UNCLASSIFIED

BRIEF 12

INDIAN RIGHTS

Indians shall have recognized their social organization, customs, languages, beliefs, traditions and rights over the lands they have traditionally occupied. Lands traditionally occupied by the Indians are considered to be lands permanently inhabited by them, used by them for productive purposes, necessary for the preservation of the environmental resource necessary to maintain their welfare, and required for physical and cultural continuity, according to their customs and traditions.

Lands traditionally occupied by the Indians are subject to exclusively to federal government jurisdiction. (aso bens da Uniao). It is responsibility of the federal government to demarcate Indian lands and to protect the Indians and their property. Lands traditionally occupied by the Indians are inalienable and the rights to them may not be transferred to others.

Indians shall have exclusive rights to the use of the resources found in the soil, rivers and lakes of their land. Mineral resources and hydro power potential on Indian lands may only be exploited with the authorization of Congress, after hearing from the communities affected. The Indian communities affected shall benefit from the exploitation of these resources, in terms to be assured by law.

Indians may not be removed from their lands except in cases of epidemic or catastrophe which puts the public at risk, or in the interests of national sovereignty. They may only removed from their lands following the deliberation of the Congress and their immediate return to their lands as soon as the public risk ends is guaranteed.

All actions intended to occupy lands traditionally occupied by Indians are nullified, without recourse to indemnization or judicial appeal, except in the case of improvements to the land resulting from occupation in good faith.

Article 174 authorizing the state to grant priority to the concession of mineral resources to mining co-operatives (co-operativas garimpeiras) does not apply to Indian lands. (Arts 231-232)