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Submission for the Universal Periodic Review, 3rd cycle, 13th Session

BRAZIL

by the Society for Threatened Peoples

The Society for Threatened Peoples is a non-governmental organization with special consultative status.

The Society for Threatened Peoples (STP) is an independent international human rights organization. Our activities concern the rights of minorities and threatened peoples, the promotion of human rights and the fight against human rights violations. We provide an extensive documentation on various issues regarding our field of work for any people interested in minorities and human rights in general.

STP already participated at the 2nd cycle of the UPR on Brazil. Attached to this report is a short analysis of the recommendations regarding indigenous peoples and human rights defenders from the 2nd cycle.

Violation of right to territories for the indigenous peoples

With the constitution of 1988, Brazil made a big step towards respecting the rights of indigenous peoples, descendants of the traditional inhabitants living in the country prior to the discovery. Article 231 recognizes the fundamental human rights and the right to the use of their lands. Until December 2014, 668 indigenous peoples lands were demarcated or in the process of demarcation, summing up 13% of the surface of Brazil.

Unfortunately, the process of demarcation slowed down significantly. Between 2011 and 2014, the government of Dilma Rousseff ratified only 11 territories, by far the lowest number of ratification since that process started, and more than 300 territories still wait for the demarcation process. A safe territory is the most important condition for the survival of indigenous peoples. This development is in violation of Article 231 of the Brazilian Constitution, of the ILO Convention 169 Brazil signed and of the Declaration of the Rights of Indigenous peoples, Brazil voted for in 2007.

Recommendations 119.164, 119.165, 119.167 and 119.168 of the 2nd cycle ask Brazil to secure the right to the territories. The government of Brazil supported these recommendations. Brazil, however, failed to comply with the recommendations.

Violation of right to free, prior and informed consent

The right to be consulted as established by the Indigenous Peoples convention 169, ratified by Brazil, and recommended by several states in the 2nd cycle - see 119.163, 119.164, 119.166, 119.167, 119.168 and 119.169 - is done, if ever, on an unprofessional and low level. Indigenous peoples are poorly consulted and have no chance to negotiate mitigation and benefit sharing agreements. The right to veto – and therefore the right to free, prior and informed consent – is simply not given. One example is the Belo Monte Dam. Despite of more than 15 complaints by federal and state prosecutors and the complete ignorance of the right to free, prior and informed consent of affected indigenous peoples, the construction of the dam has been completed.

Additionally, the Brazilian congress is preparing several bills to reduce the protection of indigenous peoples and their territories. Amongst them are the following bills: the constitutional bill PEC 215 will transfer responsibility for demarcation from the Executive to the Legislative thus paralyzing the demarcation process, Constitutional Amendment Bill 76/2011 aims at allowing the exploration of water resources in indigenous lands, Bill 1.610/1996 regulates mining in Indigenous territories, Bill 44/2007 alters the rules on the recognition and demarcation of quilombola territories (descendants from African peoples), Bill 3.654/2008 removes the right to self-identification of quilombola communities, Constitutional Amendment 71/2011 alters the rules on the demarcation of indigenous territories, Supplement Bill 227/2012 prepares mining in indigenous lands, quilombola territories and conservation units, Bill 5.807/2013 allows, as the New Mining Code, mining in indigenous lands, quilombola territories and conservation units and Bill 1.216/2015 alters the rules on the recognition and demarcation of indigenous territories. Instead of improving protection of the indigenous peoples, Brazil prepares the removal of protection what deteriorates the rights of indigenous peoples in a worrying way. All these bills and amendments happen without a consultation process and the consent of the indigenous peoples that will be most directly affected by this bills and what is defined by the ILO convention 169.

Increasing violence against indigenous peoples

The violence against the indigenous population is growing in an alarming way. In 2009, some 60 indigenous people have been killed, while in 2015, according to a report of the NGO CIMI, 137 indigenous people have been killed. The indigenous community is heavily shocked by the killings of the indigenous leaders Adenilson da Silva Nascimento and Euzébio Ka'apor in 2015. The brutal violence of private militia against the Guarani and Kaiowa in the state Mato Grosso do Sul is unacceptable. Actions against the aggressors are very seldom, and impunity the rule even in cases of gross violence and murder.

Less means and power to the Indigenous Protection Agency FUNAI

During the recent years, FUNAI, the Brazilian Indigenous protection agency, got less means to conduct their work and less power in the state decision processes whether development projects violates the rights of the indigenous peoples or not. FUNAI is not capable anymore to fulfill the tasks defined in the Brazilian constitution.

Demands to the Brazilian government

STP therefore calls on the Brazilian government to take the following steps:

1. To provide the Indigenous protection agency FUNAI with the necessary means and power;
2. To fully implement (and to assure) ILO Indigenous and Tribal Peoples Convention 169 and the 2007 UN Declaration on the Rights of Indigenous Peoples;
3. To guarantee the right of indigenous peoples to their free, prior and informed consent for any major project impacting on their way of life. This includes participation in the entire legislative process, the reform, functioning and composition of the indigenous peoples agency FUNAI and the right to a final say in all projects that involve indigenous peoples (right to veto) or their environment, such as mining, logging, dams, farming etc.;
4. The president of Brazil shall veto all attempts of the congress to weaken the rights of indigenous peoples and the demarcation process;
5. To demarcate all indigenous reserves that are claimed by indigenous peoples;
6. To fully protect all areas where isolated or uncontacted indigenous groups are located or are suspected to live and to ensure that no illegal activities are carried out;
7. To guarantee protection and security to indigenous human rights defenders and to indigenous peoples in general;
8. To combat rigorously impunity in all crimes with a special view on violence against indigenous peoples;
9. To develop and realize policies to end violence, discrimination and marginalization of indigenous peoples in Brazil.

Bern, Switzerland, 22nd of September 2016