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Moving Forward or Backwards? Indigenous Peoples, Development and Democracy in Brazil

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Introduction

In Brazil, the Federal Constitution of 1988 opened up a new chapter in the history of indigenous peoples, with the recognition of their cultural and territorial rights as an essential element of a multicultural society that adopts democracy and citizenship values (Ramos 1998). Indigenous peoples' rights over the lands which they traditionally occupy constitute a basic requirement enabling them to live according to their habits, lifestyles, and traditions, ensured by Article 231- *caput* - of the Constitution.

Considering the fact that the concept of land for indigenous peoples transcends the economic notion of territory conceived by Western society, the guarantee of territorial rights is a necessary condition for indigenous communities to exercise their collective rights, which are characterized, among other aspects, by livelihood strategies intimately linked to natural resources (Curi 2006).

Whatever value system is attached to a territory, be it the economic valuation of some non-indigenous institutions or the sociocultural valuation given by indigenous societies, the reality is that both parts have interests in securing land tenure, use, and access to natural resources. Thus, the territory, in its broad conception of a physical space that includes all elements of the forest, rivers, lakes and the existing underground, is situated at the core of conflicts surrounding indigenous peoples in the country.

Currently, some of the most controversial issues related to indigenous peoples' territorial rights in Brazil include the process of demarcation of indigenous lands, the mining interests that fall on these lands, and the utilization of water resources in or around these areas. In addition to the constant land invasions and the exploitation of natural resources, indigenous communities have been increasingly exposed to legal threats, signaling a setback in the pursuit of cultural and territorial rights guaranteed by the 1988 Constitution. Bills and decrees under negotiation in the National Congress and in other government spheres intend, among other things, to authorize mining on indigenous lands, transfer to the legislature (currently in the executive) the power to approve the demarcation of these lands and legalize economic and infrastructural projects in indigenous areas (ISA 2013, see Table 1).

Despite the discouraging scenario related to securing indigenous rights and the legitimacy of cultural diversity as one of the key elements for achieving sustainable development, indigenous peoples' agency in resisting and mobilizing to secure their rights is noteworthy. Through their organizations and also supported by partner institutions, Brazilian indigenous peoples have fought to ensure that their interests reach public participation spaces and governmental spheres responsible for development and implementation of relevant public policies.¹ If on one hand the conflicts of interest accentuate disrespect for indigenous rights, on the other, they are allowing them to be the protagonists of their own history.

In this context of rights violations, conflicts, and struggles, the present commentary aims to address legal aspects related to the construction of hydroelectric dams impacting Indian lands, and emphasize indigenous peoples and broader society rights for participation in the discussion of natural resource use and development pathways for the Brazilian Amazon.

Indigenous Territorial Rights and Social-environmental Justice

According to ISA (2013) there are 682 indigenous lands in Brazil, occupying an area of 112,870,218 hectares, which corresponds to 13.3% of the national territory. Most of this land is concentrated in the Amazonian region which includes 414 lands totaling 21.73 % of the Amazonian territory and 98.47 % of all indigenous lands of the country.

The legal recognition of indigenous lands in Brazil is based on the original rights of these peoples over the areas which they have traditionally occupied (art. 231, *caput*, CF). This legislation ensures rights over lands they have held since the colonial epoch (Silva 1992).

Although indigenous territorial rights are not tied to the demarcation process, given the fact that this is a purely declaratory act of a pre-existing right, the State is responsible for conducting the demarcation of indigenous lands, setting the physical limits of areas and supporting their effective protection.

Regarding the use of water resources and the research and exploitation of mineral resources, Article 231 – 3rd paragraph of the Constitution, determines special conditions for these activities to be undertaken in or around indigenous lands. These are: a) authorization from the National Congress; b) listening to affected communities; c) ensuring that these communities benefit from mining revenues. These conditions, which should be regulated by infra-constitutional laws, demonstrate the legislator's recognition of the existence of diverse and often conflicting interests. Among these, the first is the national interest in exploring the water and mineral resources associated with indigenous lands, and the second relates to the interest of indigenous peoples to preserve their culture and their territories.

Given the fact that water and mineral resources are considered strategic to national development, Brazilian legislators opted to enable these resources to be explored. Nevertheless, recognizing that these activities have the potential to generate significant social and environmental impacts which might endanger the physical and cultural survival of indigenous peoples, various conditions were defined, including the obligation to hear the affected indigenous communities.

The need for consultation is also ensured by the Convention 169 of the International Labour Organization, of which Brazil is a signatory. Article 6th, paragraph 1 states that governments shall consult indigenous peoples whenever legislative or administrative provisions may directly affect them.

Thus, based on this legal provision, it is necessary to broaden the discussion about indigenous peoples' rights to participate in decisions about the use of natural resources, such as hydropower development and mining exploitation in the Brazilian Amazon, to a national level. Making decisions about which and how resources might be explored are issues that transcend the "developmentalist" economic policy, since they involve, among others, elements of cultural identity and social-environmental sustainability. Recognizing that the impacts of mining and hydroelectric activities over indigenous peoples might be reflected on the whole society is a *sine qua non* condition for the rescue, as emphasized by Gambini (2000), of our "indigenous soul" towards the democratic governance and sustainable use of natural resources of a multicultural country.

There are legal channels already established for democratic participation in public management and analysis of the process of economic development in Brazil. The Federal Constitution of 1988 provides for decentralized and participatory governance, with the formation of management councils (*conselhos gestores*), as well as for public participation through mandatory public hearings during licensing processes. However, in practice, political and economic interests outweigh the social and environmental interests. In this context, more than new tools for participation, it is necessary to effectively qualify and validate civil society manifestations.

Specifically in relation to the use of water resources, Law 9.433/1997 determines that water is a public good (art. 1st, I,) and that "the management of water resources should be decentralized and include the participation of public power, users and communities" (art. 10th, VI). This highlights the call for broadening the debate about water exploitation in the Amazon, which should not be restricted to political and economic spheres.

This is not only about choosing energy sources or more viable pathways to economic growth. It is in fact an analysis with which the whole society should engage, about the future of the Amazon.² Brazilian society needs to understand and follow the legal bills and propositions being analyzed by the Congress and other government spheres, which threaten indigenous territorial rights and jeopardize sustainable development in the Amazon (Table 1):

Table 1. Main bills and other legal provisions under discussion by the federal government, which threaten the sustainability of indigenous lands in Brazil.

Proposition Author	Objective
1. Bill (PL) 1.610/96 * Romero Jucá (PFL/RR)	To authorize the exploitation of mineral resources in indigenous lands.
2. PEC 38/1999 * Mozarildo Cavalcanti (PTB/RR)	To transfer the power of approving the demarcation of indigenous lands from the executive power to the Senate. It also seeks to establish that the sum of Protected Areas and Indigenous Lands does not exceed 30% of the total area of any state.
3. PEC 215/2000 *Almir Sá (PPB/RR)	To transfer the power of approving the demarcation of indigenous land, as well as ratification of the homologated ones from the executive to the congress. Deputies and Senators would even hold the power to review and reverse old or already finalized demarcations.
4. Decree 419/2011 ³ *Executive power, reso- lution of Ministries of Environment, Justice, Cul- ture and Health	Aims to regulate time frames and deadlines for Funai (National Indian Foundation) and other bodies to prepare and present reports on environmental licensing processes. Aims to expedite the approval of infrastructure projects in or around indigenous lands, including large infrastructural projects such as hydroelectric dams and roads. Also determines that officially recognized indigenous lands are only those lands which perimeters have already been declared by the official gazette (Diário Oficial), thus disregarding environmental impacts on lands still in process of recognition.
5. Decree 303/2012 * Edited by the General Federal Pros- ecutor, Luís Inácio Adams	It determines an interpretation of the conditionings established by the Supreme Court in the judgment of the demarcation of the Raposa Serra do Sol indigenous land, extending its application to all indigenous lands in the country and making its applicability retroactive. It also provides that the demarcation procedures already finalized are reviewed and adjusted to their terms.
6. Comple- mentary Law Project 227/2012 * Homero Pereira (PSD/MT)	Intends to consider as public interest, and as such to legalize the existence of large landholdings, rural settlements, cities, roads, economic enterprises, mining, logging and hydroelectric dams, among others, in indigenous lands.
7.PEC 237/2013 *Nelson Padovani	Allows farmers to claim possession of indigenous lands through concessions. If approved, the proposal will legalize currently illegal activities on indigenous lands, such as land leasing.
8.Decree 7.957/2013	This decree creates the Environmental Operations Company of the National Public Security Force, having as one of its duties to " <i>assist on ongoing surveys and technical reports about negative environmental impacts</i> ". In practice, according to ISA (2013), this means the official creation of a state instrument for militarized repression of any action of indigenous peoples, communities, social organizations and movements that decide to stand against infrastructural projects that might impact their territories.

Source: Bills 1, 2, 3, 5, 6 and 7: Available at: www.camara.gov.br (access on 05/08/2014).

Bill 8: Available at: <http://legis.senado.gov.br> (access on 05/08/2014). PL: Bill (law project).

PEC: Constitutional amendment (Proposta de Emenda à Constituição).

Conclusion

The construction of hydroelectric dams in the Amazon makes us consider the relationship between the maintenance of cultural diversity and the promotion of sustainable development. The legal recognition of multiculturalism is not just about ensuring respect to indigenous peoples' constitutional rights, but something essential to the very sustainability of life.

Similarly, violations and threats to indigenous rights pose risks not only to them, but also hinder the trajectory of democracy in the country, which, instead of moving forward, has been stepping backward to a past of social-environmental injustice, violations of human rights, and abuse of power by public institutions.

Given the different interests at stake, only through a qualified, participatory, and transparent dialogue about the economic projections for the Amazon will it be possible to minimize conflicts and to build a sustainable future for this region.

Notes

¹Regarding the participation of indigenous peoples in the planning of public policies, it is worth mentioning the role of the National Commission of Indigenous Policy (NCIP), a committee composed of indigenous leaders from around the country, representatives of the Executive power and indigenous entities, which has as one of its goals to deliberate on the guidelines established in the national policy for indigenous peoples (FUNAI 2013).

²Report summarizing 10 years of the Program for Acceleration of Growth (PAC) II, released in March of 2012. Around thirty dams are under construction or planned for the Amazonian region in the next decades (INESC 2012).

³ Available at: www.agu.gov.br (access on 05/08/2013). Given the innumerable protests organized by indigenous peoples and their allies, this decree was suspended (CIMI 2013).

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