# INDIGENOUS PEOPLES IN BRAZIL AND THE RIGHT TO THEIR SUSTAINABILITY: A TERRITORY, AUTHORITY, AND RIGHTS APPROACH

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## INTRODUCTION

In order to maintain their rights and sustainability, indigenous peoples in Brazil depend on the support of national and international actors. At the national level, the Brazilian state still plays a central role in the process of recognition of indigenous peoples' rights. In the international arena, indigenous peoples are gaining more visibility as important actors for the creation/elaboration of international legal instruments and the implementation of sustainable development projects. Still, their role in this process is not a decision-making one. In other words, even though indigenous peoples are becoming more and more active in the international and national sphere, they still have limited control over their affairs.

In this article, my main goal is to illustrate how indigenous peoples in Brazil play a pivotal role in guaranteeing the recognition of their rights and sustainability. Rather than being passive victims in this process, indigenous peoples' activism have been instrumental in mobilizing national and international governmental and non-governmental actors towards the defense of their interests.<sup>1</sup> However limited or incipient the control over their affairs, I posit that indigenous peoples in Brazil have been causing a reordering of certain organizational logics at the national and international level since the colonial period.

To analyze this process, I adopt Sassen's approach on territory, authority, and rights (TAR).<sup>2</sup> By dislodging these three foundational components from their "particular historically constructed encasements (in this case, the national and the global)," <sup>3</sup> it is possible to examine their constitution and institutional location in different historical formations. According to Sassen, TAR "are complex institutionalization arising from specific processes, struggles and competing interest."<sup>4</sup> In medieval Europe, the movement towards creating national states have caused the assemblage of TAR. With globalization, the emergence of a new organizing logic that regards rights as more important than territorial authority have triggered a movement of disassemblage of what has been perceived as the national state domain.

I find Sassen's approach particularly suitable for my analysis for two reasons. One relates to the fact that indigenous peoples' struggle has been a complex and conflicting process that challenged the national and international binary throughout time. The second is concerned with the recognition of the critical role indigenous peoples have for the defense of international legal instruments and projects focused on sustainable development and the protection of the environment. By disaggregating the TAR components from their original encasements, I will identify specific movements that signal to the emergence of a new organizing logic triggered by indigenous peoples' activism in the defense of their rights and sustainability.

#### **Territory- Assembling of the National**

In this section, I will present a review on the participation of indigenous peoples in the establishment of the borders and territorial authority of the national state of Brazil. Pimenta's study about the role of the indigenous peoples for the consolidation of the Brazilian borders shows that they played an important part in the defense of the territory of the Amazon region.<sup>5</sup> For instance, the Ashaninka people not only helped with the 'fair wars' against the 'savage' indigenous peoples, they also defended the borders of Acre, in the north part of Brazil, from outside invaders. Another study from Pimenta indicates that Mato Grosso, in the west-central part of Brazil, "was incorporated into the national territory thanks to the Portuguese alliances with the Kadiweu people" (my translation).<sup>6</sup>

It's true that the relation between indigenous peoples and the colonizers was filled with contradictions and disparity. On one side, the 'savage' indigenous peoples were seen as threats and were exterminated either by the 'fair wars' or forced into the territory to scape assimilation. On the other, the 'meek' were seen as allies in the hard task of defending the territory and establishing the borders.<sup>7</sup> According to Almeida, the arrival of the Portuguese Royal Family in Brazil in 1808 did not change the assimilationist approach of the 16<sup>th</sup> and 17<sup>th</sup> centuries. In fact, "the Regent Prince would continue to practice the defense of the allied indigenous peoples while encouraging the fight against the savage ones" (my translation).<sup>8</sup>

Relevant to my argument is the key role indigenous peoples had in the establishment of the borders and territorial authority. The literature on the subject has stressed the active role indigenous peoples had in the process of conquest, delimitation and consolidation of the Brazilian borders.<sup>9</sup> Be that as it may, the purpose of the colonial and imperial official policy was to extinguish indigenous peoples' territories, in an attempt to "create the nation in European molds, where there was no place for pluralities, ethnic and cultural backgrounds" (my translation).<sup>10</sup> The 19<sup>th</sup> century legislation promoted the recognition of indigenous peoples' rights to their territory only until they reached the so-called "state of civilization."<sup>11</sup> In

addition, the 1850 Territory Law established that indigenous peoples had the right to territory; however, the ownership remained with the Imperial State.<sup>12</sup>

Despite the long efforts to create a homogenous national state, many indigenous peoples in Brazil refused assimilation. At the same time, they learned to value agreements and negotiations with authority and with the king himself. The petition of the indigenous people from the village of São Miguel do Uma (in Pernambuco, in the northeast part of Brazil) is illustrative in this regard. They appealed against their persecution based on 1698 Royal Charter that confirmed the donation of their territory as a "reward for participating alongside the imperial troops against Quilombo dos Palmares" (my translation).<sup>13</sup>

In sum, the relation between indigenous peoples and the colonial/imperial authority involved disputes and conflicting interests. On one side, indigenous peoples struggled for the rights to their territory and distinct status from other citizens. On the other, the Imperial State sought to guarantee its domination over the vast territory of Brazil in an attempt to create a homogenous national state. Notably, because securing the territory was as crucial for indigenous peoples as for the ruling authority, it is no surprise that 30% of the Brazilian border strip is occupied by Indigenous Territories, demarcated and recognized by the national state.<sup>14</sup>

Segments of the Brazilian society, mainly the military, consider the recognition of indigenous peoples' territories a threat to the national state.<sup>15</sup> Nonetheless, indigenous peoples' activism in the defense of the borders of Brazil "proves that the presence of indigenous peoples in the border region, instead of supporting the internationalization of the Amazon, is, on the contrary, an essential element to ensure surveillance of this vast region" (my translation).<sup>16</sup> All things considered, I maintain that indigenous peoples had a crucial role in the assembling of the national state of Brazil. The next section will discuss how the defense of indigenous peoples' rights has triggered the emergence of a new organizing logic that views rights as more important than territorial authority. In other words, I will illustrate how indigenous peoples' struggle for the recognition of their rights has created a denationalization movement, which pulls the authority out of the national state.

## **RIGHTS – DISASSEMBLING OF THE NATIONAL**

In Brazil, anthropologists have analyzed how indigenous peoples have resisted domination, assimilation, cooptation from the larger society throughout time.<sup>17</sup> In doing so, these peoples have created a multiplicity of assemblages aiming at taking control over their own affairs. The 'Alliance of the Peoples of the Forest', which assembles more than five hundred indigenous chiefs, is one illustrative development of this movement.<sup>18</sup> At the international level, indigenous peoples' global activism began before globalization. For instance, the first official document recognizing

indigenous peoples' rights to their territory dates back to 1680.<sup>19</sup> However, as stated before, the colonial and imperial official policy promoted an assimilationist approach that intended to incorporate indigenous peoples as citizens. In this context, indigenous peoples continued to be perceived as defenders of the borders; notwithstanding their legal status as distinct from other 'civilized' peoples was not a concern of the Brazilian State.

According to Lima, the creation of the Indigenous Peoples Protection Service (SPI - Serviço de Proteção Indígena, in Portuguese) was a response of the Brazilian State to the international denunciation of enslavement of indigenous people in Putumayo in 1912.<sup>20</sup> Its creation aimed at showing the world that Brazil was a civilized national state. This event demonstrates the influence indigenous peoples had in the assembling of TAR in Brazil since a very early state. Relevant to my argument is how this denunciation triggered a movement, which pulled the authority of the national state over rights even when it installed itself inside the state apparatus. Moreover, it is important to note how this process involved conflicting interests, given that the Brazilian State's recognition of indigenous peoples' rights aimed at guaranteeing its authority over the territory. For instance, in 1928, Law no. 5,484 "assigned the SPI the task of executing state tutelage over the generic indigenous peoples' legal status [...] it combined a project of management of population segments defined as having a civil participation necessarily mediated by the national state" (my translation).<sup>21</sup>

After World War I, the Western liberal democratic ideal of European nationalists formed an important part of the international political discourse about the term 'self-determination.<sup>22</sup> During this period, the assemblage of the national was based on the premise of a modern state which "gains exclusive authority over a given territory and at the same time this territory is constructed as conterminous with that authority.<sup>23</sup> In this context, the assemblage of TAR strengthened even further the notion of the national state as the sole grantor of rights within a given territory. This explains the crucial role the national state of Brazil had for the recognition of indigenous peoples' rights. It also explains why the Brazilian state created new forms of exercising control over indigenous peoples, thus, guaranteeing its sovereignty. On example of this movement is the establishment of the National Council for the Protection of the Indians (CNPI - Conselho Nacional de Proteção Indígena, in Portuguese) whose aim was to act "as a consultant and formulating body of the Brazilian indigenous policy" (my translation).<sup>24</sup>

Following the end of World War II, the emergence of international legal instruments, as the Universal Declaration of Human Rights – approved by the United Nations General Assembly in 1948, triggered an opposing movement that began to pull the authority of the national states over rights.<sup>25</sup> Albeit the national state continued to play a crucial role, it was no longer the sole grantor of rights. The emergence of

global actors, such as the Sub-Commission on the Prevention of Discrimination and Protection of Minorities – created by the Human Rights Commission of United Nations in 1947 – signals to this denationalization movement.<sup>26</sup>

In the 1960s and 1970s, the awareness of "the international human rights agenda began to systematically include issues concerning the recognition of the cultural rights of ethnic minorities, indigenous peoples" (my translation).<sup>27</sup> The creation of the International Work Group for Indigenous Affairs (IWGIA) in 1968 is a milestone of this movement, since it became a locus for the discussion of issues relating to the defense of indigenous peoples' rights and sustainability.<sup>28</sup> Despite this global trend, the national state of Brazil continued to adopt an assimilationist approach. The substitution of the SPI by the National Indian Foundation (FUNAI -Fundação Nacional do Índio, in Portuguese) in 1967 represented the attempts of the Brazilian State to "assimilate the remaining indigenous peoples' societies into the dominant national society."<sup>29</sup>

A curious characteristic of the international agenda instruments and other mechanisms is the fact that they don't need to be internalized in the national apparatus to change social perception at all levels. Specifically regarding indigenous peoples, Convention no. 169 of the International Labor Organization (ILO), held in Geneva in 1966, established guidelines concerning respect, culture, customs, tribal organization, and indigenous territories.<sup>30</sup> The First Declaration of Barbados, in 1971, "constituted a strategic starting point for the transactional articulation of indigenous and non-indigenous actors in favor of indigenous peoples' rights" (my translation).<sup>31</sup> Also in 1971, "the Subcommittee on Prevention and Discrimination and Protection of Minorities appointed a special rapporteur to conduct a comprehensive "Study on the problem of discrimination against indigenous peoples" (my translation).<sup>32</sup>

Crucial to my argument is the critical role indigenous peoples had in mobilizing national and international governmental and non-governmental actors towards the defense of their interests. Little points out that indigenous peoples played an important role in the constructing of an endogenous notion of 'ethnodevelopment.<sup>33</sup>According to the authors, this notion of development stemmed from the participation of indigenous peoples "in a host of continent-wide meetings with anthropologists and progressive sectors of the Catholic and Protestant churches" (my translation).<sup>34</sup> Another illustrative example of indigenous peoples' activism is the creation of the Coordination of Indigenous Organizations of the Amazonian Basin (COICA – Coodinación de las Organizaciones Indígenas de la Cuenca Amazónica in Spanish), in 1984. Since it "led to the consolidation of the alliance between environmentalists and indigenous organizations located in the Amazon rainforest aiming at defending indigenous peoples' rights and sustainability from major development projects implemented with resources from the World Bank" (my translation).<sup>35</sup>

According to Almeida, indigenous peoples "slowly moved from the invisibility built in the 19<sup>th</sup> century to the protagonist conquered and restored in the 20<sup>th</sup> and 21<sup>st</sup> centuries by political and intellectual movements in which they have had intense participation" (my translation).<sup>36</sup> The 1988 Federal Constitution is a landmark of indigenous peoples' activism in Brazil. For the first time ever, the national state "recognized the social organization, customs, languages, beliefs and traditions of indigenous peoples and guaranteed their original rights to the territory they traditionally occupy" (my translation).<sup>37</sup> According to Davis, advances achieved with the advent of the Federal Constitution of 1988 resulted from the intense participation of indigenous peoples' organizations in the formulation process of this legal document.<sup>38</sup>

From an international perspective, Silva stresses the important part the worldwide trend of recognition and protection of the rights of ethnic minorities played as well.<sup>39</sup> Hoffmann points out that the emergence of indigenous peoples' organizations in the 1980s can be attributed to the growing number of international instruments elaborated on the subject of minority groups, including indigenous peoples; also, to the insurgence of sustainable development projects supported by financial agencies.<sup>40</sup> In Brazil, the dynamic process of creation and registration of indigenous peoples' organizations can be ascribed to the fact that indigenous peoples began to organize themselves around a common identity and political agenda to negotiate with non-indigenous actors, mainly the national state and international financial organizations.<sup>41</sup> For instance, the Alliance of the Peoples of the Forest while "advocating for specific actions (demarcation of indigenous territories, creation of extractive reserves, etc.), also reshaped and guided the Brazilian government's Amazon policy with the new ideology of sustainable development" (my translation).<sup>42</sup>

As stated before, indigenous peoples' struggle for their rights has changed over time. Where the national state once dominated, and indigenous peoples were allies defending the nascent national state's territorial authority; now, is populated with a multiplicity of new organizations with whom indigenous peoples can interact for the defense of their rights and sustainability. The following section will discuss in more detail how the role of the Brazilian State as the sole grantor of indigenous peoples' rights is being challenged by the activism of new assemblages of TAR. Furthermore, it will discuss how indigenous peoples' activism can de-border the national authority, producing an unsettling movement towards the denationalization of certain bits and pieces of the national state of Brazil, even when it installs itself inside the national apparatus.

### AUTHORITY – ASSEMBLING OF THE GLOBAL

The interaction between indigenous peoples and national and international actors is not new. However, the changes it has been through are worthy of attention.

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Indigenous peoples' local, national and international activism has changed their interaction methods as well as their perception of the larger society. Studies have argued "that many indigenous peoples who are immersed in westernization do not reject it outright – in spite of its hegemonic, bureaucratic, and modernizing traits – but rather they place it within the context of their own agency that provides for their differentiated incorporation of development."<sup>43</sup> Evidence of this process is the conceptualization of 'ethnodevelopment.'

In the case of Brazil, the recognition of indigenous peoples' rights to their territory has been enforced by the implementation of financial projects supported by international actors. Little points out that the Pilot Program for the Protection of Brazilian Tropical Forests of the Group of Seven Industrialized Countries (PPG7) "grew out of national and international concern over the accelerated destruction of the world's tropical rain forests."<sup>44</sup> Throughout the 1990s, many international development agencies showed greater concern in recognizing policies and programs focused on the rights of indigenous peoples and ethnic minorities.<sup>45</sup> A report of the United Nations Development Program (UNDP) notes that a growing number of international legal instruments have been recognizing "indigenous peoples as a particularly important group for achieving sustainable development."<sup>46</sup> The ILO Convention 169 on Indigenous and Tribe People in Independent Countries is a cornerstone of this movement.

At the national level, the insurgence of the sustainable development movement had two important outcomes. One relates to the recognition of indigenous peoples' rights to territory. For instance, the mobilization of the Kayapó Peoples in Brazil against the construction of the Cararaô dam in 1989, which would flood part of the land they inhabited, had major repercussions in the international media. Sting's European tour with Chief Kayapó Raoni led to the creation of the Rainforest Foundation Norway, which aimed at demarcating the Kayapó territory in Brazil.<sup>47</sup> The other outcome relates to the emergence of various indigenous peoples' organizations. According to Ricardo, from the 1980s through the 2000s, there was an explosion of new indigenous peoples' organizations. To get an idea of the scale of the phenomenon, there were ten organizations before 1988 of the more than 180 computed at the end of 2000.<sup>48</sup> Today, there are more than a thousand indigenous peoples' organizations listed at the Socio-Environmental Institute (ISA - Instituto Socioambiental, in Portuguese) website.<sup>49</sup>

Regarding indigenous peoples' control over their own affairs, I divide the literature into two approaches. The optimistic one views local and national indigenous peoples' organizations as critical players for the implementation and monitoring of sustainable development projects. This approach is mainly supported by governmental and non-governmental organizations, such as: the UNDP<sup>50</sup>, the United Nations Educational, Scientific and Cultural Organization

(Unesco),<sup>51</sup> the World Bank<sup>52</sup> the Inter-American Development Bank.<sup>53</sup> Little's study on the PPG7 has demonstrated that indigenous peoples were not involved in the designing and implementation of the sustainable development projects in the beginning; however, as the projects were executed the importance of indigenous peoples' role became more obvious.<sup>54</sup> Consequently, they became more and more involved in the implementation of sustainable development projects. According to Chav et al, the Amazonian Working Group (Grupo de Trabalho Amazônico, in Portuguese), "a network of organizations covering 513 organizations, including indigenous peoples, rubber tappers, chestnut collectors, etc" (my translation),<sup>55</sup> was created to monitor the initiatives of the PPG-7. Oliveira Filho's article about indigenous peoples and the World Bank demonstrates how indigenous peoples became increasingly involved in the implementation and monitoring of the bank's projects.<sup>56</sup> Another study about indigenous peoples and sustainable development in Amazonas shows that indigenous peoples in the region have been acting as inspectors of the implementation of projects preventing the degradation of the environment.57

In contrast, the pessimistic approach states that indigenous peoples still have limited control over their affairs at all levels. In the international and national sphere, the recognition of indigenous peoples' rights still relies on the interest of the Brazilian State. Moreover, the framework, within which deforestation is governed globally, is "negotiated in a forum that does not give agency to actors other than national governments."<sup>58</sup> According to Hoffmann, the sustainable development 'project market' have created new ways of tutelage of indigenous peoples by international cooperation agencies.<sup>59</sup> Locally, sustainable development projects have been instrumental for the recognition of indigenous territories and rights; however, these developments don't have the scale to compensate for the unfavorable and unbalanced power relation.<sup>60</sup> Last but not least, Baines argues that the growing involvement of indigenous peoples and environmentalist non-governmental organizations with the implementation of sustainable development projects has deepened the power imbalance between benefactor and beneficiary countries.<sup>61</sup>

I maintain that the Brazilian national state is no longer the sole grantor of rights as a unitary assemblage of TAR, considering that indigenous peoples have been creating new assemblages that views rights as more important than territorial authority. One illustrative example of this movement was the 'Ashaninka Week', event held in Brasilia (capital of Brazil), in 2004, when indigenous peoples' representatives presented their pioneering initiatives for the preservation and sustainable use of natural resources.<sup>62</sup> Furthermore, they disclosed the difficulties experienced by them with the constant invasion of illegal loggers in their territory. As a result, in this same year, the Federal Justice of Acre (Justiça Federal do Acre, in Portuguese) ordered the national state to restore the borders between Brazil and Peru, in Alto Juruá (in the north part of Brazil), and to establish checkpoints for the Federal Police, the Brazilian Institute

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of Environment and Renewable Natural Resources (Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis, in Portuguese), FUNAI and the Army Force in the region.<sup>63</sup> It is important to note that the Ashaninka of the Ammonia River were the first to report to the Brazilian authorities the invasions of Peruvian logging in their territory, i.e., the national territory. Their mobilization against logging and in defense of sustainable development led to the creation of the Serra do Divisor and Alto Juruá Cross-Border Protection Working Group—Brazil and Peru.<sup>64</sup>

In sum, the growing involvement of indigenous peoples in the implementation of sustainable development projects and the insurgence of indigenous peoples' organizations signals to the creation of new assemblages of TAR that challenges the national authority over rights. Although these assemblages are still incipient and to a large extent informal, I concur with Sassen's argument that views this movement as "a process that lifts a variety of segments (involving dimensions of TAR) out of their national state normative framing, thereby reshuffling their constitutional alignments."<sup>65</sup>

At the international level, indigenous peoples have been recognized as critical actors in the designing and implementation of legal instruments and sustainable development projects; however, their role is still not a decision-making one. At the national level, indigenous peoples' activism is instrumental for the recognition of their rights and sustainability. Moreover, they are important partners not only for the defense of the border strips of Brazil, but also for implementation of governmental programs in the field of health, education, environment, etc.<sup>66</sup> Nonetheless, the Brazilian State still plays a crucial role in recognizing indigenous peoples' rights, establishing and implementing policies, and managing projects funded by international agencies. In this context, if the national state changes policy, indigenous peoples can only oppose and try to mobilize national and international actors towards the defense of their rights and sustainability.

One recent event involving indigenous peoples in Brazil relates to changes made by the national state regarding the environmental agenda.<sup>67</sup> Mainly Norway and Germany expressed concerns about Brazil's policy changes.<sup>68</sup> Later, this international discomfort was augmented by satellite images of the Amazonian forest on fire.<sup>69</sup> As a result, the aforementioned countries voiced their withdrawal of financial aid to the Amazonian Fund (Fundo Amazônia, in Portuguese).<sup>70</sup> This episode reveals how indigenous peoples still depend on the international and national support to guarantee their sustainability. Moreover, it shows how international and national legal instruments depend on the agency of indigenous peoples to be effective. It is true that indigenous peoples' global and local activism have created a transnational movement that enforces the implementation of their rights and sustainability. Nevertheless, the national state still has a central role in this process and recent events have demonstrated the fragility of indigenous peoples' agency.

## **FINAL CONSIDERATIONS**

In this article, I illustrate that even when indigenous peoples' rights tests the authority of the state, it creates new forms of exercising control over them. My conclusion is marked by the understanding that these new assemblages of TAR indigenous peoples have created, however incipient and informal they may be, are provoking an unsettling movement towards the denationalization of certain bits and pieces of the national state of Brazil, even when it installs itself inside the national apparatus. It is true that indigenous peoples continue to depend on national and international support in order to maintain their sustainability. Regardless, I posit that the growing involvement of indigenous peoples in the defense of their own affairs has triggered the emergence of a new organizing logic, which considers rights as more important than territorial authority. Although the control over their own affairs is still limited, indigenous peoples' activism in Brazil have been causing a reordering of certain organizational logics at the national and international level.

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