

CONSTITUTIONAL REVISION IN BRAZIL: A THREAT TO INDIGENOUS RIGHTS

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The battle for the rights of the over two hundred Indigenous groups in Brazil seemed to have claimed a victory at the end of 1988. Brazil's new constitution was drafted and approved that year, recognizing the rights of Indigenous peoples, including the right to their lands. A five year deadline for the demarcation of these lands was established. After obtaining Indigenous territory status they would be protected by the government against invasions. Only the Indigenous peoples would be able to determine the use for their lands, including, if they so wished, mining and forestry. This deadline expired on October 5, 1993, and only 266 of the 532 territories officially recognized had been demarcated.

The 1988 constitution also included a clause for its revision at the end of five years. This period also expired in October. If this revision takes place, the rights granted could be revoked. The validity of the demarcation of Indigenous territories and the current restrictions on the use of these lands are highly questioned by many groups that support the constitutional revision. Invariably, these groups are part of the elites that have lost advantages and privileges. The three chapters central to the debate are those concerning agrarian reform, the environment, and the rights of Indigenous peoples. It is feared that, if carried through, the revision could lead to changes toward the Neo-liberal policies supported by the majority of the Brazilian congress. Special interest groups lobbying in the Congress will have great influence over the results of the revision. The political climate in the congress is actually dominated by these diverse though generally conservative groups. The lack of complementary judicial tools that are also adequate and agile, added to the inoperative power of the executive are also seriously threatening the conquests made for indigenous rights.

One of the most significant conquests was that over the Yanomami territory in May, 1992. The granting of 9.6 million hectares demarcated as Yanomami territory is now in danger of revision. Although the official recognition has not kept gold prospectors away, some groups contend that this area is exceedingly large for the Yanomami.

Another argument is that demarcation in border areas threatens national sovereignty



by creating practically independent states. This argument does not take into account the fact that Indigenous territories have existed in border areas for years. Indigenous groups like the Kayapo and the Guarani are involved in legal battles to prove their rights to establishing territories that cover areas in different countries.

Though it is true that the constitutional revision would not alter the present situation it can risk the loss of the judicial principle that philosophically supports the rights of indigenous people. Thus, the Yanomami and the Kayapo could lose the legal basis to defend their autonomy and territories, as well as losing the power to resolve other issues still not legally defined, such as their rights over intellectual property and germ plasma. The appropriate compensatory mechanisms are yet to be established.

Recent events justify the urgency of the possibility of constitutional revision. The

Minister of Justice recently declared that the demarcation will only continue in areas where there are no conflicts, a requisite nearly impossible to fulfill, and that effectively halts the process of demarcation until the revision issue is resolved. This process could take months or even years. The Minister of Justice also had the power of prohibiting access to indigenous areas, but the Supreme Tribunal recently revoked this power. This will have serious consequences for groups that are still isolated. Their limited numbers are threatened by the illness and violence that nearly always follow contact with outsiders.

In the 500 years since the beginning of European invasions, the population of Indigenous peoples of Brazil has been reduced from over 5 million to less than 500,000. Their territories today are only 10% of their original size. The biggest obstacle to their survival is the attitude of Brazilian society. To the majority of the population, Indigenous rights and environmentalism are not social priorities. Hunger and poverty are ranked first. These economic pressures create great tension between the Indigenous peoples and the new colonists, poor migrants trying to establish farms in their territories. Indigenous people are thus the most widely discriminated group in Brazil, frequently viewed as sick, dirty, and carriers of the Cholera virus. The physical and cultural survival of Indigenous peoples is not considered their right, but rather an eccentricity of environmentalists. Many Brazilians are of the opinion that the resources of the tropical forests can and should be exploited for economic benefits alone. These benefits rarely reach those actually affected by poverty. This attitude needs to change if the rights established in 1988 are to be upheld and if the fight for indigenous rights is to be continued.

Sources: Porantim, Revisao Constitucional