

## Article

# Explanatory factors for the delay in the demarcation of indigenous lands in Brazil

Leonardo Barros Soares <sup>1</sup>

Catarina Chaves Costa <sup>2</sup>

Luiza Brilhante Bezerra <sup>3</sup>

Ana Paula Alvares Costa <sup>4</sup>

Yasmin Nascimento Moita <sup>5</sup>

<sup>1</sup> Universidade Federal de Viçosa (UFV), Viçosa – MG, Brazil

<sup>2</sup> Universidade de São Paulo (USP), São Paulo – SP, Brazil

<sup>3</sup> Universidade Federal do Pará (UFPA), Belém – PA, Brazil

<sup>4</sup> Universidade Estadual do Pará (UEPA), Belém – PA, Brazil

<sup>5</sup> Centro Universitário do Estado do Pará (CESUPA), Belém – PA, Brazil


The administrative processes of recognizing Indigenous Lands (ILs) in Brazil can take decades to complete. Indigenous peoples who live in unrecognized ILs are more vulnerable to a series of rights violations, which makes the completion of demarcation processes urgent. This article aims to answer the following question: why do some demarcation processes take longer than others? We listed five conditions found in the literature on the demarcation of indigenous lands that can delay them. Next, we applied the qualitative comparative analysis (QCA) method in its crisp set mode to 40 cases of IL demarcation. We present two conclusions: the presence of economic interests is an important condition to explain the long duration of some demarcation processes, but it is neither necessary nor sufficient, and the conjunction of this factor with the judicialization of the demarcation process explains most cases of long-term demarcations.

**Keywords:** demarcations; indigenous lands; QCA; judicialization; economic interests.

## Fatores explicativos da morosidade das demarcações de terras indígenas no Brasil

Os processos administrativos de reconhecimento de terras indígenas (TIs) no Brasil podem levar décadas para chegar a termo. Povos indígenas que habitam em TIs não reconhecidas em caráter final são mais vulneráveis a uma série de violações de direitos, o que torna premente sua conclusão. O presente artigo pretende oferecer uma resposta à seguinte pergunta: por que alguns processos demarcatórios demoram mais que outros? Primeiramente, arrolamos cinco condições constantes da literatura sobre demarcação de terras indígenas que podem postergá-las. Na sequência, aplicamos o método *qualitative comparative analysis* (QCA), em sua modalidade *crisp set*, a um conjunto de quarenta casos de demarcações de TIs. Apresentamos duas conclusões: que a presença de interesses econômicos é uma condição importante para explicar o longo tempo de alguns processos demarcatórios, mas não


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é necessária nem suficiente, e que a conjunção desse fator com a judicialização do processo demarcatório explica a maioria dos casos de demarcações de longa duração.

**Palavras-chave:** demarcações; terras indígenas; QCA; judicialização; interesses econômicos.

## Factores explicativos del retraso en la demarcación de tierras indígenas en Brasil

Los procesos administrativos de reconocimiento de tierras indígenas (TI) en Brasil pueden tardar décadas en llegar a su fin. Los pueblos indígenas que viven en TI cuyo proceso de reconocimiento aún no se finalizó son más vulnerables a una serie de violaciones de derechos, lo que hace urgente su conclusión. Este artículo pretende dar respuesta a la siguiente pregunta: ¿por qué algunos procesos de demarcación demoran más que otros? En primer lugar, enumeramos cinco condiciones encontradas en la literatura sobre la demarcación de tierras indígenas que pueden atrasar dichos procesos. A continuación, aplicamos el método de análisis cualitativo comparativo (QCA), en su modo *crisp set*, a un conjunto de cuarenta casos de demarcaciones de TI. Presentamos dos conclusiones: que la presencia de intereses económicos es una condición importante para explicar el largo tiempo de algunos procesos de demarcación, pero no es necesaria ni suficiente, y que la conjunción de este factor con la judicialización del proceso de demarcación explica la mayoría de los casos de demarcaciones de larga duración.

**Palabras clave:** demarcaciones; tierras indígenas; QCA; judicialización; intereses económicos.

## 1. INTRODUCTION<sup>1</sup>

“This also deals a little bit with our history and that of the judiciary as well as the administration itself which seem to work a little with a paradigm of eternity” (Justice Gilmar Mendes, RE 416144, 2004).

The demarcation of land is the public policy of recognizing indigenous lands in Brazil. It is an administrative process regulated by specific legislation, which seeks to recognize the rights of indigenous peoples prior to the Constitution of 1988 which are consecrated in Article 231. However, in evaluating their relative effectiveness compared to other countries, it is necessary to recognize that demarcation processes can drag on for years, sometimes decades, without reaching a conclusion. The sloth of this process is recognized by the actors involved – indigenous peoples and organizations, non-governmental organizations (NGOs), and national and international governmental organizations, which gives rise to a series of legal issues within this country as well as outside of it.

In a previous work, we demonstrated this affirmation by calculating that the average time for concluding these processes is fifteen years (Soares & Junqueira, 2021). There are, however, processes that still have not been completed after three decades, as well as processes that realize the entire demarcation process in five years, sometimes less. What can explain such a great discrepancy?

In order to shed light on this phenomenon and based on the methodological-theoretical framework of the field of political science, this article offers an answer to the following question: why do some demarcation processes take longer than others?

This text is organized in the following manner. In addition to the introduction and conclusion, we will present a brief panorama of the legal and institutional framework that surrounds the demarcation process in this country, in order to facilitate an understanding of the phases of this administrative process. We will then present a series of variables that are candidates for explaining the observed phenomenon based on the most comprehensive previous study (Soares et al., 2021). Next will be a discussion of the research approach known as Qualitative Comparative Analysis (QCA)

<sup>1</sup> This study is one of the products of a research project entitled “Indigenous Land Recognition Policies in Brazil: Actors, Institutions, and Processes”, realized in 2020 and 2021 by the Federal University of Pará (UFPA).

using crisp sets to examine forty cases of demarcations of indigenous lands. This will be followed by the results of this process and an interpretation of the obtained results.

## **2. THE DEMARCATION OF INDIGENOUS LANDS IN BRAZIL: A CONCISE NORMATIVE-TECHNICAL PORTRAIT**

The first piece of federal legislation of interest related to the demarcation of indigenous lands in the republic of Brazil is Law 6001 of 1973, which is also known as the Indian Statute<sup>2</sup>. This legislation sought to deal with all aspects of indigenous peoples from an assimilationist perspective which understood being indigenous as a “passing” condition, which would disappear due to the irresistible advance of “progress”, “development”, and “civilization”.

After this statute entered effect, a series of decrees were issued which sought to regulate the demarcation procedure for indigenous lands as envisaged in the Indian Statute. Decrees 76,999 of 1976, 88,118 of 1983, and 94,945 of 1987 established a series of administrative procedures which, to the extent that they sought to standardize demarcation processes and make them more predictable, had the practical effect of creating a bottleneck in a process which analysts at the time called the “demarcation funnel”, which promoted the existence of many processes in the initial phases, but few in the final phases (Oliveira & Almeida, 1984). We do not have clear statistics available in terms of the effective time it took to conclude these processes during this period, but it remains evident from researchers of this subject that the demarcation of indigenous lands policy has been notoriously slow since its inception.

The Magna Carta of 1988, in turn, provided an institutional framework which broke with the previous normative assimilationist framework and consecrated respect for the rights, customs, and traditions of indigenous peoples. Articles 231 and 232 sculpted various devices in the constitution including the end of the state’s legal authority over indigenous peoples, giving them the exclusive right to use the lands they inhabit. The dawn of the New Republic brought with it a new drive to demarcate indigenous lands and important information for the political actors involved in this process (Lima, 2015).

- 1) The actual demarcation rite is regulated by Decree 1775/96 (Oliveira & Almeida, 1998). In sum, it is an administrative process undertaken by Brazil’s indigenous peoples body and the ministry it belongs to that consists of the following phases: 1. The expedition of this ordinance establishing a working group coordinated by a professional anthropologist who should provide evidence to identify a determined area as a traditional homeland; 2. If the indigenous land study is approved, its demarcation will proceed; 3. It is then remitted to the ministry (most of the time since 1988 this has been the Ministry of Justice), which expedites the declaratory ordinance of recognizing the traditional nature of these indigenous lands;
- 2) A decree is then prepared to be signed by the President of the Republic.
- 3) Finally, this indigenous land is registered with the Secretariat of Patrimony and is thereby considered approved, which concludes the demarcation process.

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<sup>2</sup> Until the appearance of this legislation, the demarcation of indigenous lands was the mainly the task of state governments.

As we can observe, the policy of the Brazilian state – or in other words, the public policy oriented towards the establishment of a relationship, at times violent and controlling, and at times based on the guarantee of rights – with indigenous peoples is secular and consists of ample institutional-juridical codification. Given that the objective of this article is to seek an explanation for the sloth that is characteristic of a number of indigenous land demarcation processes, we need to ask which parameters should be used to know whether a procedure has taken more than a reasonable amount of time?

The provisional answer that we offer to this crucial question can be found in the legislation mentioned above. In Article 65 of the Indian Statute as well as Article 67 of the Transitional Constitutional Dispositions Act of the Constitution of 1988 a period of five years is mentioned as a sufficient amount of time to finalize not just one but all of the indigenous land demarcations that existed at the time this legislation went into effect. The reasons why this time frame was chosen elude our power of explanation. We can only state that to the legislators who produced these documents, this appeared to be an adequate amount of time. Thus, for our purposes we will consider a timely demarcation to be one that realizes its cycle in at most five years' time, and those that exceed this time frame will be considered unjustly delayed processes.

We can observe from this brief portrait of the history of indigenous land demarcation in Brazil, that it seems to suffer from a congenital illness: a sloth that defies good sense when we remember that we are dealing with territories whose traditional occupation is recognized as an original right that existed before the Constitution which endorsed it, with it being up to the Executive Branch to develop concrete measures to make this right concrete. So, given that this is, at least from a formal point of view, a procedure of an administrative nature under the exclusive responsibility of the Executive Branch, what could explain such a great discrepancy in terms of the amount time necessary for its completion? In the following section, we will detail the methodological-theoretical framework which will help us shed some light on this enigma.

### **3. WHY SO SLOW? SEVERAL INTERVENING FACTORS AND THE METHOD UTILIZED IN THIS STUDY<sup>3</sup>**

The search for institutional and non-institutional factors that can help us obtain answers to our research question led us to possible clues both inside and outside of the specialized literature on this subject. From the outset, it is important to emphasize that we have been calling attention to the relative indifference of Brazilian political science – and, to a certain extent, the indifference that has also been practiced in other countries – in other publications (Soares, 2020) to policy towards indigenous peoples, which corresponds to a significant theoretical gap in theories, hypotheses, and classical studies which can help the researcher in this investigation.

Two works by Canadian political scientists, however, stand out among the investigations of processes that recognize indigenous lands and their temporal dimensions. One of them is Christa Scholtz (2006), who, in investigating patterns of institutional designs oriented towards recognition of indigenous lands in Canada, the United States, New Zealand, and Australia argued that eminently political choices were made by governments which affected their implementation. If the option is

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<sup>3</sup> This section benefits enormously from the work that is dedicated to exploring the factors that could explain the emergence of indigenous land demarcation (Soares et al., 2022).

negotiating with indigenous peoples in the establishing of agreements, as in the case of Canada, the tendency is for the process to take longer than otherwise, since the negotiators must deal with a large group of dimensions of public policies that need to be discussed point by point. Even though this is not one of the cases addressed by this work, we can infer that models like the Brazilian one which merely involves an administrative process, should be a little bit quicker.

Another relevant authority is the work of Alcantara (2013). Focused on Canada, the author investigates a group of indigenous communities that concluded or did not conclude negotiations to recognize their traditional lands. The researcher was not only interested in knowing the elements which helped the quick resolution of the analyzed processes, but also in knowing the elements which affected the speed with which they were resolved. Thus, he proposed that in the case of Canada the following variables accelerate or delay the process of recognizing traditional lands: a relationship of trust between the First Nations and government agents, especially those who are negotiators outside of the Canadian state bureaucracy; little competition for the use of the land under negotiation – lands in remote locations have a greater chance of being recognized officially more quickly; the demand for economic development, because the presence of minerals or any other resources that can be exploited in indigenous lands requires the rapid resolution of their legal status to provide legal security for enterprises that are proposed for the area.

To find new elements to support this theoretical debate, we have conducted an ample review of the literature in a previous work (Soares et al., 2021) to perform a preliminary mapping of the factors that we believe could further the demarcation process or obstruct it. To be concise, we will first present five factors of the thirteen identified in the referred work which stand out as being of special interest in explaining this phenomenon. They are:

### **3.1. The judicialization of demarcation processes (JDP)**

The judicialization of demarcation processes is presented in the literature as the principal obstacle to their conclusion in Brazil (Alonso, 2013; Araújo, 2018; Barretto, 2017; Camilo, 2010; Cavalcante, 2014; Fernandes, 2015; Neves, 2012; Nóbrega, 2011; Osowski, 2017; Silva, 2019). By judicialization we understand the use of the Brazilian legal system to resolve controversies relative to indigenous lands by some of the involved parties. Making legal contestation possible by those who consider themselves harmed by the demarcation process gives greater legal security to the entire process, relying on judicial decisions made throughout the process. In practice, however, this leads to the indefinite postponement of these processes through legal recourses and maneuvers.

### **3.2. Economic interests (EI)**

The second most often mentioned factor in the analyzed texts is a group of economic interests that are interested in the indigenous lands (Alonso, 2013; Araújo, 2018; Ferreira, 2009; Machado, 2015; Pequeno, 2005; Santilli, 1998). In this article, we understand economic interests to be a broad spectrum of agents with economic goals, which may be private or public, that lead them to try to exploit the natural resources on or below these traditional lands.

### 3.3. A Lack of indigenous group cohesion (LGC)

The absence of a unified leadership, factionalism, and mutual sabotage of representatives of the same indigenous people can complicate the conclusion of the demarcation process (Araújo, 2018; Batista, 2004; Erthal & Almeida, 2004; Viegas, 2019). Alcantara (2013) supports this perception by arguing that the governmental power involved in the land recognition process can often present the same team that has to deal with constant changes in indigenous leadership or leadership with insufficient power which can harm the progress of these processes.

The institutional learning of the progressive establishment of trust between state agents and indigenous peoples is harmed when leaders have confrontations, lie to others, compete amongst each other, or seek solutions just for their villages without taking into account the interests of neighboring villages. In sum, fissures in the collective voice of the groups who want their lands demarcated can slow down this process.

### 3.4. Infra-constitutional normative changes (INC)

The current indigenous policy in Brazil is, as we have seen, regulated by infra-constitutional legislation that seeks to organize the various practical aspects involved in the demarcation procedure. The parameters stipulated in decrees, ordinances, norms, reports, and other administrative acts can have an overriding influence on the process of recognizing indigenous lands (Araújo, 2018; Erthal & Almeida, 2004; Machado, 2015; Menezes, 2018; Santilli, 1998).

Changes in the rules of the game can lead to a new report, new technical research, or the restarting the demarcation process from scratch. Given that constitutional changes of greater import have greater political costs attached, this seems to be an increasingly utilized strategy used by political actors interested in interfering in demarcation processes.

### 3.5. Multiplication of working groups (MWG)

The kickoff of the demarcation process is a key moment that influences whether the rest of the procedure will run smoothly. However, it is a costly procedure and there are no guarantees that the result will be satisfactory. On the other hand, there is also the possibility of a rejection of the reports the working group has prepared based on political motives. Moreover, the multiplication of working groups implies missing a cascade of procedural deadlines, which generates a mismatch between normative expectations and the reality of the bureaucratic aspects of demarcation processes.

Our study investigates a group of forty cases of indigenous land demarcation. These cases were selected as follows. First we requested, via the Access to Information Law, an updated spreadsheet from the National Foundation of Indigenous Peoples (Funai) of the existing indigenous lands in this country. Then we selected our cases based on maximizing desirable characteristics.

First, we looked for indigenous land cases of similar sizes. In the North, we tried to compare indigenous lands of large size, namely over four hundred thousand acres in area. In other regions we maintained this criterion but without this size requirement because few of them are this large. We also took into account cases with greater complexity and variation, those with lands covering different municipalities or states, those located on borders, those with a greater amount of conflict



in current demarcation processes, as well as those with high population densities in the states where they are located.

Thus, based on the above list of criteria, we arrived at a selection of indigenous land demarcation cases:

- Cases in the North and Midwest: JT,<sup>4</sup> CL, WA, KT, MK, NW, AC, YK, CC, KRP, IW, UW, TD, and C1.
- Cases in the Northeast: AB, AV, PT, BC, PMM, TK, CJP, PO, and KW.
- Cases in the South and Southeast: BV, RS, IR, CP, MC, XPC, BV, YL, XP, RC, GT, JG, IT, TP, GB, XC, and TPQ.

Therefore, of the forty cases, 18 have been concluded and 22 are in the declaration stage. In terms of the temporal aspect of the demarcation cycle, which is the focus of this article, 27 have taken more than five years during this process (AB, AV, CL, IP, JT, KT, MD, RS, SP, WA, PT, BC, PO, PMM, KW, TK, MC, XP, BV, RC, GT, C1, IW, UW, KRP, JG and TP) and 13 have concluded within the stipulated reasonable amount of time (CP, NK, CJP, XPC, YL, AC, YK, CC, TD, IT, GB, XC and TPQ). Together, these cases represent 29 million acres in 58 municipalities in 19 states containing a population of 12,966 individuals, distributed among 20 indigenous peoples. Thus, we understand that the sample presented here maximizes the variety of these cases, which may provide an opportunity for explanatory propositions of a more easily generalized scope (Gerring, 2004, 2007, 2009; Rezende, 2011).

After selecting the cases, we used the Information Access Law again to obtain the files of the demarcation processes, which were formally requested and provided in the form of digital files during the second half of 2020 and the middle of 2022. With these in hand, we analyzed the demarcation processes. As we have alluded to before, these are files which usually contain hundreds or thousands of pages of memorandums, dispatches, decrees, official communications, croquis and all sorts of other materials. Often, they are stored in countless volumes, which makes investigating them a labor-intensive task.

To facilitate a multiple and simultaneous approach to these processes, we proceeded to distribute them among our group of researchers<sup>5</sup> who had the task of reading these “digital tomes” based on a research protocol that we prepared to reduce the complexity of the task. In other words, we prepared a research instrument which guided our point of view in terms of variables of interest and helped us make quick searches for distinct elements in these documents. In addition, we broadly consulted various government and non-government databases as well as digital media sources whenever the analyzed material required greater clarification or context. We held monthly meetings in 2020 and 2021 to discuss the cases, verify the progress of each of the researchers, and occasionally propose changes in which searches to conduct.

<sup>4</sup>The cases are just identified by two letter abbreviations, with no other elements that identify their states, size or the indigenous peoples that inhabit them, to avoid mistaken interpretations of the attributions of scores to conditions which are involved in the demarcation process.

<sup>5</sup>The following researchers participated in the data collection and analysis: Catarina Chaves Costa, Marina de Barros Fonseca, Joseane Ferreira Mota, Luiza Brilhante Bezerra, Ana Paula Alvares Costa and Yasmin Nascimento Moita.

After consolidating the selected cases, we applied QCA. This is a configuration method which seeks to understand what constitutes sufficient and necessary conditions for the appearance of a given phenomenon of interest – in this case the time to complete the demarcation process. We therefore observed the conditions which are partly insufficient but necessary for an unnecessary condition, but enough to obtain a result, and those which are partly sufficient, but unnecessary, of an insufficient factor, which is necessary to obtain the result of interest (Betarelli & Ferreira, 2018).

QCA is based on the idea of causal complexity, which implies group multicausality – distinct combinations of conditions that can lead to the same phenomenon – or in other words, equal results. In addition, the multicausality in this case is also asymmetric, given that without the necessary measurements there is no way to deduce the non-occurrence of a given result based on an explanation of its occurrence.

In other words, there are various causal paths that can lead to an explanation of the demarcation of indigenous lands. On the other hand, the confirmation of these paths which lead us to the result of interest do not help us extract in a simple manner the answer to what leads to not obtaining this result. Tests of the conditions that lead to this phenomenon also need to be conducted (Freitas & Bizzarro, 2015).

Finally, in terms of the approach applied here not providing causal relationships between the selected factors in the second half of this article and the demarcation processes in a complete manner, it helps the construction of empirical typologies, which serve as trampolines to elaborate statistically testable hypotheses based on research designs with large numbers of cases.

The QCA approach consists of two basic models called fuzzy set QCA and crisp set QCA. The main difference between them resides in the condition of attributing a given phenomenon as a member or non-member of a group based on a dichotomy (“0” and “1”, “belongs” or “does not belong”) or a belonging score (any value between “0” and “1”). The former captures quantitative and qualitative distinctions between the phenomena, while the latter captures just the qualitative dimension.

In this article, we use crisp set QCA, because the analyzed phenomenon can use a simple dichotomy: “1” for indigenous lands whose demarcation process, concluded or not in 2022, surpassed a five-year time span, and “0” for indigenous lands whose demarcation process, concluded or not in 2022, is within the stipulated five-year time span. In accordance with our previous discussion, we wish to explain temporally unjust demarcations (1) and temporally just demarcations (0).

Then, we will present and debate the results of the application of this technique to our selected cases.

#### **4. AN EXPLANATION OF PROCEDURAL DELAYS: AN ANALYSIS OF THE RESULTS**

We begin with the presenting of the data matrix below in accordance with our utilization of the QCA approach. This is a table in which we can view the analyzed cases, the factors applied (k), and in the last column the result to be explained.



**TABLE 1** DICHOTOMIC DATA MATRIX

Cases	JDP	EI	INC	LGC	MWG	TIME
AB	0	0	0	0	0	1
AV	1	1	0	0	0	1
CP	0	0	0	0	0	0
CL	0	1	0	0	1	1
IP	1	0	1	0	1	1
JT	0	1	0	1	1	1
KT	0	1	1	0	0	1
MD	0	1	1	1	1	1
NK	1	1	0	0	1	0
RS	1	1	0	0	1	1
SP	1	1	0	0	0	1
WA	1	1	1	0	1	1
CJP	1	0	0	0	0	0
PT	1	1	0	0	0	1
BC	0	1	0	0	0	1
PO	1	1	1	0	1	1
PMM	1	1	0	0	1	1
KW	1	1	1	0	1	1
TK	1	1	1	0	0	1
MC	1	1	0	0	1	1
XP	0	1	0	0	1	1
XPC	0	1	0	1	1	0
BV	1	1	0	0	1	1
RC	0	0	0	0	0	1
GT	0	1	0	1	1	1
YL	0	0	0	0	0	0
C1	0	1	1	0	1	1
AC	1	1	0	0	0	0
YK	1	1	0	0	1	0
CC	1	1	1	0	1	0

*Continue*

Cases	JDP	EI	INC	LGC	MWG	TIME
IW	0	1	1	0	1	1
UW	0	0	0	0	0	1
TD	0	0	0	0	0	0
KRP	1	1	0	0	1	1
JG	1	1	0	0	1	1
IT	1	1	1	0	0	0
TP	1	1	0	0	1	1
GB	0	0	0	0	1	0
XC	0	0	0	0	1	0
TPQ	1	1	1	0	1	0

Source: Elaborated by the authors.

Then, we present the “truth table” that results from the use of minimization logic through the Boolean reduction of the selected factors and the attribution of cases to different causal configurations. This process can be realized in an automatic manner by several types of software. In this article, we used fsQCA Version 3.1b for the Windows 12 operating system. We used the threshold heading for attributing the cases to the formulas, with a minimum of 0.75, which in the QCA literature is termed a crisp set.

The program offers three types of solutions: complex, parsimonious, and intermediate. The presentation protocol for the QCA results envisions the presentation of three results, but a discussion only in terms of the intermediate solution, which is the most appropriate to consider in the final analysis, given that it is not as simplified as the parsimonious solution or as difficult to understand as the complex solution.

### BOX 1 COMPLEX SOLUTION

Formula	Raw coverage	Unique coverage	Consistency	Cases
$EI^* \sim INC^* \sim LGC$	0.481481	0.37037	0.8125	AV(1,1), CL(1,1), NK(1,0), RS(1,1), SP(1,1), PT(1,1), BC(1,1), PMM(1,1), MC(1,1), XP(1,1), BV(1,1), AC(1,0), YK(1,0), KRP(1,1), JG(1,1), TP(1,1)
$\sim JDP^* EI^* \sim LGC$	0.222222	0.0370371	1	CL(1,1), KT(1,1), BC(1,1), XP(1,1), C1(1,1), IW(1,1)
$\sim JDP^* EI^* INC^* MWG$	0.111111	0.0370371	1	MD(1,1), C1(1,1), IW(1,1)
$JDP^* \sim EI^* INC^* \sim LGC^* MWG$	0.037037	0.0370371	1	IP(1,1)

Frequency cutoff: 1 Consistency cutoff: 0.75

Solution coverage: 0.666667 Solution consistency: 0.857143

Source: Elaborated by the authors.

### BOX 2 PARSIMONIOUS SOLUTION

Formula	Raw coverage	Unique coverage	Consistency	Cases
$\sim JDP * INC$	0.148148	0.148148	1	KT (1,1), MD (1,1), C1 (1,1), IW (1,1)
$EI * \sim INC * \sim LGC$	0.481481	0.481481	0.815	AV (1,1), CL (1,1), NK (1,0), RS (1,1), SP (1,1), PT (1,1), BC (1,1), PMM (1,1), MC (1,1), XP (1,1), BV (1,1), AC (1,0), YK (1,0), KRP (1,1), JG (1,1), TP (1,1)
$\sim EI * INC$	0.037037	0	1	IP (1,1)
$JDP * \sim EI * MWG$	0.037037	0	1	IP (1,1)

Frequency cutoff: 1 Consistency cutoff: 0.75  
 Solution coverage: 0.666667 Solution consistency: 0.857143  
**Source:** Elaborated by the authors.

### BOX 3 INTERMEDIATE SOLUTION

Formula	Raw coverage	Unique coverage	Consistency	Cases <sup>1</sup>
$EI * \sim INC * \sim LGC$	0.481481	0.37037	0.8125	AV (1,1), CL (1,1), NK (1,0), RS (1,1), SP (1,1), PT (1,1), BC (1,1), PMM (1,1), MC (1,1), XP (1,1), BV (1,1), AC (1,0), YK (1,0), KRP (1,1), JG (1,1), TP (1,1)
$\sim JDP * EI * \sim LGC$	0.222222	0.0370371	1	KT (1,1), C1 (1,1), IW (1,1)
$JDP * \sim EI * INC * MWG$	0.037037	0.0370371	1	IP (1,1)
$\sim JDP * EI * INC * MWG$	0.111111	0.0370371	1	MD (1,1)

Frequency cutoff: 1 Consistency cutoff: 0.75  
 Solution coverage: 0.666667 Solution consistency: 0.857143  
 Assumptions: JDP (present)/EI (present)/INC (present)/LGC (present)/MWG (present)  
**Source:** Elaborated by the authors.

As we can observe, the application of the first five factors selected in this article as being of interest in explaining the procedural sloth of the demarcations explain 18 of the 27 cases under scrutiny. Despite the considerable coverage of the explanatory potential of this group, nine cases were not contemplated. In addition, in the first formula, we have three contradictory results (NK, AC, and YK),

<sup>6</sup> In the case of the intermediate solution, we have as the explanatory parameter the formula which has the most cases – in this case the first – and exclude those which appear to be repeated in subsequent formulas to emphasize the potential coverage of unique cases and facilitate the reading of the table. The reader can compare these repetitions in the complex and parsimonious solutions if he or she so desires.

which in other words present the configuration of these factors but their demarcations were concluded in five years or less. In view of these facts, it is necessary to take steps to adjust the model based on the recodification of the scores attributed to the cases or include new variables before rerunning the program (Delreux & Hesters, 2010).

For convenience, we have opted to follow the second path and added the elements “procrastinating” and “ambiguous” from the catalog selected in the previous work (Soares et al., 2021). We inserted conditions in the order that they appeared in our review of the literature, and we performed individual tests for each of the new insertions to gauge their explanatory potential. We tested ten new conditions and reached the conclusion that the public discourses of antagonism (PDA) and a lack of consulting indigenous peoples (LCP) increased the number of explanatory cases to 25. For PDA, we understand this to be the issuing and circulation of narratives that are disparaging and/or hostile to indigenous peoples and against the demarcation of their lands. LCP, in turn, indicates a lack of attempts to deal with indigenous peoples to further the demarcation process.

This is an element that can on one hand make the process more agile by avoiding delays due to the realization of assemblies and meetings with various indigenous leaders in remote points in their lands, and on the other, it can make it slower due to the possibility of misunderstandings, errors, and rework which may be due to the fact that these indigenous peoples, who have the best knowledge of the local geography, have not been duly included in demarcation actions. This is why, for this kind of analysis this condition should be designated as intervening simultaneously for the presence or absence of a given logical formula.

Despite the large jump in the number of cases explained by the combination of the first five factors and the new included conditions, two had yet to be explained. We continued to add variables, this time from the list of conditions that, according to the consulted literature, drive the demarcation of indigenous lands. The contradiction of including factors that should facilitate these processes to explain demarcations that have taken overly long to complete is only apparent. The theoretical justification for this procedure is that it is reasonable to suppose that all demarcations, in their historic concreteness, suffer the effects of a group of contradictory elements simultaneously, and therefore the conclusion of these demarcation processes as well as the time they take to be completed are the results of the interactions of these forces.

Thus, we repeated the above procedure with five new variables added to the seven already established as being of interest in explaining these cases, and we took the precaution of introducing them with a negative sign – in other words, the result to be explained should occur (1) when these conditions are absent.

Carrying out these tests revealed that the new additional conditions were not capable of surpassing the results obtained by the combination of JDP/EE/INC/LGC/MWG/PDA (present) and LCP (absent). Thus, this is a group of elements that we believe is capable of explaining the largest number of temporally unjust indigenous land demarcations, as we can see from the box below, which only summarizes the intermediate solution.

**BOX 4 TEMPORALLY UNJUST INDIGENOUS LAND DEMARCATIONS**

Formula	Raw coverage	Unique coverage	Consistency	Cases
JDP*EI*LCP	0.37037	0.148148	0.833333	AV (1,1), NK (1,0), RS (1,1), SP (1,1), PT (1,1), PO (1,1), KW (1,1), TK (1,1), MC (1,1), BV (1,1), AC (1,0), KRP (1,1)
~JDP*EI*~LGC*~LCP	0.185185	0.111111	1	CL (1,1), KT (1,1), BC (1,1), XP (1,1), C1 (1,1)
EI*INC*MWG*LCP	0.148148	0.0740741	1	MD (1,1), IW (1,1)
JDP*~EI*INC*MWG*~LCP	0.037037	0.037037	1	IP (1,1)
EI*~INC*MWG*PDA*~LCP	0.0740741	0	1	JT (1,1)
EI*~INC*~LGC*MWG*~LCP	0.185185	0	0.833333	PMM (1,1), YK (1,0), JG (1,1), TP (1,1)

Source: Elaborated by the authors.

In the section that completes this article, we will offer our interpretation of the results presented above.

**5. THE BLACK HOLE OF SLOTH: THE PRESENCE OF ECONOMIC INTERESTS AND JUDICIALIZATION AT THE ROOT OF THE DELAYS THAT CHARACTERIZE DEMARCATION PROCESSES**

The findings of this application of the QCA approach to this group of indigenous lands with delayed demarcations analyzed in this work considers 22 cases, excluding the three contradictory examples that remain without explanation (NK, AC, and YK). The logical formulas point to a visible preponderance of two elements that together cause these processes to extend for over five years. In order of importance, they are economic interests and judicialization. We will examine the logical formulas which support this affirmation in more detail.

The solutions JDP\*EI\*LCP and ~JDP\*EI\*~LGC\*~LCP together respond for fifteen cases – AV (1,1), RS (1,1), SP (1,1), PT (1,1), PO (1,1), KW (1,1), TK (1,1), MC (1,1), BV (1,1), KRP (1,1), CL (1,1), KT (1,1), BC (1,1), XP (1,1), C1 (1,1) – and can be read in the following manner. The former emerges as a robust link between judicialization and demarcation processes, the presence of economic interests, and a lack of consulting indigenous peoples. We will address the last term in more detail below.

In some cases, it is worth pointing out that, when compared with the latter formula, we can suggest the hypothesis that economic interests involving indigenous lands are the element with the greatest weight in the final explanation of these results, given that according to this interpretation we can deduce that this factor, in the absence of judicialization and a lack of group cohesion and consultations with indigenous peoples, is still able to explain five cases of delays in demarcation.

On the other hand, the formula  $JDP^* \sim EI^* INC^* MWG^* \sim LCP$  does not seem to be true, because it explains just one of the cases: IP (1,1).

Among the formulas presented here, several other factors appear to play a supporting role. Two of them we can say originate within the Executive Branch. The multiplication of working groups, for example, certainly contributes to the final result, since it is a bureaucratic process in which public servants are selected and nominated but then replaced for some reason by new candidates, reinitiating the process from scratch. Infra-constitutional normative changes, in turn, often appear to be just anodyne administrative acts that can also influence the rhythm of demarcation.

Curiously, only a local factor in addition to economic interests – which are not always strictly local – appears to have some influence on the flow of the demarcation process: what we call public discourses of antagonism. We can think that on the more micro-level, or in other words, the municipal level, discourses of this nature can increase the hostility of the population which can make the demarcation process a dangerous activity for the agents involved and will discourage their expeditious conclusion. On a more macro-level, on the other hand, the manifestation of opposition to demarcation processes can influence the willingness (or lack thereof) of certain political actors to dedicate themselves to the conclusion of indigenous land recognition activities.

Thus, from a broader analytical point of view, two avenues of investigation open up with the interpretations offered here, which we will mention briefly because we believe they require investigative efforts themselves, which are outside the scope of this work.

In the first place, the importance of the “economic interests” factor calls our attention in this discussion. Indigenous lands sometimes preserve a large part of environmental integrity, and often contain valuable natural resources within their boundaries, especially sought-after mineral resources. In addition, they may be cut by rivers which are of interest to commercial and sports fishing, or be located in areas with great tourism potential, not to mention the more immediate interests of loggers, land grabbers, farmers, and cattle ranchers. In sum, indigenous lands are desired by a large group of actors who often have powerful political connections and the capacity to mobilize resources to weaken the norms that protect these territories.

It is therefore imperative to develop a more vigorous academic corpus regarding this subject in Brazil. In terms of the recent emergent literature in the field of Anthropology, there are many current thorny situations which need to be debated in greater depth. We may cite, for example, the case of a movement of indigenous farmers in the State of Mato Grosso and indigenous groups which support mining on their lands.<sup>7</sup> Is a model of convenience for indigenous peoples that features economic exploitation that degrades the environment possible? And if it is, is it desirable?

In addition, there are situations that can be portents of the future, such as the opening of casinos on traditional lands as has occurred in the United States. What are the alternatives available to indigenous peoples in the face of the economic interests of actors outside their lands? Is cooperation possible between indigenous and non-indigenous people in the development of economic partnerships which will benefit both parties? Should all issues involving economic interests in indigenous lands be mandatorily settled by litigation in court? There are many questions and little empirical and systematic knowledge regarding this subject.

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<sup>7</sup> In the former case, we are referring to a group called the Indigenous Farmers of Brazil; in the latter, we are alluding to indigenous groups of various ethnicities which supported initiatives to open up indigenous lands to gold mining during the Bolsonaro administration.



We can also cite the field of studies of the judicialization of indigenous land demarcation processes, which is an area that has gained notoriety and taken on dramatic proportions over the past two decades in public debates in Brazil. Two paradigmatic cases can be mentioned. First of all, there is the contentious case of the Raposa Serra do Sol land in Roraima. The judgement that concluded in 2009 includes the possibility, present in the final vote of Justice Carlos Ayres Britto, of applying nineteen conditions to ongoing demarcation processes (Silva, 2019). Secondly, there is the judgement regarding restoring the right of occupation to the Xokleng indigenous people in the State of Santa Catarina, in which it will be decided whether the Supreme Court will continue to endorse the secular institution of indigenous peoples, or adopt a thesis associated with time frames. Both of these cases are indicative of the complexity involved in this subject, which has direct repercussions in the lives of indigenous peoples in this country.

It has to be recognized that our analysis does not address why a given case has been judicialized. Thus, we cannot state categorically that these cases have been taken to the courts due to a dispute involving economic issues. This is certainly a possible relationship that needs to be examined in greater depth in future studies.

## 6. CONCLUSION

This article has sought to offer an answer to the enigma of the delays in certain indigenous land demarcation processes in Brazil which we have termed temporally unjust, because they can drag on for more than five years, delaying the concretization of the recognized right of the indigenous peoples who inhabit these traditional territories. To accomplish this, we have considered a group of forty indigenous land cases in distinct stages of the demarcation cycle and used the QCA approach based on a group of variables from the pertinent literature.

On one hand, our findings indicate the importance of the burning question of economic interests in indigenous lands, which is a complex issue that cannot be answered by Manichaeism or simple solutions. On the other hand, our attention is drawn to the fact that the judicialization of demarcation processes is also a notable factor involved in the delay of their conclusion. Together both of these factors are true black holes which drain demarcation processes, dooming them to wander the labyrinth of corridors of the Brazilian legal system, which in the words of Justice Gilmar Mendes of the Supreme Court, “seems to work with the paradigm of eternity”. This demonstrates, from our point of view, that the Brazilian property panorama is contentious even from the point of view of social conflicts *in loco* as well as a legal point of view. In other words, traditional lands are disputed on the ground and in the courts, a domain, we can mention in passing, where indigenous peoples have gradually become specialists not only in Brazil but in many other countries as well.

We hope that this work has been useful first of all to indigenous peoples, their organizations, and their allies, by presenting an empirical investigation about an issue that is, without a shadow of a doubt, crucial to their continued existence as native societies distinct from non-indigenous society with full rights to inhabit their traditional lands. Equally, we hope that this work provides support for reflection on the part of bureaucrats and other government agents involved in this subject in a more or less direct manner, who seek possible transformations in the flow of administrative work in which political and bureaucratic bottlenecks delay demarcation processes.

We conclude this article by calling the attention of the communities of scholars, political agents, and policymakers interested in historical reparation policies and property law provisions to examine the recognition processes for traditional lands in Brazil – and we also include here quilombos, even though we do not know of studies conducted with this group – in the search of applied knowledge about how the government’s policy and bureaucracy flow. It is unreasonable to accept that processes of this nature have dragged on for decades, harming generations of indigenous peoples who have historically been massacred. It is contemptible that the practical recognition of this constitutional right has been delayed for so many years. In the famous words attributed to Rui Barbosa: “Delayed justice is not justice, but rather supremely manifested injustice.” It is time for us to make every effort to conclude indigenous land demarcation processes in a reasonable amount of time without harming the indigenous population of this country even further.

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**Leonardo Barros Soares** 

Ph.D. in Political Science from the Federal University of Minas Gerais (UFMG); Assistant Professor at the Federal University of Viçosa (UFV). E-mail: leonardo.b.soares@ufv.br

**Catarina Chaves Costa** 

Ph.D. Student in Political Science at the University of São Paulo (USP). E-mail: catarinachaves26@gmail.com

**Luiza Brilhante Bezerra** 

Bachelor's Degree in Social Sciences from the Federal University of Pará (UFPA). E-mail: luizab008@gmail.com

**Ana Paula Alvares Costa** 

Bachelor's Degree and License in English from the State University of Pará (UEPA).  
E-mail: anap.tradutora.alvarescosta@gmail.com

**Yasmin Nascimento Moita** 

Bachelor's Degree in Law from the University Center of the State of Pará (CESUPA).  
E-mail: yas.min\_n@outlook.com.br

**AUTHORS' CONTRIBUTION**

**Leonardo Barros Soares:** Conceptualization (Lead); Data curation (Lead); Formal Analysis (Lead); Methodology (Lead); Project administration (Lead); Supervision (Lead); Writing - original draft (Lead); Writing - review & editing (Lead).

**Catarina Chaves Costa:** Data curation (Supporting); Methodology (Supporting); Supervision (Supporting); Writing - original draft (Supporting); Writing - review & editing (Supporting).

**Luiza Brilhante Bezerra:** Data curation (Supporting); Methodology (Supporting); Writing - original draft (Supporting).

**Ana Paula Alvares Costa:** Data curation (Supporting); Methodology (Supporting); Writing - original draft (Supporting).

**Yasmin Nascimento Moita:** Data curation (Supporting); Methodology (Supporting); Writing - original draft (Supporting).

## **DATA AVAILABILITY**

The entire dataset supporting the results of this study was published in the article itself.

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