

# Observations on the State of Indigenous Human Rights in Brazil

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## CULTURAL SURVIVAL

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the *Cultural Survival Quarterly*; and on its website: [www.cs.org](http://www.cs.org). Cultural Survival also produces and distributes quality radio programs that strengthen and sustain Indigenous languages, cultures, and civil participation.

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### I. Background

According to Instituto Socioambiental, 896,917 Indigenous people, belonging to 247 Indigenous groups and speaking more than 200 Indigenous languages, live in Brazil. They constitute 0.5% of Brazil's total population.<sup>i</sup> The Guarani who number 51,000 are the largest Indigenous group; most of their lands have been seized within the last 100 years and the Tikuna, with 40,000 people, are the second largest group. The state has demarcated 703 Indigenous Territories (T.I.s) comprising about 13% of Brazil's land mass; 98.5% of these reservations are in Legal Amazonia.<sup>ii</sup> The Yanomami occupy the largest area (9.4 million ha) in a relatively isolated area of northern Amazonia. Many tribes are vulnerable due to lack of territorial demarcation, illegal encroachment within demarcated lands, inadequate health care, and decreasing numbers (Akuntsu 1,000; Awa 450). 128<sup>iii</sup> groups have less than 500 people<sup>iv</sup> and several groups, like the Kawahiva who number 12 individuals, live in voluntary isolation.

In 1998 Brazil ratified ILO Convention 169 and voted for the UN Declaration on Rights of Indigenous Peoples (UNDRIP) in 2007.<sup>v</sup>

### II. Recommendations Relevant to Indigenous Peoples from Previous UPR Cycle

- Cape Verde: *Pay particular attention to seek even more effective results in the implementation of policies addressing the following issues: protection of the rights and promotion of the socio-economic situation of Indigenous Peoples ....* Not implemented
- Norway: *Ensure the rights of Indigenous Peoples, in particular the rights to traditional lands, territories and resources, and their right to be consulted.* Not implemented
- Poland: *Pay more attention, at all administrative levels, to the rights of Indigenous Peoples, especially to ensure their land rights.* Not implemented.
- Netherlands: *Further entrench in standard administrative procedures the right of Indigenous Peoples to be consulted, in accordance with ILO Convention 169.* Not implemented.
- Peru: *Continue promoting internal debates towards a better regulation of the consultation processes with Indigenous Peoples on issues that affect them directly.* Not implemented.
- Slovakia: *Continue promoting internal debates towards a better regulation of the consultation processes with Indigenous Peoples on issues that affect them directly.* Not implemented.
- Germany: *Ensure Indigenous Peoples adequate consultation.* Not implemented.
- Turkey: *Follow up on the recommendation of ILO to continue efforts to ensure full equality of opportunity and treatment for women, persons of African Descent and Indigenous persons.* Not implemented.

### III. Indigenous Rights Violations

#### A. Land Rights and Demarcation

The 1988 Brazilian Constitution guarantees Indigenous Peoples land rights through the recognition that Indigenous Peoples are the first and natural owners of the land and was enacted with a 5-year deadline to complete the demarcation process of Indigenous lands. 228 cases totaling 7,807,539 hectares or 33%<sup>vi</sup> of the 698 Indigenous lands, have yet to receive finalization affecting 107,203 Indigenous People. FUNAI (Bureau of Indian Affairs) was legally obliged under TAC (Conduct Adjustment Commitment) and MPF (Federal Public Prosecutor's Office) in

2007 to complete all demarcation cases by 2009. Commitment, efficiency, and accountability is still lacking. 118 cases in 2015 experienced delays and neglect, double the number of cases from 2013. Some affected tribes<sup>vii</sup> include a number of cases, Acre (1), Amazonas (3), Bahia (4), Ceará (2), Goiás (1), Maranhão (5), Mato Grosso (1), Mato Grosso do Sul (24), Minas Gerais (1), Pará (42), Paraná (1), Rio Grande do Sul (14), Rondônia (7), Santa Catarina (11) and Tocantins (1). Former President Dilma Rousseff's (2011-2016) government demarcated least land since 1988. In 2016, there are still 200<sup>viii</sup> applications awaiting to be processed.

Office of the General Counsel for the Federal Government's Decree 303 (AGU) is a new detrimental policy drafted without Indigenous consultation that states that Indigenous People cannot geographically extend their lands once they are demarcated. It is commonly used to justify agribusiness expansion near Indigenous lands. The decree also covers permission of any Indigenous land to be occupied by military units, permission for road construction, hydropower projects and mining projects in Indigenous territories, and limits Indigenous Peoples' right to the exclusive use of natural resources.<sup>ix</sup> These provisions contradict the government's stance of improving Indigenous rights policies. The AGU 303 was highly influenced by this Parliamentary Front, a council<sup>x</sup> dealing with agricultural business and landowning issues that poses a threat to the Indigenous Peoples as they do not have access to decision-making. (250<sup>xi</sup> Congress members are linked to this front). Not only were Indigenous leaders not consulted on the decree drafting, but they were also not present during the voting.

#### B. Legislature in Violation of Free, Prior and Informed Consent (UNDRIP Articles 18 & 19)

Indigenous Peoples lack representation in the government. Congress does not have a single Indigenous deputy or senator. Brazil has only had one Indigenous Congress member to date. In 2015, unresolved land issues were exacerbated due to the controversial proposed amendment to Brazil's Constitution, PEC 215, which would transfer power from the executive branch to the legislature paralyzing the process that recognizes Indigenous lands and directly affecting cases currently in process. Under this amendment, 144 cases (25,630,907 hectares of land) under legal review would be affected including 149,381 Indigenous people. If passed, PEC 215 would also open Indigenous lands to projects of public interest to the Union—allowing the possibility, as stated in Supplementary Law Bill 227, for hydroelectric projects, mineral exploration, the construction of oil and gas pipelines, infrastructural work, and settlement of non-Indigenous residents. 35<sup>xii</sup> Indigenous lands are under review by PEC 215 which proposes to ban further expansion of demarcated reservations. It would also include within the constitutional text a “temporal landmark”<sup>xiii</sup> banning recognition of lands as legally Indigenous if they were not occupied by Indigenous people at the time of the 1988 signing of Brazil's Constitution. The temporal landmark<sup>xiv</sup> clause would affect demarcated Indigenous land reserves and poses a significant threat to Indigenous rights. PEC 215 has been under negotiation for 16 years and currently in the last phase of the amendment process - a vote by Congress<sup>xv</sup>.

The Proposed Law 1610<sup>xvi</sup> would allow mining to occur in any Indigenous territory if miners have government issued licenses, regardless of consent of the local Indigenous peoples. Part of the mining profit is to go to Indigenous communities. PEC 76 also offered to share the profits on any hydroelectric dams constructed in Indigenous lands. Both of these policies offer no real compensation to Indigenous peoples and disregarded Brazil's commitment to FPIC.

The implementation of Brazil's 2007 Growth Acceleration Plan (PAC) promotes extractive projects with little to no regard of their effects on Indigenous Peoples and Brazil's obligation to comply with ILO Convention 169. The Ten Year Energy Plan 2021 states that

hydropower, the Belo Monte Hydroelectric Project, Madeira River Hydroelectric Complex Stations (PCH), and thermoelectric plants powered by biomass and wind energy, will continue to grow over the next 10 years, providing a projected 83.9%<sup>xvii</sup> of Brazil's renewable energy by 2021. Indigenous Peoples, their lands, and their cultures face increasing challenges and threats posed by growing extractive projects including new gold, bauxite and nickel mining projects<sup>xviii</sup> and the state's support for them.

### C. Extractive Industries, Agribusiness, and Land Rights (UNDRIP Articles 8, 10, 18, 27, 29)

On May 23, 2015 China and Brazil announced a plan to construct a "Twin Ocean Railroad," part of the Initiative for the Integration of Regional Infrastructure in South America (IIRSA), that would span South America. State-sponsored studies are underway to determine feasibility of possible routes. The Brazilian government is promoting a route that will pass through Mato Grosso directly affect the A'uwê-Xavante and seven other Indigenous groups. Since the 1990's, soy has boomed in Brazil, resulting in the exploration of various mega-infrastructure (water and asphalt highways) to transport industrial agricultural crops for export, raising concerns about impacts on local Indigenous populations.<sup>xix</sup>

Brazil is projected to become the world's largest producer and exporter of soy, which has greatly boosted its economy<sup>xx</sup> <sup>xxi</sup> and generated US\$ 31.27 billion in revenue in 2015.<sup>xxii</sup> Millions of acres in Mato Grosso are being designated for soy farming, causing deforestation on Indigenous lands. As of 2012, soy harvesting destroyed 21 million hectares of Brazilian forests and 80 million hectares including parts of the Amazon basin<sup>xxiii</sup> and causes conflicts<sup>xxiv</sup>. Fake deeds have been used by invaders to plant the crop. Infrastructure constructed to transport soy production, like Cargill's port, has provoked more conflict and land disputes, specifically in Santarem and Belterra.

The Soy Moratorium, a voluntary private-sector agreement in place since 2006 has prevented market access for soy that involves deforestation, slave labor or threats to Indigenous lands. It has been effective in reducing new deforestation of Amazon forests for soy.<sup>xxv</sup> <sup>xxvi</sup> Over 600 soy farmers have violated the government's Forest Code, which dictates that 80 percent of Amazon rainforest on a person's property must be held in reserve. Just 2 percent of soy farmers have maintained these legal reserves and even farmers abiding by the moratorium were still illegally clearing forest on their properties, just not for growing soy.

Soy farmers have also put pressure on the state to cease demarcation of Indigenous lands. As a result, three Indigenous groups from Borari in the region await demarcation. According to the Land Pastoral Commission (CPT), three micro-regions that include Prainha, Gleba Nova Olinda, and the Plateau area (Santarem and Belterra) are currently experiencing the "highest levels of conflict."<sup>xxvii</sup> Odair Jose Borari, a village chief, states, "They are taking our land, our timber, our fruit and medicinal plants. Creeks are drying and several water sources have been fenced up."<sup>xxviii</sup>

Soy production is causing dire consequences to the Cerrado and its unique ecosystems south of the Amazon rainforest. Due to its expansive grasslands and the high demand of soy for livestock feed, the Cerrado is being turned into harvesting fields causing devastation to the biodiversity in the region. Current lands in utilization for soy farming have achieved maximum levels of production, leaving Indigenous lands vulnerable to seizure. Father Luis Silva Leal, who lives in the area observed soybean farmers adding 10-20<sup>xxix</sup> hectare portions of Indigenous lands to their farms every year, and attempt to lease larger areas of Indigenous land for soy production. The Volta Grande village continues to fight an 11,000 hectare land dispute of the original 33,000

hectares they once owned with soybean farmers. Farmers argue that it is “too much land for too few Indians,” and that they “don’t do anything with it (the land).”<sup>xxx</sup> Instead, soy farmers “plant soybean and eventually pay some money to the Indians, who accept it in order to avoid major conflicts.”<sup>xxxii</sup>

The Xavante village of Abelhinha in Mato Grosso is located near a soy producing town and has been negatively impacted by the agroindustry. The big multinational companies regularly spray pesticides via crop dusting while flying over and near villages. Pesticide drift is an insidious threat to human health as well as to wildlife and ecosystems in and around agricultural areas. Children are especially vulnerable to these airborne pesticides.<sup>xxxiii</sup> Chemical spills in Indigenous territories (such as T.I. Sangradouro) caused by overturned tanker trucks and are responsible for deforestation surrounding Abelhinha causing damage to ecosystems around headwaters to Amazonian tributaries.

#### D. Threats to Physical Safety (UNDRIP Article 7)

Despite the Programme to Protect Human Rights Defenders (PPDDH) instituted in 2007, Indigenous human rights defenders are threatened and killed on a regular basis. Agroindustry also causes conflict between Indigenous Peoples and civil population of Mato Grosso. On June 14, 2016, a violent conflict left one dead and at least one wounded in a fight for land. This clash was allegedly commanded by a local farmer against the Guarani Kaiowá in the Tekoha Toro Paso region. Indigenous people claim these local farmers use violent methods to displace them from their lands. According to CIMI (Conselho Indigenista Missionário), 138 deaths<sup>xxxiiii</sup> of Indigenous Peoples occurred in 2014, most of which occurred in Mato Grosso. In June 2013, Celso Rodrigues, a member of Guarani Kaiowá tribe of the Mato Grosso village of Paraguassú, was shot by Ivonel Gabriel Vieira, a farm manager. Similarly, less than a month before, an Indigenous Terena man was assassinated by the police during an eviction, even though this land was previously recognised by the courts as a traditional Indigenous area.<sup>xxxiv</sup>

Marinalva Manoel, who was an active leader in the Guarani community and the movement of Indigenous repatriation, was raped and stabbed to death in November 2014.<sup>xxxv</sup> She was a prominent campaigner for Indigenous Peoples’ rights who demanded the return of their Guarani lands. She also led one of seven communities that had recently reoccupied their ancestral lands, which are now plantations of sugar and soy, although each community now faces eviction and threats of violence.<sup>xxxvi</sup>

In 2015 in the Guarani Kaiowa community, in the state of Mato Grosso, the leader Simião Vilhalva was killed in an armed attack by gunmen funded by landowners. These same landowners have also claimed that the killings would not end unless this land inhabited by the Guarani was returned to them. This land, however, had belonged to those communities through a 2005 court ruling. During that same year, another Supreme Court suspended the return of these lands, and since this suspension no legal measures have been taken. Many of the Guarani Kaiowa population were forced into an extremely small area of land, and have even continued to receive threats by landowners.<sup>xxxvii</sup>

#### E. Indigenous Children (UNDRIP 7, 8, 9, 24, 29)

Indigenous Peoples in Brazil amount to only 0.5% of the country’s population, but are 30% of its illiterate population.<sup>xxxviii</sup> 25% of Indigenous children in Brazil have no access to education and 15% of children between 10 and 15 are illiterate.<sup>xxxix</sup> The First National Survey of Indigenous Peoples Health and Nutrition in Brazil states that Indigenous children with

undereducated mothers are over 4 times more likely to be stunted.<sup>xi</sup> The Indigenous enrollment rate in secondary school is particularly low, and many schools can barely sustain the students they have due to a lack of transportation, materials, qualified teachers, and space limits.

One of the largest health issues within Indigenous communities in Brazil is chronic malnutrition, which is manifested in stunting. The First National Survey of Indigenous People's Health and Nutrition in Brazil found that the current rate of stunting for Indigenous children is 25%<sup>xli</sup>, the same rate for non-Indigenous children 40 years ago.<sup>xlii</sup> According to a 2014 report on the health of Guaraní children, the rate of stunting was 96% more than other tribes and 7.2 times more likely to occur than the total child population of Brazil.<sup>xliii</sup> The First National Survey also determined that 50% of Indigenous children are anemic. The survey overall concluded that the disproportion of sick Indigenous children to non-Indigenous children represents the lack of medical services and sanitation accessible to Indigenous communities.<sup>xliv</sup> According to UNICEF, Indigenous children are twice as likely to die prior to the age of one than children in other Brazilian ethnic demographics.<sup>xlv</sup> Indigenous children across the country also suffer from illnesses triggered by industrial projects.

The suicide rate for Indigenous people in Brazil is six times higher than the national average. A study in 2013 showed that for the Guarani tribe, the suicide rate was 34 times higher than the national average<sup>xlvi</sup> with most victims between 15 to 29 years old. One suicide involved a 9 year old victim. The prevalence of suicide in Indigenous communities can be attributed to the loss of their ancestral land. The Guarani have had most of their land taken away and are now forced to live in unsanitary and overcrowded areas, with inadequate food and unclean drinking water.<sup>xlvii</sup> Forced relocation and displacement due to development projects impacts cultural continuity, family relations, and youth self-confidence.

Child labor of Indigenous children is also often overlooked and not addressed. The Ministry of Justice stated in 2013 that Indigenous children are often trafficked in the domestic service sector, which has increased as a result of tourism.<sup>xlviii</sup>

## **V. Questions**

1. What method of accountability will be placed for the government to comply with its Constitution and ILO Convention No. 169?
2. What steps will be taken to advance the land demarcation process and efficiently resolve delayed, disputed, or neglected cases?
3. What measures will be taken to improve the well-being of Indigenous children?

## **VI. Recommendations**

1. Reject proposed constitutional amendment PEC 215.
2. Rescind Supplementary Law Bill 227, Decree 303 and Proposed Law 1610.
3. Reform Growth Acceleration Plan (PAC) 2007 to comply with ILO 169 and Constitution.
4. Amend the Ten Year Energy Plan 2021 to include a clause to acknowledge and respect Indigenous Lands, Indigenous Peoples right to FPIC
5. Repeal Twin Ocean Railroad or propose a route that does not travel through the isolated Indigenous lands.
6. Develop better enforcement of the Forest Code to prevent deforestation of Indigenous lands.
7. Include Indigenous Peoples in all matters affecting them especially in land rights policies.
8. Promote Indigenous leadership in Congress.
9. Implement the Programme to Protect Human Rights Defenders (PPDDH).

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