations	Annual average
Fernando Henrique Cardoso (1995–2002)	167	20,8
Luiz Inacio Lula da Silva (2003–2010)	452	56.5
Dilma Rousseff (2011–2012)	108	54

Source: Conselho Indigenista Missionário – CIMI. Relatório Violência Contra os Povos Indígenas no Brasil: Dados de 2013.

part 4

Conclusion



Quilombolas going to the oyster farm, in the Mandira Extractive Reserve, Ribeira Valley, São Paulo. © Claudio Tavares/ISA

Conclusion

Indigenous lands and forested conservation areas that allow sustainable use by local communities are important not only in Brazil but at a global scale. Combined, they cover more than 40 percent of the Brazilian Amazon. A 2014 study estimated that 17.64 billion tonnes of carbon are stored in Brazil's government-recognized community forests (i.e. indigenous lands, extractive reserves, *quilombos*, etc.).²¹ This is about 13 times the emissions of carbon dioxide produced annually by all passenger vehicles in the world and 12 times Brazil's total emissions in 2012.²²

The international community is aware that protecting forests is a crucial part of global efforts to mitigate climate change. The *New York Declaration on Forests*, a non-binding agreement signed in September 2014 at the United Nations Climate Summit, recognizes that "reducing emissions from deforestation and increasing forest restoration will be extremely important in limiting global warming to 2 °C."²³ Tropical forests are not only a very large storehouse of carbon in the form of trees and biomass but also the world's most diverse terrestrial ecosystems—they are home to thousands of Indigenous Peoples' groups, with 250 such groups in Brazil's tropical forests alone, and millions of animal and plant species.

Amazonian indigenous and community lands play a crucial role in regulating the South American climate. The rain that falls in southern Brazil and in Uruguay, Paraguay and northern Argentina – where most of South America's agricultural and industrial production is located, as well as many big cities (e.g. Buenos Aires, Asunción, Montevideo, São Paulo, Rio de Janeiro, and Belo Horizonte) – is strongly dependent on the health of Amazonian forests, which act as a humidity pump for this vast region.²⁴ The recent severe drought in southeastern Brazil, which caused water shortages for both domestic and industrial use, is an indicator of what might become a permanent condition if deforestation continues in the Amazon.

Brazil made significant advances in the recognition of the land rights of indigenous and other traditional peoples between 1988 and 2008. This had a positive effect on the policies of other countries and projected Brazil internationally as a multiethnic democracy mindful of its global responsibilities.

However, changes in the Brazilian economy, which led to changes in the political balance inside and outside the National Congress, are setting back land and environmental rights in the country, challenging the advances that were made in the previous two decades. Rising global demand for commodities such as grains, meat, and minerals has strengthened the political clout of certain economic actors, to the point that the country's leftist government has allied with them. The National Congress's distorted representation system has enabled these economic actors to steer the national political agenda, and they have portrayed indigenous lands and conservation areas as obstacles to prosperity (and their own interests).

With strong representation inside the National Congress and the increasing sympathy of the Federal Government, these lobbies want to reshape the Brazilian institutional framework that protects the environment and forest land rights. If only some of the dozens of legislative proposals that are being considered are adopted—most of them aim to reverse already recognized land rights and open up indigenous lands to hazardous development projects—and the Federal Government continues on its slowdown regarding recognition of land rights for local communities, human rights in Brazil will have reached a turning point, with implications not only for Brazil, but also for the broader Latin American region.

In 2013, as an indirect consequence of this conservative advance in the National Congress, the deforestation rate in the Amazon was 28 percent higher than the previous year, a reverse after years of decreasing rates.²⁵ Much of this increase came from areas affected by roads and dams constructed by the Federal Government to

generate cheaper energy or allow the transportation of the agricultural production that is taking place in the heart of the Amazon.²⁶ The amnesty granted by the new Forest Code was also a major incentive. Independent monitoring shows that it is very probable that the deforestation rate will not decrease in 2014,²⁷ although this can no longer be officially testified, as, for the first time in many years, the Federal Government postponed the public release of satellite data to after the elections.²⁸ Disputes over land, especially in the Amazon, have increased again in the last few years, leading to more violence against indigenous and other traditional communities. All of this is a consequence of a general feeling that the respect of land rights and environmental laws is something that is already in the past.

In neighboring countries development interests are already stalling or rolling-back progress in the protection of indigenous and community rights. In Bolivia, the government of Evo Morales has promoted a policy of economic development without sufficient social, environmental, and land rights protections, especially in the Amazon region. Deficiencies within this policy became apparent in 2011, in the context of the dually protected Isiboro Sécure National Park and Indigenous Territory (*Territorio Indígena y Parque Nacional Isiboro Sécure, TIPNIS*). Here, the Bolivian government failed to consult the indigenous communities holding title to the land on the construction of a massive highway – 32 miles of which would cut through the TIPNIS – that is part of a larger Brazilian-led effort to build a network of mega-projects across the region.²⁹ Denied their constitutional rights to participation in decisions that affect them or their land, indigenous groups marched to the capital in protest in August 2011, clashing with police along the way.

More recently in Peru, President Ollanta Humala enacted legislation aimed at stimulating economic development in the country by promoting foreign investment. Law 30230, approved in July 2014, contains legislative

measures to simplify the environmental permitting process, grant tax flexibility and delineate “special” procedures for demarcation and transfer of land in favor of investment projects such as mining, oil, and gas. This law weakens both indigenous territorial security and environmental protection.³⁰

This same trend extends beyond the borders of Latin America. Increased global demand for lands and resources, and governments interested in increasing investment and revenues, have contributed to a sharp increase in large-scale land acquisitions in developing countries.³¹ While environmentally and socially responsible investments can make significant contributions, development policies dependent on industrial concessions for intensive commodity production often threaten the land rights security of the many people who inhabit these areas. A geo-spatial analysis of forest, mineral, and agricultural concessions across 12 countries in South America, sub-Saharan Africa, and Southeast Asia found that at least 31 percent of the total concession area overlapped with community-held lands. Increasingly, a wide range of private sector, government and civil society actors are recognizing that economic growth models that do not take land rights security and related environmental protections into account are inherently unsustainable, and risk undermining progress on a range of related social development, human rights, and climate change goals.

Brazil's exemplary leadership in environmental protection and the rights of traditional peoples in the period 1988–2008 had a positive influence on the policies of other countries in the region, showcasing effective economic development while respecting the constitutional rights of its citizens. Now, Brazil stands poised to reverse hard-won human rights, with likely negative knock-on effects for the political agendas of other countries both within the region as well as globally whose economies depend on the expansion of commodity production.

Notes

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