

Submission to the UN Office of the High Commissioner for Human Rights for the consideration of the 3<sup>rd</sup> Universal Periodic Review of the Federative Republic of Brazil during the 27<sup>nd</sup> Session



#### **Unrepresented Nations and Peoples Organization**

The Unrepresented Nations and Peoples Organization (UNPO) is an international, nonviolent, and democratic membership organisation. Its members are indigenous peoples, minorities, and unrecognised or occupied territories that have joined together to protect and promote their human and cultural rights, to preserve their environments, and to find nonviolent solutions to conflicts which affect them.

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*Keywords: indigenous peoples; territorial rights; free, prior and informed consent; state omission; misuse of power; violence.*

## **I. Introduction**

1. This report, submitted by the Unrepresented Nations and Peoples Organization (UNPO) on the occasion of the 27<sup>th</sup> session of the Universal Periodic Review, during which the Federative Republic of Brazil is under consideration, draws attention to human rights violations occurring in the country that affect its indigenous peoples. The report will open with a brief introduction to the indigenous peoples of Brazil. Then, it will outline three kinds of human rights violations suffered by indigenous peoples in Brazil – namely violations of territorial rights, violence towards indigenous people, and lack of consultation and representation – taking as primary legal frameworks the International Labour Organization Convention 169 (ILO 169), the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the 1988 Constitution of the Federative Republic of Brazil. Third, it will present a series of recommendations aimed to facilitate constructive discussions during the 27<sup>th</sup> Session of the UPR in Geneva.

### **Indigenous people in Brazil**

2. Brazil is home today to 817.963 indigenous inhabitants – belonging to some 305 different indigenous peoples – which make up around 0,5 % of the country's total population. Close to 40 % of Brazil's indigenous population reside in the northern region.<sup>1</sup> In many states, indigenous leaders have formed regional councils in which they cooperate to raise awareness of the indigenous cause and pressure relevant authorities. On a national level, these organizations work together and are supported by the *Conselho Indigenista Missionário* (Indigenist Missionary Council – CIMI) and other institutions committed to the struggle for the recognition and implementation of indigenous rights.

## **II. Indigenous Human Rights Issues**

3. Since the colonization by European explorers in the sixteenth century, indigenous peoples throughout the Americas have faced genocide, slavery, oppression and assimilation. Between the year 1500 and the year 2000, the number of indigenous languages spoken in what today is Brazil shrank from 1.078 to around 170.<sup>2</sup> Indigenous peoples were forced out of their lands, enslaved, often murdered, their histories and cultures denied and erased.<sup>3</sup> After Brazil's independence in 1822, the country's official attitude towards its indigenous people shifted from outright hostility to an assimilationist and paternalist ideology that, throughout most of the nineteenth and twentieth century, remained dominant in legislation and institutions.<sup>4</sup>
4. It is only with Brazil's 1988 new democratic constitution that indigenous peoples first succeeded to take part in the negotiation of their rights.<sup>5</sup> These negotiations resulted in a constitution that "explicitly recognized the rights of indigenous peoples to maintain their cultural traditions", and acknowledged the vital importance of ancestral territories to the physical and cultural well-being of indigenous peoples.<sup>6</sup>

5. Over the course of the last three decades, a number of treaties and conventions that grant rights and protection to Brazil's indigenous peoples have come into force on both the national and the international level. The ILO 169 was signed by Brazil in 2002, and the UNDRIP adopted in 2007. These and other international treaties – such as the International Covenant on Civil and Political Rights (ratified in 1992) – constituted important steps forward, at least on paper. It has become clear, however, that the establishment and ratification of treaties and rights does not equate their adequate implementation. This report presents evidence of Brasília's persistent lack of effort and commitment to comply with its obligations.
6. The sections below will briefly elaborate on violations of indigenous rights – to land, physical security, and consultation and representation – that happened in Brazil since 2012. The main sources for this report are two 2014 reports published by CIMI – *Violence Against Indigenous People* (henceforth referred to as the first CIMI report) and *Empreendimentos que Impactam Terras Indígenas* (Undertakings that Impact Indigenous Lands – henceforth referred to as the second CIMI report) – and news reports by CIMI and the *Instituto Socioambiental* (Social-Environmental Institute – ISA), in addition to reports by other NGOs and news agencies and to UNPO's direct experience.

**a. Violations of indigenous territorial rights**

7. Article 14 and 15 of the ILO 169 convention guarantee to indigenous peoples the rights to the territories they traditionally occupy and use, and to the natural resources on these territories.<sup>7</sup> The implementation of effective institutions to demarcate and consolidate these territories is specifically guaranteed in article 14.1, and article 7.4 guarantees the government's commitment to protect the environment in these territories. In concordance with these commitments, the Brazilian Constitution guarantees the demarcation and protection of indigenous territories in article 231.<sup>8</sup> Article 8.2.(b) of the UNDRIP further stipulates that "States shall provide effective mechanisms for prevention of, and redress for any action which has the aim or effect of dispossessing them of their lands, territories or resources."<sup>9</sup>
8. Brazil has received criticism on the failing implementation of the above principles on various occasions. Amnesty International reiterated its concern over the slow progress in the demarcation of indigenous territories in its annual report for 2015/2016.<sup>10</sup> During the second cycle of the Universal Periodic Review of Brazil, both Poland and Norway recommended Brazil to pay attention to indigenous land rights (recommendations 119.168 and 119.164). Norway made explicit mention of the case of the Guaraní Kaiowá people in Mato Grosso do Sul (recommendation 119.165), which will receive further mention in the following section.
9. The first CIMI report counts 118 cases of omitted and delayed regulation of land rights, and 19 cases of conflict over territorial rights, often involving legislative, judiciary and executive branches of local or regional governments blocking or annulling the demarcation and ratification of indigenous territories.<sup>11</sup> An important recent development is that the directors of the *Fundação Nacional do Índio* (National Indian Foundation – FUNAI) – charged by the government with the demarcation of

indigenous territories – have been called to justice by the *Ministério Público Federal* (Public Federal Ministry – MPF) for delays in the demarcation process in August 2016.<sup>12</sup>

10. A lack of adequate and timely demarcation and protection of indigenous lands is mentioned by various NGOs as the cause of conflicts between indigenous communities and loggers, farmers and miners.<sup>13</sup> It was also brought up as the main cause of concern by indigenous leaders from the state of Maranhão during a UNPO-organized roundtable in Brasília in November 2014.<sup>14</sup>
11. 83 cases of occupation of indigenous lands have been reported by CIMI in their first report, usually combined with the illegal extraction of natural resources.<sup>15</sup> A recent example is the case of the Ka'apor indigenous territory of Alto Turiaçu, which has suffered repeated invasion since its demarcation by FUNAI in 1978<sup>16</sup>. Illegal logging in Alto Turiaçu was already included in the first CIMI report, but ISA reported a new offensive in September 2016 by loggers invading the Ka'apor territory and ambushing the indigenous population. The Ka'apor are still awaiting action on the part of the governmental institutes IBAMA and FUNAI and the Federal Police.<sup>17</sup>
12. In addition to private actors intruding into indigenous territories, the second CIMI report counts 519 development projects in the areas of energy, infrastructure, mining, agribusiness and tourism that impact indigenous territories in some way.<sup>18</sup> According to a 2015 article in *The Guardian*, more than 250 hydroelectric dams are currently planned in the Amazon region alone.<sup>19</sup> Both the article and the second CIMI report mention an alarming lack of adequate environmental impact studies and safeguards.<sup>20</sup> Mr Clóvis Antônio Brighenti – member of CIMI's regional office for South Brazil – points towards the ironic circular reasoning where the delays in identification and demarcation of territories – mentioned in paragraph 9 – make it impossible for the communities in those territories to be officially considered as impacted.<sup>21</sup>
13. The evidence above indicates the Brazilian government is in some cases failing to protect indigenous territories from intruders, and in other cases actively involved in the intrusion and expropriation of indigenous territories in favour of big state-funded infrastructure and hydroelectricity projects. Brazil is thus failing to uphold the principles of its own constitution, as well as international treaties it ratified. It will become clear in the next section that much of the violence directed towards indigenous peoples occurs in relation to conflicts over the demarcation of indigenous territories and over intrusions into those territories.

## **b. Violence against indigenous peoples**

14. Article 3 of the ILO Convention 169 specifies that indigenous and tribal people should enjoy their human rights and freedoms without being discriminated against, and that “[n]o form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned”.<sup>22</sup> The Convention on the Elimination of All Forms of Racial Discrimination, signed by Brazil in 1968, includes the promise of a state party to take “special and concrete measures to ensure the

adequate development and protection of certain racial groups” in article 2.2..<sup>23</sup> Commitments to protect against, and punish, racism are also made in Article 5 of the Brazilian Constitution. <sup>24</sup> During the second UPR cycle, Switzerland recommended Brazil to ensure the protection of leaders of indigenous communities fighting for their rights (recommendation 119.82), a recommendation supported by Brazil.

15. The above paragraph amounts to a promise not to commit violence or discrimination towards people, and to protect people against violence by third parties. The 2014 CIMI report *Violence against indigenous peoples in Brazil*, however, gathers extensive information about violent incidents that took place throughout that year. The report counts 154 cases of physical violence, including murder, attempted murder, manslaughter, injuries and sexual violence, with 456 victims.<sup>25</sup> It further reports 56 cases of violent threats and 14 cases of misuse of authority by civil or military police.<sup>26</sup>
16. Additionally, although no comprehensive report has been released yet on those years, both CIMI and ISA have reported on various cases of violence and other crimes committed against indigenous peoples throughout 2015 and 2016. An alarming example is the conflict between the Guaraní and land-owners in Mato Grosso do Sul, the state with the highest incidence of anti-indigenous violence.<sup>27</sup> Continued violent attacks on the resident tribes of the indigenous territory of Dourados-Amambaiegua I in the south of Mato Grosso do Sul in June 2016 have been covered by ISA<sup>28</sup> as well as BBC Brazil.<sup>29</sup>
17. Government officials implicated in violence towards indigenous peoples, or the omission of their protection, are rarely held accountable for their actions and inactions. In June 2016, a parliamentary commission investigating violence towards indigenous peoples in Mato Grosso do Sul voted in majority in favour a report exempting the executive branch of government of any responsibility. An alternative report asserting clear omission of the State was discarded.<sup>30</sup> In 2015, Mr João Quartiero, a rice-farmer who led a guerrilla-type resistance against the demarcation of the indigenous territory of Raposa Serra do Sol in the north of Roraima in 2008<sup>31</sup> – and was briefly imprisoned in 2009 on charges of gang formation and attacks on indigenous villages<sup>32</sup> – was allowed to run for office, and elected vice-governor of Roraima. Both examples indicate low accountability due to a political power balance in favour of an anti-indigenous bloc.
18. The evidence presented by CIMI and other organizations shows violence against indigenous peoples committed by individuals and groups who consider them to stand in the way of their interests, as well as by representatives of the federal, state and local government itself, combined with a low rate of accountability for such actions. This leads to the conclusion that the Federative Republic of Brazil is not only failing to protect its indigenous community, but also breaking its constitutional and international promises by turning a blind eye to these violations or even taking an active role in them.

**c. Lack of consultation and political representation**

19. Consultation with indigenous peoples on matters that affect them directly is provided in several articles of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Article 19 explicitly provides that “[s]tates shall consult and cooperate in good faith with the indigenous peoples [...] in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”<sup>33</sup> Ms Maria Rezende Capucci, federal prosecutor in Santa Catarina, stresses that no person or body can substitute the indigenous community in question in this dialogue, with specific reference to the government institute FUNAI.<sup>34</sup>
20. Consultation on matters that affect them is also promised to indigenous peoples in articles 6.1a, 15, 17, 22, 27 and 28 of the ILO Convention No. 169. Article 6.1b of the same convention specifically guarantees to indigenous peoples the right to participate in all levels of decision-making where policies and programmes that affect them are developed.<sup>35</sup> During the second UPR cycle, the Netherlands, Norway, Peru, Slovakia and Germany all recommended Brazil improve its implementation of the right for indigenous peoples to be consulted (recommendations 119.163, 119.164, 119.166, 119.167 and 119.169).
21. The Guardian article mentioned above calls attention to a lack of respectful consultation with Amazonian indigenous peoples on the implementation of hydraulic energy projects.<sup>36</sup> An example of this is the way in which the Brazilian government reported in 2013 on their consultation with the Munduruku in regards to the Belo Monte hydraulic dam. According to Mr Saulo Ferreira Feitosa – member of CIMI’s regional office for Northeast Brazil – the report makes clear that the government will only recognise as legitimate representatives of the Munduruku people those who agree with the government’s perspective, and that any Munduruku opposition to the dam will be discredited rather than heard.<sup>37</sup>
22. According to Mr Brighenti, one of the root causes of the issue lies in the failure by the government to obtain free, prior and informed consent from indigenous communities regarding planned projects. In the current *modus operandi*, indigenous communities are often informed about projects that will affect their territories only when they are fully planned, and are offered mitigating measures instead of an actual say in whether or not a project should go through.<sup>38</sup> In February 2016, the MPF of Amazonas requested the annulment of a licence to Transnorte Energia S/A to construct a power transmission line through the land of the Waimiri Atroari. According to the leaders of this people, FUNAI and IBAMA had surpassed them in granting license to Transnorte, acting on their behalf unwarranted.<sup>39</sup>
23. In addition to the questionable functioning of official mechanisms for consultation, indigenous peoples face a complete lack of representation within the Brazilian Congress, where legislation directly affects their livelihoods. In contrast, the interests of those opposing indigenous rights are well represented in Brasília, where Congress is increasingly dominated by a “ruralist bloc”, pushing for laws such as the PEC215, which forms a direct threat to indigenous territorial rights by moving the responsibility for the demarcation of indigenous territories from the executive to the legislative branch of power, and by opening concluded demarcation processes up for

reconsideration.<sup>40</sup> Mr Erwin Kräutler – Bishop of the Prelacy of Xingu and President of CIMI – and Ms Janete Capiberibe – Member of the Brazilian Parliament – both relate the ongoing and intensified violence against indigenous peoples throughout Brazil directly to the distribution of power in Brasília.<sup>41</sup>

24. During a conference organized by UNPO in Brussels in April 2015, the lack of representation and consultation of indigenous people was a recurring theme. Mr Francisco Assis, a Member of the European Parliament, mentioned the importance of Article 32, as respecting it “presupposes the recognition of indigenous peoples’ ability and maturity to express their opinions and decide on issues that concern them”.<sup>42</sup> The lack of consultation that is reported by CIMI’s 2014 report signals that such recognition is still far from being a reality.

### III. Recommendations

Given the above-mentioned human rights situation in the Federative Republic of Brazil, the Unrepresented Nations and Peoples Organization urges the Government of Brazil to consider the following recommendations:

1. *To hold government institutions which are responsible for the enforcement of indigenous rights accountable for their actions and negligence.*
2. *To identify and eliminate causes of inefficiency, delays and omissions to ensure the recognition of indigenous peoples’ territorial rights.*
3. *To ensure the protection of leaders of indigenous communities struggling for their rights.*
4. *To ensure accountability of those implicated in instances of violence or hatred towards indigenous peoples and ban them from government positions related to the matter.*
5. *To ensure “free, prior and informed consent” to indigenous communities regarding measures that will directly affect their livelihoods, in accordance with Article 19 of UNDRIP.*
6. *To ensure that no person or government institution replaces indigenous communities in processes of consultation over measures that will impact their territories or livelihoods.*
7. *To consider introducing quotas for indigenous representation in the Brazilian Congress, in an effort to comply with Article 6.1b of ILO 169.*
8. *To ensure the implementation and enforcement of treaties, agreements and other constructive arrangements that Brazil is a party to, in accordance with Article 37 of UNDRIP.*

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