

The International Human Rights Discourse as a Strategic Focus in Socio-Environmental Conflicts: The Case of Hydro-Electric Dams in Brazil

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This article examines the mobilisation of human rights in campaigns against hydro-electric dams in Brazil. The symbolic and legal power of human rights has allowed activists to challenge official accounts of the impact of dams while deploying domestic and international legal frameworks. Although the politicisation of natural resources in Brazil has limited the effectiveness of anti-dam mobilisations, an appeal to the human rights agenda has translated into a powerful critique of the social impact of Brazil's development agenda, thereby making a moral and legal claim for justice.

Keywords: environment; human rights; hydro-electric dams; Brazil; energy politics; activism

Introduction

In 2009 the National Indian Foundation (Fundação Nacional do Índio, FUNAI) reported on an expedition to the Amazonian state of Rôndônia where a major dam, the Jirau hydro-electric complex, was under construction. Detailing evidence of indigenous groups in voluntary isolation living close to the dam, the report also found increased deforestation, invasions of indigenous territories and cases of previously rare illnesses such as malaria and hepatitis. The report added that indigenous groups had fled the region following threats to their territory, construction noise and several loud explosions nearby.¹ Following on from this, in 2011 a labour inspection at the Jirau Dam encountered 38 workers in forced labour conditions, a situation exacerbated by health and safety problems and inadequate accommodation,² which in turn provided the impetus behind a large strike that took place at the Jirau Dam in early 2012. Frustrated by the conditions they experienced, workers – often migrants from other Brazilian states attracted by job prospects at dam construction sites –

proceeded to set fire to buses, their lodgings and various communal areas. Reporting from helicopters circling around the dam site, television journalists labelled the fires and blockades as destruction and vandalism rather than representing the latter as a strategy of resistance that had finally forced the construction companies to negotiate.³ During a strike on 6 April 2013 at the Belo Monte dam, workers also threatened to set their lodgings on fire while attempting to unite with other labourers at faraway construction locations, however the police⁴ managed to obstruct their efforts. The government was more concerned about property and dam construction than human rights and responded to the strike – as well as regular occupations of the building sites by local communities – by employing the authorities to protect the construction sites, and in many cases used the latter to repress protests and occupations.

Dam construction projects have thus become associated with a wide array of human rights infringements, from forced labour and violent repression of protests to displacement and the destruction of the natural environment and people's livelihoods. Consequently, since the 1980s dam construction sites in Brazil have turned into significant sites of contestation, involving protests drawn from local communities, indigenous groups, environmental activists and workers.⁵ Citing the often irreversible impact of hydro-electric dams on communities and the environment, these anti-dam campaigners have questioned the social and environmental sustainability of Brazil's ambition to expand hydro-electric power generation. This article begins by arguing that the economic, political and symbolic significance of natural resources for Latin America has created a politicised situation in which progressive governments have promoted the exploitation of natural resources while often ignoring the social and environmental costs. The article then turns to discuss the political significance of hydropower for Brazil's national development agenda, which has limited the space for opposing voices to be heard, despite Brazil's legally enshrined commitments to consult and protect affected groups. To circumvent these limitations, as the following section explains, anti-dam

protestors have deployed a human rights agenda in order to frame socio-environmental conflicts in terms of international human rights, thereby highlighting the discrepancies between Brazil's ambitions for global leadership in environmental sustainability and human rights, and domestic realities. Finally, two cases of dam conflicts – the Dardanelos and Belo Monte dams – illustrate the political dynamic at work in socio-environmental conflicts in Brazil. At a domestic level, both conflicts show that anti-dam campaigners have strategically mobilised alternative accounts of dams' effects on local communities, by simultaneously challenging official impact studies and widening the definition of the communities and territories affected. Both cases underline the significant role of the domestic legal system in challenging various aspects of the government decision-making and consultation process. However, with the government unresponsive to these demands due to the political and economic significance of hydropower, the Belo Monte campaigners have utilised an international human rights discourse to exert further pressure on the political process. The article concludes that while the international human rights framework has provided activists with a powerful political resource to mobilise for procedural rights to consultation and information, domestic and international legal strategies have proven to be a double-edged sword. The politicisation of natural resources in Brazil has meant that this strategy could not resolve substantive problems, such as the irreversible damage to local communities caused by dam construction.

The Politicisation of Natural Resources in Latin America

Conflicts about hydro-electric dams cannot be understood without reference to the political context in which they take place, as natural resources have become an increasingly problematic and politicised source of development. While reliance on natural resources is not

a new phenomenon in Latin America, since the early 2000s the economic, political and symbolic significance of the sector has deepened at the global, national and local levels. David Harvey's⁶ concept of accumulation by dispossession suggests how the global expansion of capitalism – with the state playing a significant role in this process in Latin America – has intensified the commodification of nature and environmental degradation. The creation of new development frontiers through the expansion of agriculture, infrastructure, and resource extraction in regions such as the Amazon has become associated with the dispossession of communities living near mega development projects in terms of their land, culture and livelihoods. The contestation of natural resource exploitation has thus become inextricably linked with the development agenda pursued by Latin American governments, reflecting the political and symbolic significance of natural resources. The politicisation process therefore involves both the government discourse about the importance of natural resources for national economic and social development and the intensifying contestation surrounding the social, political and environmental sustainability of extractivist projects.

The politicisation of natural resources since the turn of the twenty-first century followed a period during which Latin American governments introduced neoliberal policies to reduce the role of the state, including political interference in the natural resources sector. In the aftermath of the 1982-3 debt crisis and under pressure from global financial institutions, governments in Latin American countries such as Argentina, Chile, Brazil and Mexico decided to privatize key state-owned enterprises, including banks and companies in the electricity and natural resources sector. For example, the Brazilian government privatized the iron ore mining company Companhia Vale do Rio Doce in 1997, now the country's largest exporter. During the 1980s and 1990s we can therefore speak of the depoliticisation of natural resources⁷ as their exploitation shifted away from the state to the private sector, with a

focus on shareholder profits rather than national developmental concerns in an attempt to exclude political considerations from shaping the sector's future.

Since the late 1990s the Latin American political spectrum has changed significantly as voters elected left-wing parties, including in Bolivia, Brazil, Ecuador and Venezuela. What these countries have in common in addition to the electorate's disillusionment with neoliberalism is that their governments have deepened their reliance on primary exports (e.g. gas and lithium in Bolivia, iron ore, oil and agriculture in Brazil, and oil in Ecuador and Venezuela). Based on the surge in global demand for raw materials and agricultural products that lasted until the late 2000s, particularly from China's booming economy, left-wing governments of various political colours and convictions expanded their primary sector. In the Brazilian case, the country's impressive growth rates between 2004 and 2011, was based not only on industrial exports but also on the exploitation of natural resources. Although Brazil's economy is more diversified than some of its neighbours, agricultural and primary products still play a significant role in the country's exports. In 2014, 50% of Brazilian exports consisted of primary products, most significantly soy (13.26%), iron ore (7.45%) and crude oil (6.45%),⁸ with China, the US and the EU as its principal export markets. In this scenario, hydropower has facilitated the expansion of production and the exploitation of natural resources as well as driving the increase in domestic energy consumption.

Predominantly a state-led project under left-wing governments in Latin America, this "neo-extractivist" development model has involved using natural resource revenues to promote economic and social development.⁹ This framework has involved both traditional extractivist activities, such as mining, and recent concerns such as the production of renewable energy and biofuels as well as the regional integration of infrastructure.¹⁰ In contrast to the neoliberal drive to withdraw the state from the economy, neo-extractivism involves a 'reclaiming' and rebuilding of state authority in areas such as natural resources and

industrial policy with the intention ‘to oversee the construction of a new social consensus and approach to social welfare’.¹¹ Due to this political commitment to social development through state intervention, ‘the practice of extractivism [has become] associated with an imagined national interest’ in which ‘the exploitation of nature serves to secure national development and sovereignty, to reduce poverty, increase social participation, to diversify local economies and to guarantee political stability’.¹² Hence this dynamic has permitted left-wing governments across the region to argue that the improvement of socio-economic conditions through government policies necessitates the expansion of natural resources exploitation.

The renewed political significance of natural resources, however, has signified that economic development priorities often override other concerns, such as democratic participation in decision-making, human rights and environmental protection. In Hogenboom’s view, the ‘repoliticisation’ of extractivism has meant that progressive regimes ‘prefer to keep [natural resource extraction] a highly centralized field of governance and to pose strict limits to local demands from civil society’.¹³ For Eduardo Gudynas, the region’s progressive reliance on natural resources does not resolve structural inequalities but merely compensates for the negative effects of the commodification of nature,¹⁴ while simultaneously politically marginalising groups directly affected by this process, particularly indigenous people.¹⁵ In Gudynas’ view, the strategic importance of natural resources has also resulted in Latin American governments engaging with environmental issues ‘at a surface level’, leading to an environmental agenda ‘that effectively incorporates actions that are functional to economic growth and a relationship to the global economy that relies on the export of primary commodities’.¹⁶ Development strategies based on the commodification of nature have also become an object of intense contestation. According to Svampa, the Latin American ‘commodities consensus’ has led to an ‘eco-territorial’ turn in which a wide variety

of socio-environmental activists have argued that natural resources, such as land, water, forests, should not be considered as strategic resources to be commodified for development but as part of the natural, social and cultural heritage of humankind.¹⁷

Because of these contradictions, the politicisation of natural resources in Latin America has generated two clashing discourses: one argument – usually presented by the region’s progressive governments – is that millions of ordinary citizens can benefit from the exploitation of natural resources that underpins an expansionist economic and social development agenda. The ‘developmental illusion’¹⁸ among Latin American governments reflects the view that trade in natural resources opens up opportunities to produce social and economic development, while escaping the fluctuations in global demand for primary goods. The other argument of those opposed to unfettered natural resource exploitation points to the uneven distribution of the costs and benefits and the denial of space for differing views to contest this development strategy. The affected communities have viewed the exploitation of natural resources as creating irreversible damage, which is relevant not only locally but also nationally and globally, as their views increasingly resonate with transnational environmental activists and global concerns about the state of Latin America’s natural environment.

Renewable Energy as a Source of Conflict in Brazil

In the debate about the politicisation of natural resources, hydro-electric dams are a particularly poignant case because they not only produce two-thirds of Brazil’s electricity and generate renewable energy – a cornerstone of climate change policy – but they also cause irreversible social and ecological damage according to the dams’ opponents. In effect, the government argument pitches the interest of millions of Brazilians in national progress and poverty reduction against a supposedly localised discourse about the rights and specific

interests of those directly affected by extractivist projects. However, local communities, together with a transnational network of activists, have offered a different conception of sustainability, one focused on maintaining indigenous peoples' distinctive spiritual relationship with their land as connected with a responsibility for the protection of nature.¹⁹ Nevertheless, as the discourses used in conflicts about hydro-electric dams in Brazil illustrate, the politicised nature of natural resources as a highly strategic sector has simultaneously constrained opposition and opened up new domestic and international spaces for contestation.²⁰

The expansion of infrastructure and hydro-electric power generation in the Amazon region²¹ has formed a cornerstone of Brazil's development agenda since the 1980s. Accelerating in the 2000s in response to electricity blackouts and growing demand, the dual objective of this expansion has been to decrease the country's dependence on energy imports and to increase renewable energy sources for domestic consumption. To illustrate the importance of renewable energy, in 2014 a total of 83.7% of Brazilian electricity was generated from renewable sources, including 67.6% from hydropower. In 2014, dams located in the northern Brazilian states generated 14% of this electricity and the Ministry of Mines and Energy expects this proportion to increase to 23% by 2024 to cope with growing consumer and industrial demand. Combined, the highly controversial Belo Monte and São Luiz do Tapajós dam complexes in the Amazonian state of Pará represent 68% of the planned expansion of hydropower over the next decade.²² The government's argument concerning dams has focused on the essential role of hydro-electricity in national development, which in turn is expected to lead to improved Brazilian living standards. For example, in response to questions about indigenous rights during Brazil's Universal Periodic Review at the Human Rights Council in 2012, the Brazilian representative pointed out that the country's 'development projects contribute not only to economic growth, but also the creation of clean

energy, which accounts for a large part of the country's supply. Moreover, infrastructure creates regional and local benefits'.²³ From this perspective, hydro-electric power not only underpins national and regional development but as a renewable source of energy also contributes to Brazil's strategy to champion climate change policy.²⁴

Anti-dam campaigners have challenged the government argument about the benefits of hydro-electric dams, emphasising the costs in social, cultural and environmental terms. Based on site visits to, and testimonies from, communities affected by dams in the 2000s, a 2010 Brazilian government report²⁵ detailed the human rights violations associated with dam construction. In addition to population displacement due to flooding, the report signalled that local communities experienced changes in traditional land use including: pollution; territorial conflicts and invasions or damage to protected areas; the loss of sacred sites; a deterioration in their quality of life; health problems; threats of violence; actual violence; and food insecurity, such as the loss of fisheries.²⁶ Compounding these negative effects, the Amazonian region, where most dam projects are concentrated, dominates the statistics of killings, threats and arrests of protestors associated with environmental conflicts.²⁷ By emphasising the tensions between these human rights violations, the national development and environmental agendas as a strategic focus, the human rights framework has provided access to domestic and international legal instruments to challenge government policy.

Human Rights in Socio-Environmental Conflicts

While environmental human rights are hard to define,²⁸ framing environmental problems in terms of human rights has allowed socio-environmental activists to appeal to internationally recognised procedural and substantive rights, particularly when struggles involve indigenous peoples. Apart from the core international human rights declarations,²⁹ specific principles

relevant to the rights of indigenous people can be found in the International Labour Organization's Convention 169 on indigenous rights and the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Both ILO Convention 169, ratified by Brazil in 2002, and UNDRIP outline indigenous peoples' right to self-determination (respectively, in the Preamble and in Article 3) and cultural integrity (in Article 5 of ILO 169 and in Articles 8, 11-13, 31 of UNDRIP). Another significant element of the Convention and UNDRIP is that 'indigenous peoples bear both substantive and procedural land and resource rights'.³⁰ From this perspective, substantive rights include the legal recognition of territories and indigenous peoples' right to use this land as well as its resources. Procedural rights include the right to participation and consultation, particularly the principle of free, prior and informed consultation when development projects affected indigenous livelihoods. The ILO Convention 169 (Article 4) stipulates that governments should adopt special measures to protect indigenous groups, underlining the importance of the procedural principles of consultation and participation. However, in practice the extent to which these rights are recognised and upheld has depended on the national political context, where indigenous groups' views and interests have often been marginalised or excluded from the debate.

A human rights perspective highlights the unequal way in which people experience the impact of environmental problems, which has often translated into uneven domestic access to consultation and the legal protection of vulnerable groups.³¹ These inequalities are mutually reinforcing, as the effects of environmental problems caused by natural resource exploitation tend to be more severe when local communities' livelihoods rely on land and water resources and when these communities have cultural and religious connections to the local environment, as in the case of indigenous communities.³² These communities often lack the resources to cope with environmental damage or the capacity to pressurise their government for protection, as in the case of Brazil.

Even though the Brazilian regulatory structure provides for consultation and participation in the licensing of dam projects,³³ the consultation process has transformed into a struggle about the recognition of the rights of those affected by dams.³⁴ As Hochstetler argues, the environmental licensing process in Brazil is a significant source of contention because the process is open to public participation, and includes social as well as environmental considerations.³⁵ However, the extent to which the consultation process can effectively address substantive concerns is questionable. At a hearing about human rights violations in the Belo Monte case in 2011, a participant observed: ‘Whoever went to the government hearings did not get a response to their questions. In addition, they organised hearings at the last minute so that we could not participate. We are not being heard by the companies and the government. They come, throw a book detailing the phases of the works on our table or push it under our door, and they say that this is a dialogue’.³⁶ In the case of the São Luiz do Tapajós Dam, in Fearnside’s view the environmental licensing process ‘ignores many serious socioeconomic impacts and minimises others’, concluding that they are merely a figleaf to justify decisions that have already been made.³⁷ Similarly, Zhouri points out that Brazil’s licensing procedures, while ostensibly promoting participation, have effectively depoliticised the consultation process by limiting the right to object to large development projects.³⁸ As the Brazilian situation shows, no matter how important procedural rights are for vulnerable groups,³⁹ procedures are not always effective and they do not always help to protect substantive rights or compensate for losses,⁴⁰ which has further intensified socio-environmental conflicts. While effective opposition through participation in decision-making processes has become limited, activists have turned to the international human rights framework to challenge the domestic consultation and mitigation procedures.

Reflecting the potential of the human rights framework to address these inequalities, the legal mobilization framework posits that the primary strength of a human rights appeal

not only lies in access to legal instruments but also in the power of human rights claims to be a political resource with the potential for political mobilisation and change.⁴¹ However, the mere existence of laws and regulations have not necessarily guaranteed satisfactory outcomes, as the Brazilian case illustrates. Legal frameworks are therefore a double-edged sword as the ‘law often significantly supports prevailing social relations as well as provides limited resources for challenging those relationships’.⁴² As Burdon warns, while environmental human rights can provide protection, ‘they have not been designed to address the underlying root causes of environmental harm’.⁴³ For Adelman, the ‘key lies in translating human rights as aspirations or moral claims into enforceable demands’,⁴⁴ which is often a difficult task. According to McCann, although the ‘law provides both normative principles and strategic resources for the conduct of social struggles’,⁴⁵ the strategic use of the law as a political resource needs be accompanied by political mobilisation strategies to put pressure on the political process, such as demonstrations, lobbying, transnational networking, occupations and strikes.

As discussed in the next section, the opponents of dam projects have used a range of mobilisation strategies but because they have viewed the domestic consultation procedures as lacking, they have appealed to internationally agreed human rights such as the right to information, participation and consultation, and access to justice mechanisms. As a result, international institutions⁴⁶ such as the Organization of American States (OAS)⁴⁷ and the United Nations human rights framework have increasingly become a focal point for socio-environmental campaigners in Brazil. The inter-American human rights framework not only recognises the distinctive position of indigenous peoples but has also established the relationship between environmental problems and human rights, which opens up the procedures to non-indigenous groups affected by development projects: ‘where environmental degradation is not managed and minimized, it can threaten living conditions

and even life itself”, which means that ‘human life is threatened just as human lives can be threatened by torture, imprisonment, and forced labor’.⁴⁸ The Inter-American Court of Human Rights (IACHR) can recommend precautionary measures, which has taken place in response to several Brazilian cases of social-environmental conflicts, notably the Belo Monte Dam but also when the state failed to protect indigenous groups whose territories had not yet been recognised.⁴⁹ Upholding procedural rights can also function to enhance democratic accountability from the OAS viewpoint, as ‘governments strengthen their democratic base at the same time that they promote sustainability’,⁵⁰ which has the potential to bridge the gap between the generalised benefits of extractivism and socio-environmental costs. The intersection between environmental sustainability and human rights in this definition has been interpreted in the inter-American system as the positive obligation of governments to address environmental damage and to protect indigenous territories,⁵¹ which is reflected in the Inter-American Court of Human Rights ruling on the Belo Monte Dam in 2011. However, as the next section argues, the outcome of socio-environmental struggles – even when international human rights are mobilised – continues to depend on political dynamics as signified by the symbolic politics of natural resources.

Contesting Dams: Human Rights Discourses in Socio-Environmental Conflicts in Brazil

The campaigns against the Dardanelos and Belo Monte Dams in Brazilian Amazonia illustrate how anti-dam activists have mobilised the power of human rights discourses to challenge the ethical, legal and political dimensions of the government’s development agenda. In the case of the Dardanelos Dam, the project faced particularly strong opposition from local indigenous communities who struggled for any recognition of the effects of the

dam on their livelihoods. However, when the Dardanelos Dam began operating in 2011, it soon became clear that the drive to expand hydro-electric power would override these concerns. In the Belo Monte Dam case, activists therefore mobilised the symbolic and legal power of human rights by drawing international attention to Brazil's human rights record and bringing the case to international bodies such as the IACHR and HRC. As the Belo Monte Dam became an international emblem of the anti-dam movement, the symbolic power of the human rights agenda pointed to the human cost of natural resource exploitation, which in turn allowed activists to frame the resultant damage in terms of nationally- and internationally-defined rights. At Rio+20, connecting the international human rights and environmental sustainability agendas to hydro-electric dams meant that socio-environmental campaigners could challenge the government's development agenda which, while not halting dam construction, resulted in long delays in the dam construction process.

Domestic Contestation of the Dardanelos Dam

The Dardanelos hydro-electric dam in the municipality of Aripuanã in the north of Mato Grosso state was one of the first **government-funded** dam projects in the 2000s. Although the project received less attention compared to high-profile cases such as Belo Monte and Jirau, the controversies surrounding its construction are emblematic for other socio-environmental conflicts. Construction commenced in 2007 in the midst of lengthy legal and political battles that had started two years previously, exemplifying not only the problems associated with dams but also the challenges raised by opponents. Before construction began, government authorities stated that the dam would only affect indigenous territories in the region indirectly because of its location outside indigenous land.⁵² Because of irregularities and omissions in the Environmental Impact Assessment (EIA),⁵³ the state's public prosecutor

initiated legal action against a number of companies involved in the dam's construction in 2005, demanding the cancellation of the EIA⁵⁴ and suspending the project tender.⁵⁵ The prosecutor criticised the EIA for not consulting the State Environmental Council, for not including the impact outside the municipality, and ignoring alternative locations. Neither did the assessment take into account electricity transmission to the national grid, which would cause damage over a larger area than predicted.⁵⁶ Furthermore, a 2004 report on local indigenous communities signalled the threat of migrants to the region in search of construction jobs, which would increase illegal fishing, hunting and logging, as well as polluting the natural environment.⁵⁷ The Dardanelos case therefore signals the significant role of regional public prosecutors who have challenged various aspects of the licensing and construction process, demonstrating the key role of the Brazilian legal system in the opposition to dams.

After the initial suspension of the project tender, the local public prosecutors continued to challenge the project, including the construction of electricity transmission lines, all based on irreversible social and environmental damage.⁵⁸ Despite claims that indigenous communities would not be affected, the construction process directly threatened indigenous sacred and ancestral sites, as in 2010 when the Aguas da Pedra construction company blew up an indigenous cemetery.⁵⁹ In response, around 400 indigenous activists occupied the construction site in 2010, holding construction workers hostage to demand compensation for their losses, but the damage was irreversible.⁶⁰ Similar to the other Amazonian dams,⁶¹ opponents also questioned official information about the economic viability of the dam, particularly the effect of seasonally fluctuating water levels, raising concerns about the dam's productivity during the dry season. The Dardanelos case illustrates that opposition strategies focused on the Brazilian legal system in a struggle to challenge the narrow definition of the

dam's impact but also that national legal provisions were insufficient to safeguard the rights of the groups involved.

The Belo Monte Dam on the International Stage

While the Dardanelos conflict received some international attention, the protests' dynamics were primarily domestic. Instead, the Belo Monte Dam has become an international symbol of the resistance of indigenous people to the damage caused by hydro-electric dams, illustrating how campaigners used symbolic and legal strategies to challenge the project. Planning for the Belo Monte dam began under the military government in the mid-1970s but accelerated in the 1990s, until Congress and the Senate finally approved the dam in July 2005. However, questions of transparency, legality and the consultation of indigenous groups continued to spark controversy,⁶² eventually leading to legal challenges conducted through international human rights institutions.

Although an exhaustive overview of the legal issues surrounding the Belo Monte Dam is beyond the scope of this article,⁶³ the complexities of the legal process explain why activists have appealed to international legal frameworks to contest the dam. At a national level protests have focused on the government's attempts to simplify the process of environmental licensing and, as in the Dardanelos case, protestors also challenged the impact studies conducted. Their argument focused on the gap between the right to consultation and the political reality, which effectively limited this right. The anti-dam coalition disputed the official EIA in 2009, pointing out omissions and irregularities. Challenging the official accounts of the impact of dams on local communities therefore turned into a key strategy to halt construction. The 230 page alternative report argued that the EIA underestimated the number of people and land area affected by the dam, overstated the project's environmental

sustainability and lacked appropriate mitigation mechanisms.⁶⁴ The dam would lead to extensive flooding of towns and villages in Pará state, as well as drying up of parts of the Xingu River. At the same time, the dam offered few real benefits to local communities as the energy generated locally would need to be transported to the national grid, supporting wealthier parts of the country. While the dam displaced approximately 35,000 people during and after construction,⁶⁵ Brazilian government reports indicated that the Belo Monte Dam would facilitate the construction of additional dams further upstream, with significant potential for additional displacement.⁶⁶ The alternative report also contested the often-cited argument that the actual infrastructure would not be located on indigenous land so consultation of indigenous people was not required. The official EIA had excluded rivers and shores from indigenous territories, which would significantly alter the potential effects.⁶⁷ Following these debates, in April 2010 a federal judge in Pará suspended the project tender, citing a lack of consultation of indigenous people, which is unconstitutional according to Article 231. The president of the state's Regional Federal Tribunal overturned this decision on the same day, arguing that there was no immediate danger to indigenous people because construction would not start immediately.⁶⁸

To address the difficulties of proceeding through the domestic legal system and the lack of effective consultation, a coalition of groups from the Xingu River Basin issued a complaint with the Inter-American Court of Human Rights (IACHR) in 2011, which became one of the most controversial international legal challenges to Brazil's development agenda. The Court's ruling in April 2011 recommended precautionary measures, calling for the Brazilian government to halt construction until indigenous people were properly consulted and appropriate measures to guarantee the protection of their livelihood were tabled. The recommended precautionary measures involved measures to protect the life and integrity of indigenous communities affected by the dam while suspending the licensing and construction

process. The ruling stipulated that these measures reflected Brazil's international obligations and recommended translating the EIA into indigenous languages as well as developing a plan for the protection of peoples in voluntary isolation.⁶⁹

Although the ruling strengthened the recognition of the rights of those affected by Belo Monte and the legitimacy of their claims in terms of Brazil's international human rights obligations, the recommendations met with a sharp response from the Brazilian government, indicating sensitivity to international pressure despite government resistance. The Ministry for Foreign Affairs responded 'with perplexity' to the demands of indigenous communities 'supposedly threatened' by the construction of Belo Monte.⁷⁰ The Brazilian government subsequently withdrew its ambassador to the OAS as well as suspending its financial contribution of US\$800,000 to the IACHR. The government also responded with a 52 page document, questioning the scope of the Court's powers over domestic matters and arguing that the government had taken appropriate measures to consult and protect indigenous people.⁷¹ The government refused to recognise the jurisdiction of the IACHR in this matter, arguing that its role was subsidiary and that the consultation of indigenous people was an exclusively domestic concern as guaranteed by Article 231 of the Brazilian Constitution.⁷² The document spent much time outlining indigenous policies in Brazil with little detail provided about the actual effects of Belo Monte. Tellingly, the response defined electricity as essential for fundamental development goals, such as to 'promote human dignity, guarantee national development, eradicate extreme poverty and marginalisation, and to reduce social and regional inequalities'.⁷³ Under pressure from Brazil, the IACHR issued a heavily toned down and revised ruling in July 2011, focusing on the protection of the health and cultural integrity of indigenous peoples as well as recommending measures to mitigate the impacts of Belo Monte.⁷⁴ Before the ruling was revised, the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA), in charge of monitoring the environmental impact

of energy projects, had already issued a license authorising construction to begin in June 2011.⁷⁵ The Brazilian response to international pressure to uphold its human rights commitments illustrates the political power of the government's counter-argument, which ended up overriding human rights concerns. However, the strong Brazilian reaction to the ruling also signals the political and symbolic significance of the international recognition of the rights of the communities involved, lending legitimacy to and recognition of campaigners' demands.

Following the IACHR ruling, in March 2012 the International Labour Organization called on the Brazilian government to observe Convention 169, requiring the consultation and participation of indigenous people regarding issues that affect their livelihoods. The tripartite commission noted that while the hydro-electric dams may not be located on indigenous lands, the former could alter 'the navigability of rivers, flora and fauna and climate, [going] further than the flooding of lands or the displacement of the peoples concerned'.⁷⁶ The legal battles also continued in Brazil. In 2012 the Brazilian Regional Federal Court halted construction of the Belo Monte Dam,⁷⁷ which the Federal Supreme Court overturned again in August of the same year, after which construction resumed immediately.⁷⁸ While the construction process advanced, the Belo Monte activists decided to use the occasion of the Rio+20 sustainable development summit in June 2012 to emphasise the discrepancies between Brazil's international environmental credentials and the government's domestic development agenda. In an example of mobilising symbolic political discourse,⁷⁹ the campaigners challenged Brazil's international reputation while the case also illustrates the limitations of a human rights strategy in a restrictive political context.

Symbolic Politics at Rio+20

The Rio+20 sustainable development conference in June 2012 provided the anti-dam campaigners with a platform to focus their protests on Brazil's international reputation as a champion of sustainable development. The Xingu Vivo movement organised a parallel meeting close to the Belo Monte Dam in Altamira, called 'Xingu+23' to mark twenty years since the first 'Encounter of the Indigenous People of Xingu', which took place in 1989. On 16 June 2012, anti-dam activists occupied a temporary dam near Santo Antonio and opened a small channel to allow the Xingu river to flow. They also formed the words 'Pare Belo Monte' (Stop Belo Monte) on the dam, captured on an aerial photograph.⁸⁰ Another "human banner" on the beach in Rio de Janeiro read 'Rios para a vida' (Rivers for Life).⁸¹ Anti-dam groups featuring Brazilian and international participants held several meetings in the civil society arena in Aterro do Flamengo, located about 30 kilometres from the official conference in Riocentro. However, while Rio+20 should have underlined Brazil's global leadership ambitions as South America's largest democracy, the spatial organisation of the conference also served to illustrate the distance between civil society and the official negotiators.⁸²

With the eyes of the world on Brazil, the anti-dam activists also protested against the Belo Monte Dam in Rio de Janeiro. On 18 June 2012, about 1,000 indigenous protesters marched from the People's Summit in Flamengo along some of the city's busiest roads to the headquarters of Brazil's National Development Bank (BNDES).⁸³ In a sign of crossover between legal and political mobilisation strategies, some of the protesters held signs proclaiming that the Brazilian government should respect ILO Convention 169. They protested against the Bank's role in financing large infrastructural projects, wearing 'typical clothes, bodies painted, holding *tacapes* [indigenous weapons], bows and arrows'.⁸⁴ A couple of days later, on the first day of the official Rio+20 conference, around 2,000 activists gathered outside the Riocentro conference centre. Led by the Kayapó leader Cacique Raoni,

the protesters wanted to present a document detailing indigenous demands to UN Secretary-General Ban-ki Moon.⁸⁵ They eventually talked to Gilberto Carvalho, President Dilma Rousseff's chief of staff, who allowed a small delegation to enter the official conference the next day.⁸⁶ Although the delegation met again with Carvalho at Riocentro, who conceded that there had been a lack of advance consultation in the case of Belo Monte, the delegation's presence at the official negotiations unsurprisingly did not result in the government suspending construction,⁸⁷ yet by recognising the Brazilian government's sensitivity to negative international publicity in the area of human rights and the environment, the activists very consciously engaged in symbolic politics to draw attention to their struggle.

With Brazil's environmental credentials at stake, the anti-dam protesters used the momentum of Rio+20 to highlight the tensions between human rights and development policy while Brazil was in the international spotlight, providing them with symbolic leverage in their attempt to hold the Brazilian state accountable. The Dardanelos and Belo Monte case studies illustrate the significance of combining political mobilisation with legal strategies in an attempt to force the Brazilian government to recognise the problems caused by dams. The campaigns also underline the power of the national developmental discourse, which continued to restrict the debate about procedural and substantive issues associated with large development projects. The internationally-focused human rights strategy developed by the campaigners did affect the government's concerns about Brazil's international reputation, particularly when campaigners exploited the political opportunity of Rio+20 and as illustrated by the government's reaction to the IACHR ruling about Belo Monte. While Brazilian dam conflicts are ongoing, the outcomes suggest that international human rights strategies, while unable to halt dam construction or resolve substantive problems, can be employed effectively to exert political pressure in a polarised context.

Conclusion

Weeks before the climate talks began in Paris in November 2015, Brazil experienced one of the most severe environmental disasters in the country's recent history. In the state of Minas Gerais, a mining dam being used to hold waste from iron ore extraction collapsed, releasing a torrent of toxic mud which swallowed the small town of Bento Rodrigues, killing 12 people with about a dozen further victims still missing. The disaster's human and environmental damage once again underlines the cost of natural resource exploitation while the same time iron ore continues to be one of Brazil's most important export products. In the same month, and only days before the Paris talks started, the Brazilian environmental agency IBAMA granted the license necessary to start filling the reservoirs of the Belo Monte Dam, despite a letter FUNAI indicating that many social and environmental conditions had not been met.⁸⁸ These examples illustrate the relationship between development, environmental and human rights priorities, where the dominant discourse about the necessity of natural resources for national development has created a highly politicised environment. The cases discussed in this article also highlight the intensity of socio-environmental conflicts in Brazil in a context where the politicisation of energy leaves little space for effective domestic opposition, contributing to the decision to appeal to the international human rights discourse.

An analysis of socio-environmental conflicts in terms of human rights illuminates how campaigners have translated the human rights agenda into a powerful moral and political critique of development projects, supported by a wide range of other protest strategies. At the same time, the legal mobilisation approach highlights the limitations of international human rights strategies to pursue political change. Legal strategies are a double-edged sword: domestically, while the Brazilian legal system and the environmental licensing process have opened up opportunities for contestation, the national political dynamic has prevented the

extension of the right to consultation to the right to object to dams. While international rulings in favour of campaigners can strengthen the legitimacy of their claims and the recognition of their rights, enforcement depends on a government's willingness to recognise these decisions. As the Brazilian case demonstrates, when an issue is as politicised and significant as energy policy, human rights norms also become politicised, thus the incorporation of these norms into national legislation and practice is by no means a linear or straightforward process.

Consequently, the political dynamic in Brazil illustrates the problematic relationship between procedural and substantive human rights in socio-environmental conflicts. Legal challenges have focused on procedural rights, particularly the right to prior consultation, which has turned into a struggle about whose costs and benefits are important when considering the impact of dams. The dam campaigners' critique has involved a struggle to recognise both the procedural and substantive rights of those involved in socio-environmental conflicts, as the official definition of the dams' impact often proved to be exceedingly narrow. The Brazilian experience also demonstrates that these procedures have often proved to be lacking, not only because of the narrow definition of the costs and benefits but also because dam construction often proceeded while the conditions set out in official impact studies had not yet been fulfilled. Furthermore, the procedural framework did not necessarily resolve substantive issues about the livelihoods of local communities and inequalities in terms of how people experience dams' effects. While appropriate procedures are essential because they offer access to information, consultation and potentially justice, to marginalised groups they do not always answer more fundamental questions about the human rights implications of irreversible damage to people's livelihoods.

¹ Fundação Nacional do Índio (FUNAI), *Relatório da expedição Estação Ecológica Mujica Nava/Serra dos Três Irmãos para levantamento de índios isolados*, ref. no. 12, Porto Velho: FUNAI, 2009.

² Leonardo Sakamoto, 'Governo insere 52 nomes na "lista suja" do trabalho escravo', 30 December 2001, <http://blogdosakamoto.blogosfera.uol.com.br/2011/12/30/governo-insere-52-nomes-na-lista-suja-do-trabalho-escravo/> (accessed March 23, 2015).

³ Bruno Fonseca and Jessica Mota, 'Trabalhadores refêns em obras bilionários na Amazônia', *Diário Liberdade*, 13 December 2013; Roberto Vêras, 'Brasil em obras, peões em luta, sindicatos surpreendidos', *Revista Crítica de Ciências Sociais* 103 (2014): 118.

⁴ The police force in question, the Força Nacional, was established in 2004 as a federal force – police forces in Brazil are organised at state level – to coordinate action in case of public security emergencies. Critics have argued that the FN, being directly controlled by the president, does not have the same level of democratic control as other police forces and that its mandate now includes security at private enterprises, such as the Belo Monte Dam. See Ciro Barros, 'Pela Ordem', *APública*, 25 April 2014, <http://apublica.org/2014/04/pela-ordem/> (accessed April 28, 2016).

⁵ On the scope of the networks involved in socio-environmental activism in Brazil, see Kathryn Hochstetler and Margaret E. Keck, *Greening Brazil: Environmental Activism in State and Society* (Durham, NC: Duke University Press, 2007): Ch. 5; Franklin D. Rothman and Pamela E. Oliver, 'From Local to Global: The Anti-Dam Movement in Southern Brazil, 1979-1992', *Mobilization* 4, no. 1 (1999): 41-57; Philip M. Fearnside, 'Dams in the Amazon: Belo Monte and Brazil's Hydroelectric Development of the Xingu River Basin' *Environmental Management* 38, no. 1 (2006): 16-27; Eve Z. Bratman, 'Passive Revolution in the Green Economy: Activism and the Belo Monte Dam', *International Environmental Agreements* 15, no. 1: 61-77.

⁶ David Harvey, 'The "New" Imperialism: Accumulation by Dispossession', *Socialist Register* (2004): 75.

⁷ Barbara Hogenboom, 'Depoliticized and Repoliticized Minerals in Latin America', *Journal of Developing Societies* 28, no. 2 (2012): 136-7.

⁸ Ministério do Desenvolvimento, Secretaria de Comércio Exterior, *Exportação brasileira, produto por fator agregado* (Brasília: Ministério do Desenvolvimento/SECEX, 2015).

⁹ Alberto Acosta, 'Extractivism and Neextractivism: Two Sides of the Same Curse', in *Beyond Development: Alternative Visions from Latin America*, ed. Miriam Lang and Dunia Mokrani (Amsterdam: Transnational Institute, 2013): 71-2.

¹⁰ Maristella Svampa, "'Consenso de commodities" y lenguajes de valorización en América Latina', *Nueva Sociedad*, no. 244 (2013): 34-5.

¹¹ Jean Grugel and Pía Riggirozzi, 'Post-Neoliberalism in Latin America: Rebuilding and Reclaiming the State after Crisis', *Development and Change* 43, no. 1 (2012): 2-3.

¹² Hans-Jürgen Burchardt and Kristina Dietz, '(Neo-)extractivism – A New Challenge for Development Theory from Latin America', *Third World Quarterly* 35, no. 3 (2014): 470.

¹³ Hogenboom, 'Depoliticized and Repoliticized Minerals', 152; for the Brazilian case, see also Anthony Hall and Sue Branford, 'Development, Dams and Dilma: The Saga of Belo Monte', *Critical Sociology* 38, no. 6: 856-7.

¹⁴ Eduardo Gudynas, 'Estado compensador y nuevos extractivismos: Las ambivalencias del progresismo sudamericano', *Nueva Sociedad* 237 (2012): 128-46.

¹⁵ Helle Abelvik-Lawson, 'Sustainable Development for Whose Benefit? Brazil's Economic Power and Human Rights Violations in the Amazon and Mozambique', *International Journal of Human Rights* 18, no. 7-8 (2014): 801-3.

¹⁶ Eduardo Gudynas, 'Climate Change and Capitalism's Ecological Fix in Latin America' *Critical Currents*, 6 (2009): 40.

¹⁷ Svampa, "Consenso de commodities", 41.

¹⁸ Svampa, "Consenso de commodities", 35.

¹⁹ Deborah McGregor, 'Living Well with the Earth: Indigenous Rights and the Environment', in *Handbook of Indigenous Peoples' Rights*, ed. Damien Short and Corinne Lennox (Abingdon and New York: Routledge, 2016): 169.

²⁰ Kathryn Hochstetler, 'The Politics of Environmental Licensing: Energy Projects of the Past and Future in Brazil', *Studies in Comparative International Development* 46 (2011): 353.

²¹ For a map of the planned expansion of hydro-electric power generation, see Ministério de Minas e Energia, Secretaria de Planejamento e Desenvolvimento Energético, *Plano decenal de expansão de energia 2024* (Brasília: Ministério de Minas/PPE, 2015): 392, <http://www.epe.gov.br/PDEE/Relat%C3%B3rio%20Final%20do%20PDE%202024.pdf> (accessed April 28, 2016).

²² Ministério de Minas, *Plano decenal de expansão*, 82-4, 95.

²³ Human Rights Council (HRC), *Report of the Working Group on the Universal Periodic Review: Brazil*, A/HRC/21/11 (Geneva: Human Rights Council, 2012): 14.

²⁴ Marieke Riethof, 'Brazil and the International Politics of Climate Change: Leading by Example?', in *Provincialising Nature: Multidisciplinary Approaches to the Politics of the Environment in Latin America*, ed. Michela Coletta and Malayna Raftopoulos (London: ILAS, 2016).

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²⁶ See Fiocruz, 'Mapa de conflitos envolvendo injustiça ambiental e saúde no Brasil', Fundação Oswaldo Cruz, <http://www.conflitoambiental.icict.fiocruz.br/> (accessed August 25, 2015); Comissão

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³⁶ Cited in SDH, *Relatório de impressões*, 15.

³⁷ Fearnside, 'Brazil's São Luiz do Tapajós Dam', 378-81.

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³⁹ Sophie Thériault, 'Environmental Justice and the Inter-American Court of Human Rights', in *Research Handbook on Human Rights and the Environment*, ed. Anna Grear and Louis J. Kotze (Cheltenham, Edward Elgar, 2015): 311.

⁴⁰ Fernanda C. de Oliveira Franco and Maria L. Alencar Mayer Feitos, 'Desenvolvimento e direitos humanos: Marcas de inconstitucionalidade no processo de Belo Monte', *Revista Direito* 9(1) (2013): 96; see also Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya: Extractive Industries and Indigenous Peoples*, A/HRC/24/41 (Geneva: Human Rights Council, 2013): 13-4.

⁴¹ Scheingold, *The Politics of Rights*.

⁴² McCann, 'Law and Social Movements', 25.

⁴³ Peter D. Burdon, 'Environmental Human Rights: A Constructive Critique', in *Research Handbook on Human Rights and the Environment*, ed. Anna Grear and Louis J. Kotze (Cheltenham, Edward Elgar, 2015): 62, 73.

⁴⁴ Adelman, 'Rethinking Human Rights', 167.

⁴⁵ McCann, 'Law and Social Movements', 22.

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http://www.oas.org/en/sedi/dsd/ELPG/Docs/report_human_rights.pdf (accessed 5 November 2015): 2.

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