

The human rights situation of indigenous peoples in Brazil

Joint submission for the third monitoring cycle of Brazil in the Universal Periodic Review mechanism of the UN Human Rights Council

Joint submission led by:

APIB – Articulação dos Povos Indígenas do Brasil



APIB (Articulation of Indigenous Peoples of Brazil) was established in 2005 with the aim of strengthening the unity among indigenous peoples and the better coordination of the country's indigenous peoples and organisations; unifying the fight and pleads of indigenous peoples, and the politics of the indigenous movement; and mobilizing indigenous peoples and organisations in Brazil against the threats to and assaults on indigenous rights. APIB is composed by indigenous representatives from the 5 country's regions: APOINME, Conselho Terena, ARPINSUDESTE, Comissão Guarani Yvyrupá, ARPINSUL, ATY GUASSÚ and COIAB.

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RCA – Rede de Cooperação Amazônica

Established in 2000, the RCA (Amazonian Cooperation Network) has the mission of promoting cooperation and the exchange of knowledge and experiences between indigenous and indigenist organisations active in Brazilian Amazonia, in order to strengthen the autonomy and increase the sustainability of indigenous peoples in Brazil. It is composed of 13 member organisations: AMAAIC, Apina, ATIX, CIR, CTI, CPI-AC, FOIRN, Hutukara, Iepé, ISA, OGM, opiac and Wyty-Cate.

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PLATAFORMA DE DIREITOS HUMANOS
ECONÔMICOS, SOCIAIS, CULTURAIS E AMBIENTAIS

Plataforma de Direitos Humanos - Dhesca Brasil

The Plataforma de Direitos Humanos (Human Rights Platform) – Dhesca Brasil – is a network formed by 40 civil society organisations that develops initiatives promoting and defending human rights, as well as the reparation of rights violations. The Rapporteur on Human Rights and Indigenous Peoples was created in 2015 to monitor denunciations of rights violations against indigenous peoples and to promote national and international actions.

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Composed of the following indigenous organisations:

APOINME – Articulação dos Povos e Organizações Indígenas do Nordeste, Minas Gerais e Espírito Santo

Conselho Terena

Comissão Guarani Yvyrupá

ARPINSUDESTE – Articulação dos Povos Indígenas do Sudeste

ARPINSUL – Articulação dos Povos Indígenas do Sul

ATY GUASSU – Grande Assembleia do Povo Guarani

COIAB – Coordenação das Organizações Indígenas da Amazônia Brasileira

ATIX – Associação Terra Indígena Xingu

AMAAIC – Associação do Movimento dos Agentes Agroflorestais Indígenas do Acre
APINA – Conselho das Aldeias Wajãpi
FOIRN – Federação das Organizações Indígenas do Rio Negro
HAY – Associação Yanomami
CIR – Conselho Indígena de Roraima
OPIAC – Organização dos Professores Indígenas do Acre
Wyty-Catë – Associação Wyty-Catë dos Povos Indígenas Timbira do Maranhão e Tocantins
OGM – Organização Geral Mayuruna

And by the following indigenist, socioenvironmental and human rights organisations:

CIMI – Conselho Indigenista Missionário
CTI – Centro de Trabalho Indigenista
CPI-AC – Comissão Pró-Índio do Acre
CPI-SP – Comissão Pró-Índio de São Paulo
Comitê Brasileiro de Direitos Humanos e Política Externa
IEB – Instituto Internacional de Educação do Brasil
Iepé – Instituto de Pesquisa e Formação Indígena
ISA – Instituto Socioambiental
FIAN Brasil
Justiça Global

APIB, RCA and DHESCA led a consultation process towards drafting a thematic report on the human rights situation of indigenous peoples in Brazil, evaluating Brazil's degree of compliance with the UPR's recommendations for the country in 2008 and 2012. Data was collected and information systemized using multiple sources in order to assemble this thematic report covering the 2012-2016 period.

The report was completed and approved in September 2016 in Brasilia (DF) during a workshop that included the participation of representatives from the organisations making up the coalition. Indigenous leaders along with indigenist, human rights and socioenvironmental organisations participated to evaluate the human rights situation of indigenous peoples and discuss strategies for improving protection of these rights in the context of the third monitoring cycle of Brazil by the Universal Periodic Review (UPR) mechanism of the UN Human Rights Council.

The text and the recommendations presented in the annexed table were approved by the organisations belonging to this coalition.

The human rights situation of indigenous peoples in Brazil

1. Indigenous leaders and organisations, along with indigenist, human rights and socioenvironmental organisations, met in September 2016 in Brasilia-DF, to assess the human rights situation of indigenous peoples and discuss strategies for improving protection of their rights in the context of the 3rd Monitoring Cycle of Brazil under the UPR mechanism.¹
2. As already denounced by the indigenous movement² and observed by various bodies of the UN³ and the OAS,⁴ the State's failure to act is provoking serious violations of the human rights of indigenous peoples, including as a result of the weakening of FUNAI⁵ and the failure to meet the planned targets for indigenist policies.⁶ Worryingly, analysis of the period (2012-2016) confirms a pattern of violence and abuses that relate to assimilationist and colonizing postures. It echoes experiences under the military dictatorship and demand transitional justice.
3. In 2014 Brazil set up a National Truth Commission which established that indigenous peoples had been victims of serious human rights violations meriting reparation.⁷ The inquiry concluded that at least 8,350 indigenous people had been killed in massacres, land dispossessions and forced evictions, or due to the spread of infectious-contagious diseases, imprisonments, torture and abusive treatments, suffering attempted exterminations.⁸
4. Although the indigenous rights have appeared in previous UPR cycles, we concluded that there has been no advance in combating the scenario of rights violations and that constitutional rights are under threat. The overall evaluation of the organisations is that Brazil failed to adopt effective measures to meet the recommendations made and accepted within the UPR framework⁹ and that no concrete measures were taken to alter the situation of indigenous rights violations in Brazil.
5. These violations require urgent state measures to: demarcate indigenous lands; and combat the racial discrimination and institutional racism perpetrated against indigenous

¹ Universal Periodic Review of the United Nations Human Rights Council.

² See the public declarations by the Articulação dos Povos Indígenas do Brasil (APIB), regional and local indigenous organisations and indigenous representatives at the First National Indigenist Policy Conference (2015) and the Commission (2012-2015) and subsequently the National Indigenist Policy Council (2015-2016).

³ UN Human Rights Committee, Committee on the Elimination of Racial Discrimination, UN Permanent Forum on Indigenous Issues, UN Special Rapporteurs on Indigenous Rights, UN Working Group on Business and Human Rights, and UN agencies (UN Women, UNDP, ILO).

⁴ Among diverse cases under analysis, in 2016 the Inter-American Commission on Human Rights presented case no. 12728 to the Inter-American Court of Human Rights in defence of the rights of the Xukuru indigenous people. The case dealt with the impossibility of the Xukuru peacefully exercising their right to ancestral lands due to the 16-year delay in the demarcation process, as well as their lack of access to the justice system.

⁵ Fundação Nacional do Índio, the federal agency for indigenous affairs.

⁶ See Multi-Annual Program (PPA) 2012-2015.

⁷ The NTC analysed 10 cases of rights violations of indigenous peoples during the military dictatorship.

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http://200.144.182.130/cesta/images/stories/CAPITULO_INDIGENA_Pages_from_Relatorio_Final_CNV_Volume_II.pdf

⁹ In 2008, Brazil received one specific recommendation on the rights of indigenous peoples in the UPR, which identified the need for country to devote special attention to the violation of the human rights of indigenous peoples. The context of the warning already concerned the lack of recognition and protection of the territorial rights of indigenous peoples and was maintained in 2012.

peoples at all levels of government. There is a clear need for improved structuring and increased government investment in FUNAI in order to develop adequate actions and ensure effective protection of indigenous rights in Brazil.

6. In 2012, the UPR recommendations¹⁰ covered the issues of: indigenous territorial rights; the violence practiced against indigenous leaders as defenders of human rights; the non-demarcation of Guarani Kaiowá lands; and the rights violations arising from the failure to implement the right to free, prior and informed consent.¹¹
7. In 2016, these remained the central issues in the scenario of violations to the human rights of indigenous peoples, aggravated by the racist and discriminatory discourses made by public authorities, which have been encouraging and supporting further violent attacks against communities especially in southern Bahia, Mato Grosso do Sul, Rio Grande do Sul, Paraná and Santa Catarina. The growing number of attacks is directly linked to impunity.¹² Besides, indigenous peoples' lack of access to the justice system.¹³ The period under review was also marked by the weakening of legal protections given to the rights of indigenous peoples and the federal government's attempt to negotiate indigenous rights in favour of interests of dominant sectors.
8. In some regions this scenario was found by the Federal Prosecutors Offices to have contributed to the risk of ethnocide of indigenous peoples, as in the case of the Guarani Kaiowá in Mato Grosso do Sul¹⁴ and the indigenous peoples affected by the Belo Monte Hydroelectric Dam in Pará.¹⁵
9. In the table (APPENDIX 1) we analyse each of the recommendations received by Brazil in previous UPR cycles, including those that, though not making explicit mention of indigenous peoples, should have been applied to improve the human rights situation of the latter too but did not. Finally, we identify the potential to improve UPR recommendations by making specific mention of indigenous rights, observing the distinct sociocultural contexts of indigenous peoples.

Human Rights of Indigenous Peoples in Brazil

10. Brazil presents a legal framework with constitutional provisions that for a long time were a benchmark for the defence of the rights of indigenous peoples. However, no advances in terms of the issuing a long standing demand for specific national legislation¹⁶ was observed in the evaluation period of this Universal Periodic Review (2012-2016). Nonetheless, Brazil began some isolated processes for implementing specific policies to protect indigenous rights such as the National Territorial and Environmental Management Policy (2012) and its

¹⁰ In 2012, Brazil received 15 recommendations in the UPR citing the rights of indigenous peoples. See: A/HRC/21/11/Para. 119 & A/HRC/21/11/Add.1 recommendations: 119.31, 119.32, 119.50, 119.82, 119.84, 119.138, 119.144, 119.158, 119.162, 119.163, 119.164, 119.165, 119.166, 119.167, 119.168 and 119.169.

¹¹ A/HRC/WG.6/13/BRA/2

¹² http://cimi.org.br/site/pt-br/?system=news&conteudo_id=7240&action=read

¹³ <http://www.sdh.gov.br/sobre/participacao-social/cndh/relatorios/relatorio-do-gt-sobre-direitos-dos-povos-indigenas-da-regiao-sul-1>

¹⁴ <http://www.cartacapital.com.br/sociedade/os-ataques-a-indigenas-no-ms-na-visao-de-uma-lideranca-6848.html>

¹⁵ <http://www.prpa.mpf.mp.br/news/2015/mpf-denuncia-acao-etnocida-e-pede-intervencao-judicial-em-belo-monte>

¹⁶ Since 1991 approval has been pending on the Law Bill for the Indigenous Peoples Statute to replace Law 6001/73, adapting the infraconstitutional legislation to the precepts of the non-assimilationist policy.

integrated action plan (2016)¹⁷ and the Continuity Grant Program (2013) supporting access to higher education. In 2014, the National Human Rights Council was reformulated. The First National Conference on Indigenist Policy was held, and presented a series of proposals for overcoming the current scenario of rights violations, but no monitoring mechanism has been established yet. Finally meeting a demand first made over 20 years ago, the National Council for Indigenist Policy was created (2015).

11. Over the same period, however, the federal indigenist agency (FUNAI) experienced a serious shrinkage of staff and resources,¹⁸ and even had several of its units attacked by anti-indigenous movements, including the destruction and burning of buildings and official vehicles, and staff threatened.¹⁹ Devalued and with its political power diminished, FUNAI currently operates with just 36% of its capacity without concluding its restructuring process (2010). This situation impedes the proper demarcation of indigenous lands and adequate action at local level. The closure of the Ministry of Human Rights (2016) worsens the situation.
12. Brazil, through its Constitution and its international commitments,²⁰ formally recognises the right to self-determination, territories, consultation and consent, as well as reaffirms the right of indigenous peoples to live free of genocide and any other forms of assimilation, discrimination, racism, intolerance and violence. However, without government institutions strengthened to work in the defence and promotion of these rights, or the political will to defend the existing protective legislation or to define an agenda for implementing rights, such commitments and obligations are merely dead words on paper for indigenous peoples.
13. Despite the ethnic diversity of the more than 305 indigenous peoples, Brazil fails to include adequately the concern with indigenous peoples in its discussions of national, bilateral and international agreements that affect indigenous peoples and lands. Topics that should include a continuous dialogue with indigenous peoples include: environmental issues, traditional knowledge, climate change mitigation and adaptation, and so on. For example, in the discussion on ratification of the Minamata Convention, we noted with concern the absence of specific data on the impact of mercury in indigenous communities. A published study (2016) shows that the continuous illegal invasion of the Yanomami/RR territory by prospectors has had serious consequences, including mercury contamination of up to 92% of the people examined in one village.²¹ The invasion of indigenous lands for illegal mining has already been identified through its harmful effects in other regions of Brazil like Maranhão, Pará, Acre and Mato Grosso.
14. The country needs to approach the indigenous issues in a more inter-related way with areas such as agrarian reform, territorial planning, environmental protection, social rights

¹⁷ <http://www.funai.gov.br/index.php/comunicacao/noticias/3883-plano-integrado-de-implementacao-da-pngati-e-lancado-em-brasil>

¹⁸ Some local FUNAI units have just one employee to work with the entire indigenous population under their jurisdiction.

¹⁹ See the attacks on the Regional Coordination Units of Passo Fundo/RS and Humaitá/AM: <http://g1.globo.com/am/amazonas/noticia/2013/12/funai-repudia-vandalismo-em-humaita-e-diz-manter-dialogo-com-indios-no-am.html>

²⁰ UN Declaration on the Rights of Indigenous Peoples, ILO Convention 169, UN Convention on the Elimination of All Forms of Racial Discrimination.

²¹ Study conducted by the Oswaldo Cruz Foundation (Fiocruz) and Instituto Socioambiental. See: https://pib.socioambiental.org/pt/noticias?id=162297&id_pov=318

and development. However indigenous rights are not seen nor prioritized in government agendas despite the denunciations and received recommendations.

Protection of the territorial rights of indigenous peoples²²

15. Under the argument that the demarcation of indigenous lands would harm small farmers, over the last four years we have seen the opposite. The stagnation in the demarcations of indigenous lands was accompanied by the growth of large scale agribusiness and led to an increase in land and income concentration in this sector. Since 2012, there has been no significant advance in the measures of agrarian reform and territorial planning for the protection of indigenous lands, especially outside Legal Amazonia. Backed by the support of ruralist politicians, this dispute for land has become increasingly violent. The case of indigenous land Marãiwatséde is revealing of this.²³ The organized and armed violence²⁴ is used against indigenous peoples who demand for their territorial rights and ended up being used to justify the so-called negotiations²⁵ (of rights). As a consequence, indigenous peoples lives is put in further risk, especially in the states of Mato Grosso do Sul, Bahia, Santa Catarina,²⁶ Paraná and Rio Grande do Sul.²⁷
16. The increase in inflammatory discourses by public authorities²⁸ and parliamentarians opposed to the demarcation of indigenous have boosted initiatives to alter the Ministry of Justice's demarcation procedures,²⁹ as well as fomenting conflicts and attacks on indigenous communities. Those initiatives feed arguments for denying other human rights such as healthcare and education due to the lack of land regularization, and foster legal insecurities, backed by more than a hundred anti-indigenous proposals to remove constitutional rights, such as PEC215/2000.³⁰
17. PEC215/2000 is considered the most dangerous legislative initiative to the rights of indigenous peoples and quilombola communities, involving a serious curtailment of

²² Recommendations EPU/ONU 2012: A/HRC/21/11 - Para. 119 & A/HRC/21/11/Add.1 - Para. 21, recommendations n. 119.164, 119.165, 119.167

²³ See: <http://apublica.org/2016/09/no-mato-grosso-os-novos-problemas-de-uma-velha-disputa/>

²⁴ According to data from the Conselho Indígena Missionário (CIMI), more than 20 attacks were registered in 2015 attributed to paramilitary groups against indigenous communities in Mato Grosso do Sul.

²⁵ <http://www.ebc.com.br/cidadania/2015/09/governo-iniciara-mesas-de-negociacao-para-resolver-conflitos-indigenas-em-ms>

²⁶ <http://www.secretariadegoverno.gov.br/01-10-2015-mesa-de-negociacao-da-sg-fecha-acordo-entre-indigenas-e-orgaos-publicos-federais>

²⁷ See the conclusions and recommendation of the Working Group of the National Human Rights Council on its missions to the south of the country to assess the situation of indigenous peoples' rights.

<http://www.sdh.gov.br/sobre/participacao-social/cndh/relatorios/relatorio-do-gt-sobre-direitos-dos-povos-indigenas-da-regiao-sul-1>

²⁸ Notably speeches and remarks made by former Chief of Staff Gleisi Hoffman in 2012 in the National Congress, along with speeches by the former Attorney General Luis Adams, senator and former Minister of Agriculture Kátia Abreu and former Minister of the Environment Izabella Teixeira.

²⁹ <http://www.socioambiental.org/pt-br/noticias-socioambientais/ministro-aceita-discutir-consulta-sobre-mudanca-em-demarcacao-dizem-liderancas-indigenas>

http://cimi.org.br/site/pt-br/?system=news&conteudo_id=7291&action=read

³⁰ If approved PEC215/2000 will mean the paralysation of the demarcation processes of these territories in the country; the review of territories already recognised and the forced removal of communities from traditional territories to make way for large farming interests, infrastructural works or projects to exploit natural resources by third parties.

collective rights. Worryingly, it is advancing without any initiative to conduct prior, free and informed consultation.

18. In 2012, the AGU³¹ published PortariaNo. 303 imposing restrictive guidelines on the work of federal lawyers and prosecutors responsible for defending the interest of the Union and of indigenous communities.³² This situation demonstrates how access to justice for indigenous peoples has been blocked by discriminatory and politicized decisions and guidelines.³³
19. The conditions imposed in the judgment on the Raposa Serra do Sol case³⁴ by the Federal Supreme Court resulted in a growth of legal actions against demarcations of indigenous lands in various parts of the country. A juridical scenario disproportionately unfavourable to indigenous peoples has become established in Brazil, including a number of court orders evicting indigenous communities from their own lands. These decisions have multiplied in recent years, even in completely distinct contexts of the Raposa Serra do Sol case.
20. Since 2012, despite the heightening conflict and the specific recommendation of the UPR, there has been no effective progress in the demarcation of Guarani Kaiowá indigenous lands in Mato Grosso do Sul. This situation reflects the general situation of the demarcations pending in the country. There are at least 25 indigenous lands awaiting for presidential homologation and another 140 for approval of the identification and delimitation studies by FUNAI and declaration by the Ministry of Justice. From 2013 to 2015, due to political pressures, the State targets set for demarcations of indigenous lands have not been met³⁵ and the Ministry of Justice established the so-called negotiation tables.
21. During the same period there was a rise in paramilitary attacks against indigenous communities; numerous eviction orders in favour of non-indigenous occupants were carried out with disproportionate use of police force, even resulting in the death of some indigenous people;³⁶ and, rather than investigating and punishing those responsible for the violence³⁷ committed, various leaders were persecuted, criminalized³⁸ and imprisoned.³⁹ No case was resolved by the negotiation tables, causing frustration on all sides and

³¹ Federal Attorney General's Office (Advocacia Geral da União).

³² Despite its suspension in 2013 following pressure from indigenous peoples and organisations, Ordinance 303 of the AGU continues to generate effects related to the denial of indigenous territorial rights by incorporating, as a general framework, conditions that were in fact applicable solely to the Raposa Serra do Sol/RR case. See:

<http://www.agu.gov.br/atos/detalhe/596939>

³³ In the period evaluated in the first cycle of the UPR (2008), the Raposa Serra do Sol/RR case was being monitored by the UN Committee on the Elimination of Racial Discrimination (CERD). See A/HRC/WG.6/1/BRA/2

³⁴ Pet. 3388/STF (2009) and Declaratory Judgments (2013)

³⁵ http://www.funai.gov.br/arquivos/conteudo/ouvidoria/pdf/ acesso-a-informacao/Plano_plurianual-PPA_2012-2015.pdf

³⁶ Oziel Terena was killed during a repossession operation in the Buriti/MS Indigenous Land (2013). See:

<http://politica.estadao.com.br/noticias/geral,terena-e-baleado-em-novo-conflito-no-ms,1038837>

³⁷ Mobilizations and attacks against indigenous communities, fomented by politicians and local authorities, were reported to the National Human Rights Council concerning events in 2015 in the municipalities of Guaíra/PR and Vicente Dutra/RS.

³⁸ A case reported to the National Human Rights Council concerning the imprisonment in 2016 of the leader of the Boa Vista/PR village a few days before a repossession order was carried out against the indigenous community.

See: <http://www.sdh.gov.br/sobre/participacao-social/cndh/relatorios/relatorio-do-gt-sobre-direitos-dos-povos-indigenas-da-regiao-sul-1>

³⁹ In 2015 at least seven Tupinambá leaders were killed in Bahia, as well as the imprisonment of the leader Babau in dubious circumstances in 2014 and 2016. See: http://cimi.org.br/site/pt-br/?system=news&conteudo_id=8648&action=read

revealing the bias involved in the political and asymmetric negotiation of fundamental indigenous rights.⁴⁰ Subsequently the very violation of indigenous constitutional rights was transformed into an argument in favour of initiatives designed to reduce and waive these rights.

22. Among the major concerns already identified by the previous UN Special Rapporteur on the Rights of Indigenous Peoples⁴¹ and reiterated in the context of the UN's Universal Periodic Review mechanism in 2008⁴² and 2012⁴³ and by the current UN Rapporteur⁴⁴ (2016) are: the paralysation of the indigenous land demarcation processes; and the threat of changes to constitutional provisions⁴⁵ aimed at eroding and even reversing demarcations.⁴⁶ These initiatives subject indigenous rights to openly anti-indigenous criteria and pressures, demonstrating the need for Brazil's indigenous peoples to campaign and resist such actions.⁴⁷

Protection of the rights to life, integrity, dignity and autonomy⁴⁸

23. Other setbacks on human rights include: the violence perpetrated against indigenous communities with impunity; and the threats, unjustified imprisonments and deaths of indigenous leaders, especially in a context of disputes over the recognition of their territorial rights. Between 2012 and 2014 at least 251 murders of indigenous persons were recorded across the country, more than 40% of the cases being in Mato Grosso do Sul. In 2016 there were at least three armed attacks on the communities of Kurusu Ambá, Taquara and Caarapó. In Caarapó, Clodioldo de Souza, a Guarani Kaiowá leader, was murdered.⁴⁹
24. Cases of racism⁵⁰ and discrimination against indigenous persons and peoples also increased. The action of parliamentarians from the ruralist and anti-indigenous lobby in particular has grown in strength over the last four years, part of a context involving attempts to erode indigenous rights and propagate untruths that turn much of the general public against indigenous peoples.⁵¹

⁴⁰ <https://mobilizaconacionalindigena.wordpress.com/tag/mesa-de-dialogo/>

⁴¹ A/HRC/12/34/Add.2, 26 Aug. 2009, See: <http://unsr.jamesanaya.org/country-reports/report-on-the-situation-of-human-rights-of-indigenous-peoples-in-brazil-2009>

⁴² A/HRC/8/27.

⁴³ A/HRC/21/11.

⁴⁴ The report in the visit to Brazil of the UN Special Rapporteur on the Rights of Indigenous Peoples will be presented during the 33rd Session of the UN Human Rights Council simultaneous with the submission of this civil society report as part of the Universal Periodic Review mechanism. A/HRC/33/42/Add.1

⁴⁵ Constitutional Amendment Bill (Proposta de Emenda Constitucional) PEC215/2000

⁴⁶ Also see Law Bill 1606/2015 annexed to PL1218/2007.

⁴⁷ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18498&LangID=E>

⁴⁸ Recommendations EPU/ONU 2012: A/HRC/21/11 - Para. 119 & A/HRC/21/11/Add.1 - Para. 21. See Appendix I.

⁴⁹ In this case, the Federal Prosecutor's Office concluded that 12 farmers had been directly involved in the armed attack the formation of a militia to attack the indigenous community. See:

<http://pfdc.pgr.mpf.mp.br/informativos/edicoes-2016/agosto/fazendeiros-sao-presos-por-envolvimento-em-ataque-a-indigenas-em-caarapo-ms>

⁵⁰ In 2014 the Conselho Indígena Missionário (CIMI) documented 19 cases of racism and ethnic-cultural discrimination perpetrated against indigenous peoples.

⁵¹ Public authorities and institutions disseminate false information, generating a climate of terror among the non-indigenous population against indigenous peoples. See: federal deputies Luiz Carlos Heinze (<http://g1.globo.com/rs/rio-grande-do-sul/noticia/2014/02/em-video-deputado-diz-que-indios-gays-e-quilombos-nao-prestam.html>), Valdir Colatto (<http://iela.ufsc.br/povos-originaarios/noticia/indigenas-de-sc-repudiam-deputado-colatto>), Alceu Moreira (<http://reporterbrasil.org.br/2014/02/deputados-heinze-e-alceu-moreira-sofrem->

25. Another serious situation is the racism and discrimination encountered by indigenous people in urban areas. The protection of children and teenagers and their rights to family and community life is one major concern for indigenous peoples. In states like those of the south region, indigenous peoples have reported to the National Human Rights Council (2016) cases of violence practiced by individuals and the illegal forced removal of guardianship of indigenous children by tutelary councils and judges. Local councils and trade associations act to limit the indigenous presence in towns and cities, especially in relation to the sale of craftwork. In 2015, an indigenous child was decapitated while in its mother's arms while they were travelling through a municipality in Santa Catarina, sleeping in a coach station on the way to sell craftwork.⁵² The removal of indigenous children from family life is also related to contexts of territorial dispute, as in the case of Mato Grosso do Sul and people trafficking, as in the case of more interior regions of Amazonas.

Protection of social rights

26. Without the security of their lands, indigenous peoples are unable to plant or produce to ensure adequate dietary, dwelling, health and living conditions.
27. Despite the global improvement in health conditions in Brazil, a specific study has pointed to an alarming disparity between the child mortality and malnutrition indices among indigenous and non-indigenous populations. Among each 1,000 live births in the Yanomami and Xavante communities, 141 do not survive until the age of 5. And while the rate of chronic malnutrition in children younger than 5 is 7% among the general population, it rises to 26% among indigenous peoples and 47% among the Guarani Kaiowá.⁵³
28. Associated with the demand for recognition of territorial rights, we can also perceive a worsening of cases of violence against indigenous women, including sexual violence. However, the national policies for combating discrimination and violence against women are unable to approach the issue with specific attention to the contexts of indigenous peoples. There is also a tendency for the situation to worsen with the reduction in the status of the Ministry of Policies for Women to a subarea of the office for human rights.
29. Along the same lines, despite advancing in the reduction of poverty, especially through income transfer programs, Brazil has failed to identify and fully meet the specificities of the indigenous cases and promote an effective improvement in living conditions, without imposing an alien way of life. The State needs to engage in a proper discussion of the concept of poverty in the context of indigenous peoples and lands. Without doing so, it risks to reproduce and foment stigmas and stereotypes that undervalue indigenous peoples and their life-styles, social organisation and self-sustaining production.
30. In relation to universalizing social programs like the Bolsa Família, problems were identified both in terms of providing adequate means for indigenous peoples to access these social

[representacoes-por-racismo-e-incitacao-ao-crime/](http://g1.globo.com/mato-grosso/noticia/2015/11/em-cuiaba-bolsonaro-se-diz-contraterra-para-indios-e-cota-para-negros.html)) and Jair Bolsonaro (<http://g1.globo.com/mato-grosso/noticia/2015/11/em-cuiaba-bolsonaro-se-diz-contraterra-para-indios-e-cota-para-negros.html>).

⁵² Given the absence of any timely response to the case from the competent authorities, investigative missions were conducted by the National Human Rights Council to assess the situation of the human rights of indigenous peoples in the states in the southern region of Brazil. See: http://www.cimi.org.br/site/pt-br/?system=news&conteudo_id=8640&action=read

⁵³ Study by Fian Brasil (2016): <http://www.fianbrasil.org.br/noticia/visualizar/10>.

programs and benefits, and due to negative impacts in some indigenous communities.⁵⁴ The rapid incorporation of communities in consumer and debt relations without the necessary prior information, or without the concern towards the autonomy of indigenous peoples and their ways of life have been causing social and cultural shaking in some communities. Therefore specific attention from the State in proper dialogue and consultation with indigenous peoples is needed.

Protection of indigenous leaders as defenders of human rights⁵⁵

31. Today 103 indigenous persons are registered under the Human Rights Defenders Protection Program, mostly from the Tupinambá, Guarani Kaiowá, Xakriabá or Kaingang groups. However many of these leaders and others, particularly in the states of Mato Grosso do Sul, Santa Catarina, Roraima, Pará and Bahia, have denounced the situation of permanent insecurity due to the rising number of threats received by themselves and their families, and the program's lack of effective support.
32. No specific protocol exists to inform the actions of the federal police and ensure quick responses in the case of attacks on and threats to the communities of indigenous leaders protected by the program. In Pará, the state with the highest number of deaths and death threats relating to defenders of human rights, there is no state collaboration with the federal program. In Mato Grosso do Sul and Mato Grosso, no agreements were signed with the state governments for the processing of requests for protection of human rights defenders. Since 2012 the program has deteriorated in a worrying manner and may be one of the causes behind the increase in violence against indigenous leaders and communities.⁵⁶
33. Accounts of abusive or unjustified imprisonments and ambushes of indigenous leaders, strongly influenced by politicians in contexts of territorial dispute, form part of this scenario of lack of progress and the threat of reversals of indigenous peoples human rights. Police abuse,⁵⁷ abusive treatment and even torture of indigenous leaders, are practiced as ways of constraining and retaliating against these leaders working in the defence of their collective rights. Across the country, indigenous people report suffering greater impediments or difficulties than the non-indigenous population when attempting to register occurrences of threats and violence against them to security authorities.⁵⁸ At the same time, there is an alarming tendency of state and federal polices to criminalize indigenous leaders.
34. No transparent data exists on the number of imprisoned indigenous persons and, in many states, it is suspected that they receive discriminatory and degrading treatment, spending more time in prison due to the lack of public defence lawyers to work on their cases.

⁵⁴ See: <http://www1.folha.uol.com.br/poder/2016/09/1810078-bolsa-familia-altera-rotina-de-indigenas-na-regiao-do-xingu.shtml>

⁵⁵ Recommendations EPU/ONU 2012: A/HRC/21/11 - Para. 119 & A/HRC/21/11/Add.1 - Para. 21, Recommendations n.119.32, 119.82, 119.84 and Recommendation EPU/ONU 2008: A/HRC/8/27, para. 83.3.

⁵⁶ See: <http://www.global.org.br/wp-content/uploads/2016/03/informe-situac-a-o-defensores-2016-PORT-ONU-INDIGENAS.pdf>

⁵⁷ In 2014 a Munduruku man was killed in a confrontation with the Federal Police in the region in conflict over the São Luiz do Tapajós Hydroelectric Project. See: <http://www.ebc.com.br/noticias/brasil/2014/07/mpf-denuncia-delegado-federal-por-morte-de-indio-munduruku>

⁵⁸ In 2014, the Conselho Indigenista Missionário (CIMI) registered 108 indigenous victims of abuses of power across the country.

35. In relation to the participation of indigenous people in public life, we highlight the fact that for 30 years Brazil has had one indigenous representative in the National Congress and his mandate continues to be the only example. Without strong support from political parties, indigenous candidates struggle to become federal representatives in the legislature and executive and thus ensure a counterweight to the anti-indigenous ruralist lobby, meaning that the dispute is heavily unequal and unfavourable to the indigenous population. Data from the TSE⁵⁹ (2014) show that of the 25,366 registered to compete for executive and legislative posts at all levels, 55.03% declared themselves to be white and 0.32% indigenous.

Protection against discrimination in the use of indigenous languages and the right to health and education⁶⁰

36. Near 30% of the more than 180 indigenous languages may become extinct in the next 15 years.⁶¹ The failure to guarantee bilingual education in indigenous schools; the exploitation of the indigenous workforce and the discriminatory treatment that indigenous people receive in many states – public authorities and even the police often prohibit indigenous peoples from speaking their own languages –; and the defamation of the image of indigenous peoples in the main media are factors that contribute to the alarming loss of indigenous languages. Despite a few examples of documentation of indigenous languages, there is no structured public policy to combat racial discrimination or recognise and protect indigenous languages from extinction.

37. Although the Constitution establishes the right to bilingual education in indigenous schools, only around 30% of indigenous schools use indigenous languages in their teaching. Over the last four years there has been a perceptible deterioration in the specific actions targeted at indigenous school education and there have been complaints that in many municipalities the resources allocated to indigenous school education are returned, while students and teachers from indigenous schools encounter difficulties due to the low level of support.

38. The training and hiring of indigenous teachers continues to be a challenge in terms of guaranteeing high-quality and specific education for indigenous peoples. Data from the MEC⁶² School Census indicates that just 20% of indigenous teachers are fully employed, while the remainder have provisional and temporary contracts without observance to their labour rights or equal wages. The implantation of Ethnoeducational Territories is now paralysed, eroding the quality of the education offered in villages.

39. In Brazil indigenous peoples still figure among the sectors of the population facing the greatest difficulties in accessing the birth register and documentation. In many municipalities indigenous persons face cases of racism and discrimination both for not carrying civil documentation and when attempting to access these documents and having services denied by the registry offices. In Mato Grosso do Sul and in the south region of the country, the Guarani are frequently called ‘Paraguayans’ by the authorities and the local non-indigenous population. This discrimination seeks to deny indigenous identities and

⁵⁹ Tribunal Superior Eleitoral (Superior Electoral Court).

⁶⁰ See Appendix I with suggested wording of the recommendations adapted to the context of the rights of indigenous peoples.

⁶¹ See the Language Documentation Project run by the Indian Museum/FUNAI (2014).

⁶² Ministry of Education

Brazilian nationality in order to perpetuate rights violations, particularly in relation to territorial rights.

40. Brazil made some progress with the creation of a subsystem of Indigenous Healthcare. However in the period evaluated by the UPR, indigenous peoples denounced diverse cases of irregularities encountered in the healthcare services⁶³ and a lack of effective indigenous monitoring of the system. There is a concern with the serious threat of reversals with the prospect of privatization or municipalization of indigenous healthcare. In addition, the State's neglect in relation to the right to health of indigenous peoples is intensified in the context of large-scale infrastructural projects which fail to meet the conditions priorly set for their construction in terms of complying with the rights of indigenous peoples, as in the case of the Belo Monte Hydroelectric Dam.⁶⁴ Another point to be highlighted in relation to the last four years concerns is the urgent attention that the State needs to give to the health situation of isolated and recently contacted indigenous peoples.
41. Between 2012 and 2016, at least three situations were reported of contact with isolated indigenous peoples in the border area of Brazil, requiring coordinated actions between the countries involved for territorial and health protection capable of ensuring the physical and cultural survival of these peoples.⁶⁵ Nonetheless without structural provisions and investment in FUNAI from the government, there will be a lack of adequate action to ensure effective protection of especially vulnerable peoples.

Implementation of the right to free, prior and informed consultation⁶⁶

42. In May 2016 the Presidency of the Republic inaugurated the Belo Monte Hydroelectric Dam,⁶⁷ whose study, licensing, authorization and construction process over the last four years have been marked by the absence of consultation of indigenous peoples. Systematic violation of fundamental rights were found by the Federal Prosecutors Office due to the failure to comply with the set conditions.⁶⁸ These omissions led to a critical situation of environmental and social destruction with impacts, for instance, on the health of indigenous peoples.⁶⁹
43. As the example of Belo Monte, the violation of indigenous peoples' human rights are growing and are related to the pressures of a developmental model that fails to respect indigenous peoples ways of lives and plans for their futures. Public and private sectors

⁶³ See: <http://brasil.elpais.com/especiais/2015/saude-indigena/>, and <http://saude.estadao.com.br/noticias/geral,indios-da-regiao-amazonica-estao-sem-vacina-desde-o-inicio-do-ano,10000077881>

⁶⁴ See: <http://www.mpf.mp.br/pa/sala-de-imprensa/noticias-pa/mpf-pede-paralisacao-de-belo-monte-por-risco-de-colapso-sanitario>

⁶⁵ Contact situation in Acre (2014) <http://www.funai.gov.br/index.php/comunicacao/noticias/2903-indios-isolados-que-estabeleceram-contato-recebem-atendimento-medico-no-acre?highlight=WyJpc29sYWRvliwiY29udGFobyJd> and in Amazonas (2014 and 2015) <http://www.funai.gov.br/index.php/comunicacao/noticias/3040-grupo-isolado-korubo-faz-contato?highlight=WyJpc29sYWRvliwiY29udGFobyJd>.

⁶⁶ Recommendations EPU/ONU 2012: A/HRC/21/11-Para. 119 & A/HRC/21/11/Add.1-Para. 21, Recommendations n. 119.163, 119.164, 119.166, 119.167, 119.169.

⁶⁷ See: http://brasil.elpais.com/brasil/2016/05/09/opinion/1462804348_582272.html

⁶⁸ <https://www.socioambiental.org/pt-br/noticias-socioambientais/fgv-aponta-que-nenhuma-obra-para-saude-indigena-foi-concluida-por-belo-monte>

⁶⁹ <https://mediadrawer.gvces.com.br/publicacoes/original/indicadores-de-belo-monte-2016.pdf>

work within a logic of domination and political favours in detriment to the rights of indigenous peoples.

44. The violation of the right to consultation and the lack of legal resources to defend indigenous rights relating to the construction of large-scale infrastructural projects,⁷⁰ the advancing of illegal destruction of the environment in indigenous lands,⁷¹ and proposals for regulatory changes concerning the exploration of natural resources in indigenous areas, were identified in 2015 by the UN Working Group on Business and Human Rights.⁷² Emblematic cases involving the violation of the right to consultation found in the period evaluated: the Belo Monte, Teles Pires and São Manoel Hydroelectric Dams, the Tapajós Dam project, transposition of the São Francisco River, the Manaus-Boa Vista Transmission Line, duplication of the Carajás railway, as well as more than 100 law bills and constitutional amendments designed to alter indigenous rights currently passing through Congress without consultation.
45. Most government sectors ignore indigenous rights and very often violate the human rights of indigenous peoples. For example, despite the formal recognition of the right to consultation in the national legal framework,⁷³ we can observe a systematic and continuous violation of this right by the executive and the legislature, particularly in relation to large-scale construction projects and measures with huge impacts on indigenous lands, lives and rights. These violations are founded or backed by limited or contradictory understandings and interpretations of the context, scope and requirements of free, prior and informed consultation (ANNEX II), which fail to meet the regulatory and jurisprudential standards defined internationally, especially by the Inter-American Human Rights System.⁷⁴

⁷⁰ Stays of Injunction against appeals in favour or the recognition of the right to free, prior and informed consultation in the cases of the Belo Monte and São Luiz do Tapajós Hydroelectric Dams. See: <http://sddh.org.br/sddh/index.php/item/1011-leia-relatório-sobre-suspensão-de-segurança-no-brasil-entregue-à-cidh>; <http://terradireitos.org.br/2016/02/16/suspensao-de-seguranca-neodesenvolvimentismo-e-violacoes-de-direitos-humanos-no-brasil/> and <http://www.mpf.mp.br/pa/sala-de-imprensa/documentos/2016/violacoes-direitos-povo-indigena-munduruku>

⁷¹ The case of the following Indigenous Lands: Marãiwatséde/MT (<https://maraiwatsede.wordpress.com/2012/07/05/nota-da-funai-sobre-a-terra-indigena-maraiwatsedemt/>), Manoki/MT (<http://www.axa.org.br/2013/09/povo-manoki-denuncia-extracao-ilegal-de-madeira-de-seu-territorio-oeste-de-mato-grosso/>), Cachoeira Seca/PA (http://www.bbc.com/portuguese/noticias/2015/05/150508_belo_monte_funai_ms_lgb), Kaápor/MA (<http://amazonia.org.br/2016/06/greenpeace-formaliza-denuncia-de-ameacas-ao-povo-kaapor-na-ti-alto-turiacu/>), among others.

⁷² A/HRC/32/45/Add.1

⁷³ Brazil ratified ILO Convention 169 by Decree 5051/04.

⁷⁴ The absence of prior consultation of the Arara da Volta Grande do Xingu, Juruna, Juruna do km 17, Xikrin, Asurini, Kararaô, Parakanã, Araweté and Arara de Cachoeira Seca indigenous peoples was covered by Precautionary Measure no. 382/2010 of the Inter-American Commission on Human Rights, which ordered the suspension of work on the Belo Monte Hydroelectric Dam. After pressure from the Brazilian government, which threatened to hold back its annual payment of funds to the IACHR and remove the appointment of lawyer Paulo Vannuchi, the IACHR reviewed its decision. the full text of the Precautionary Measure is available at: <http://www.consultaprevia.org/#!/documento/123>. For an in-depth discussion of the effects of the Brazilian government's stance on the Inter-American System, we recommend watching the seminar "The Belo Monte Case: Challenges and Opportunities for the Protection of Human Rights and the Environment in the Inter-American Human Rights System."

See: <http://media.wcd.american.edu/Mediasite/Play/7e2dc4f20e0a468b9ac31c1c7dba2a4a1d>

46. At the executive branch, while on one hand the need for consultation was recognised by various administrative bodies, on the other there is a reluctance to conceive consultation as a right. Seen as a mere bureaucratic formality, consultation very often appears as a dispensable accessory in processes where decisions have already been taken. Roads, railways, ports, hydroelectric dams, transmission lines, mining activities and other projects are licensed and built without any kind of consultation with the indigenous and traditional communities affected, even in cases where the project is implemented inside indigenous land, such as the construction of the Manaus-Boa Vista Transmission Line in the Waimiri-Atroari Indigenous Land.
47. In 2012, following a complaint to the ILO, the government began a process of consulting indigenous peoples, quilombolas and traditional communities on a possible regulatory framework of procedures for implementing the right to consultation. However this initiative was aborted, demonstrating the difficulty of obtaining a cohesive position from the government to act in good faith with the interested parties.
48. Given the concern that any regulatory framework would serve merely to impose limits on the rights of indigenous peoples and merely meet the interests of large-scale projects, in some regions indigenous peoples (Wajãpi, Mundurucu, the indigenous peoples of the Parque do Xingu Indigenous Land) began to discuss and elaborate their own consultation protocols. These protocols contain guidelines for the State on how to carry out specific and culturally respectful consultations. However up to now there has been no position from the government vis-à-vis these protocols, nor support to develop other protocols in other regions.
49. In terms of legislative measures, we encounter the most serious cases of the violation of the right to consultation. Despite the biggest attack on indigenous rights since the 1988 Constitution now being pursued in the National Congress,⁷⁵ no examples of prior consultation exist. Led by a parliamentary lobby that acts to promote the interests of the large rural landowners, the attack aims to limit indigenous territorial rights, opening up traditional territories to economic exploration without respect for basic rights and no consultation as demanded by ILO Convention 169. The actors involved in the legislative process seem to ignore their obligation to carry out consultation on the measures affecting indigenous peoples.
50. The widespread use of the Stays of Injunction⁷⁶ and Temporary Protection Orders has also contributed to violation of the right to free, prior and informed consultation and consent, and limits indigenous peoples' access to justice. In sum, large-scale projects continue to be

⁷⁵ Supplementary Law Bill no. 227/2012: regulates mining in indigenous lands, quilombola territories and conservation units; Law Bill no. 5.807/2013 (New Mining Code): permits mining in indigenous lands, quilombola territories and conservation units; and Law Bill no. 1.216/2015 and Law Bill no. 1.218/2016: alter rules on the recognition and demarcation of indigenous lands. We cite as serious examples: Law Bill no. 1.610/1996: regulates mining in indigenous lands; Constitutional Amendment Bill no. 215/2000: enables the National Congress to demarcate indigenous lands and quilombolas and review finalized procedures; Constitutional Amendment Bill no. 76/2011: allows the exploration and use of water resources in indigenous lands with a share of the results; Constitutional Amendment Bill no. 71/2011: alters rules in the demarcation of indigenous lands; Constitutional Amendment Bill no. 65/2012: alters rules on the requirement of environmental licensing for large-scale construction projects.

⁷⁶ This instrument, the exclusive use of public authorities, allows court presidents to suspend any decision for authorized political motives (serious harm to the public order, economy and administration).

planned and implemented without the right to consultation being ensured.⁷⁷ Badly planned projects turn into faits accomplis.

Recommendations:

51. Hence, in order to contribute to the defence of the human rights of indigenous peoples in Brazil on different issues,⁷⁸ as well as the on themes identified in the previous evaluations of the UPR – indigenous peoples, right to land, right to participation and consultation, and human rights defenders – we suggest 105 detailed recommendations⁷⁹ to monitor the situation of human rights of indigenous peoples in Brazil, including:
 - a) that in dialogue with indigenous peoples representatives at the national level, Brazil establishes a mechanism to monitor the implementation of the recommendations, obligations and commitments accepted under international laws and the UPR as well as Special Procedures such as the UN Special Rapporteur on the Right of Indigenous Peoples and UN Working Group on Business and Human Rights, including the development of a national plan or strategy to implement the UN Declaration on the Rights of Indigenous Peoples and to ensure participation of indigenous peoples in national, regional and international forum;
 - b) guarantee that constitutional rights, specially those related to lands, resources and cultures, will be kept and strengthened in accordance with international human rights standards and that indigenous peoples will have full access to justice, and provided services of public defense in an equal basis as other minority groups, when their individual or collective rights are violated;
 - c) complete demarcation of indigenous lands with a particular attention to areas outside the Amazon region and or affected by large development projects and bring to justice perpetrators of violence, discrimination and murders practiced against indigenous communities and leaders;
 - d) establish uniforming standards for the administration to ensure guarantee in the implementation and monitoring of the right to free, prior and informed consultation in accordance with ILO Convention 169, including in relation to legislative measures, and to recognize and support indigenous peoples own initiatives of consultation protocols;
 - e) ensure that economic, social and cultural policies and programs, including cash transfer policies, entail respect and due value for indigenous peoples and their specific rights, as well as their autonomy and ways of lives, avoiding stigmatization of indigenous peoples as poors or obstacles to development;
 - f) investigate and act in cooperation with state and local authorities and dialogue with indigenous peoples to banish situation where indigenous peoples are prevented enjoy their economic, social, cultural, civil and or political rights due to the lack of the State demarcation of indigenous lands;

⁷⁷ Belo Monte, Teles Pires and São Manoel Hydroelectric Dams, duplication of the Carajás Railway, Manaus-Boavista Transmission Line, among others.

⁷⁸ Health, education, environment, children's rights, women's rights, protection of languages, violence, racism and discrimination, employment and work, access to the justice system and impunity, human rights and business, national and international institutions, international and bilateral treaties and cooperation agreements, etc.

⁷⁹ Annex I: Table of recommendations.

- g) establish policies to protect and promote indigenous languages with special attention to the full implementation of the right to bilingual education, according to the specificities of indigenous peoples;
- h) urgently act to prevent and punish racism, discrimination and violence practiced against indigenous peoples, including within the public institutions;
- i) strengthen through the allocation of adequate resources and continuous training the institutions that key to the promotion and protection of the human rights of indigenous peoples such as National Indian Foundation (FUNAI), Federal Prosecutors Office (MPF), Public Federal Defendants (DPU), Federal Attorneys (AGU), Conselhos Tutelares, judges and magistrates, among others;
- j) guarantee financial resources and political support for the effective implementation of the National Policy for Environmental and Territorial Management of Indigenous Lands (PNGATI);
- k) initiate a consulted process to implement measures that contribute to the truth, reconciliation and redress of past violations and violences committed against indigenous peoples, including through public campaigns and awareness raising, in order to build the proper environment for a new relation of the State with indigenous peoples, with respect to their autonomy and human rights; and
- l) engage with indigenous peoples and ensure their participation in national, international, regional and or bilateral processes related to boarder issues, climate change, traditional knowledge, the protection of environment and the sustainable development goals.