

Report to the Committee of Experts on the Application of Conventions and Recommendations of the ILO for the fulfillment of Convention 169 regarding Indigenous and Tribal Peoples*

The aim of the present report by the indigenous organizations Articulation of Indigenous Peoples of the Northeast, Minas Gerais and Espírito Santo - APOINME (Articulação dos Povos Indígenas do Nordeste, Minas Gerais e Espírito Santo); Indigenous Council of Roraima - CIR (Conselho Indígena de Roraima); Coordination of the Indigenous Organizations of the Brazilian Amazon - COIAB (Coordenação das Organizações Indígenas da Amazônia Brasileira) and Warã Brazilian Indigenous Institute (Warã Instituto Indígena Brasileiro) was to carry out an independent evaluation of the application of Convention 169 of the International Labour Organization (ILO) by the Brazilian State with respect to the indigenous peoples.

Five cases were chosen and mentioned as priorities: the Belo Monte Hydroelectric Plant; the Indigenous Territory of the Guarani-Kaiowá; the Indigenous Territory Raposa Serra do Sol; Mining in the Indigenous Territory of the Cinta Larga; and the Transposition of the Sao Francisco River. These cases illustrate paradigmatic situations. However, it should be stressed that many other cases could have equally been used as examples in this report.*

This document analyzes the fulfillment of Convention 169 of the International Labour Organization (ILO) from the following perspectives: ethnic identity; consultation and participation; territorial rights and natural resources; and development. These topics were considered structural issues for the indigenous challenges in Brazil, although there are other relevant topics that will also be included, such as the state of indigenous peoples health. . The organizations involved then present recommendations to the Brazilian State regarding the effective fulfillment of Convention 169.

1. INDIGENOUS PEOPLES IN BRAZIL

* This report is a result of activity carried out in the context of the project “Protagonism of Brazilian Indigenous Peoples through international instruments for Human Rights”, co-financed by the European Union and Oxfam and carried out by the indigenous organizations, APOINME, CIR, COIAB and Warã. The content of this report is of the exclusive responsibility of these indigenous organizations and must not at any time be interpreted as the expression of the viewpoints of the European Union and/or Oxfam.

* The cases mentioned in this report were indicated by the indigenous organizations involved. For each case, one reporter was chosen (four indigenous lawyers and one non-indigenous lawyer), who, in most cases, carried out visits and workshops on Convention 169 in affected indigenous communities.

It is estimated that the current Brazilian indigenous population is 750 thousand people.¹ According to official data, there are 225 distinct peoples,² who speak approximately 180 languages and live in 611 indigenous territories³, of which only 398 are regulated.⁴ Nearly 60% of these indigenous people live in the central-western and northern regions of the country. The other 40% of this population are confined to small indigenous lands, located in the more populated northeastern, southeastern and southern regions of the country.⁵

Although recent studies indicate that the political power of indigenous peoples has increased in the last decade throughout Latin America,⁶ this does not mean that the quality of public policies regarding these peoples has improved. The mentioned study points out that this is due to the little importance State institutions have given to indigenous issues, characterized by low degree of indigenous influence in the definition and implementation of actions. This is also the situation in Brazil. Low levels of indigenous participation resulting from institutional ineptitude perpetuate this process of political inadequacy regarding indigenous peoples.⁷

The lack of conflict resolution regarding the indigenous territories is another factor that characterizes the indigenous situation in Brazil. According to the Indigenous Missionary Council (Conselho Indigenista Missionário - CIMI), the number of indigenous territories officially declared by the government was an average of six (06) territories per year between 2003 and 2005, which was a lower number than in the previous period, with an average of thirteen (13) territories per year. Comparatively, during the period of least regularization of indigenous territories, the average annual homicide rate increased from twenty (20) to forty (40)⁸. An analysis of this data reveals that there is an inversely proportional relation between demarcation

¹ Source: IBGE- Brazilian Institute of Geography and Statistics – Demographic Census 2000.

² Source: FUNAI- Fundação Nacional do Índio. According to the ISA Socio-environmental Institute (Instituto Socioambiental) – a Brazilian civil society organization founded in 1994 to propose integrated solutions to social and environmental questions, there are 227 indigenous peoples; according to the CIMI - an organization linked to the Catholic Church which has been following the indigenous issues for more than 35 years in Brazil - there are 241 indigenous peoples.

³ According to the ISA, there are 626 indigenous territories 626; according to the CIMI, the number is 850.

⁴ Source: FUNAI (www.funai.gov.br).

⁵ Source: National Health Foundation – Department of Indigenous Health – National Healthcare Policy For Indigenous Peoples

⁶ Indigenous Peoples, Poverty and Human Development in Latin America: 1994-2004 – Word Bank Study

⁷ In this sense, the data produced by the IBGE is taken as an example, which takes the standard model for human development evaluation, applying it indistinctively to the situation of the indigenous peoples. These data show that the child mortality rate of indigenous peoples (51.4 per thousand live births) is higher than that of the Brazilian population in general (30.1 per thousand live births). In relation to education, the indigenous peoples are also at a disadvantage. The number of Caucasian children between the ages of 7 and 14 not enrolled in schools in Brazil is 3.8%. The number of indigenous children increases to 21.5%.

⁸ Source: CIMI- Report on violence – 2006-2007, published bi-annually since 1998.

of territories and the violence to which these peoples are submitted. In the last year, cases of violence against indigenous peoples in Brazil affected all regions of the country.

2. APPLICATION OF ILO CONVENTION 169 BY THE BRAZILIAN STATE.

2.1. Self-identification [Article 1 of Convention 169]

The cases in this report involve different indigenous peoples situated in different regions and have different identity configurations. This implies the need for the Brazilian State to observe and respect the ethnic and cultural specificities of each people as well as their struggles and ethnic movements – especially those of the Northeast, who are often disqualified and called “fake indigenous peoples” by detractors who work against their claims. It should be stressed that the constitution of the identity of a people is a slow process, created and re-created according to uses, customs and traditions that are embedded in the culture as social practices in movement.

2.2-Consultation and participation [Article 6 of Convention 169]

After strong claims from the Brazilian indigenous movement, the government established the National Commission of Indigenous Policy (Comissão Nacional de Política Indigenista – CNPI) by decree on March 22nd, 2006. The CNPI is an advisory agency, whose presidency is under the responsibility of the National Indian Foundation (Fundação Nacional do Índio - FUNAI⁹) and includes representatives from the federal government, Brazilian indigenous organizations and other civil society organizations. The CNPI was created to help link government sectors and offer greater indigenous participation and social control over governmental actions. Nevertheless, the CNPI cannot be considered an entity of indigenous consultation and participation as expressed in Article 6 of Convention 169. The CNPI is not an agency equally composed of government agencies and civil society organizations, which gives it a partial character. Its presidency is occupied by the head of the official agency for indigenous policies, which, according to the indigenous understanding, is paradoxically the greatest violator of their rights. Thus, the conclusion is that the existence of the CNPI cannot be considered a substitute for the consulting institute determined in Article 6 of Convention 169.

Until now the government has not carried out any consultation in order to comply with that which is determined in Article 6 of the Convention, although there have been many occasions

⁹ FUNAI is a government agency partially responsible for the formulation and execution of Brazilian indigenous policy.

where it was of utmost necessity. This also applies to the cases described in the present communiqué as follows:

A) Belo Monte Hydroelectric Plant: This venture is one of seven dams originally planned by Eletronorte¹⁰ for the hydroelectric complex of the Xingu River. It will inundate an area of 400 km² and will produce 11,182 megawatts of energy. As it is projected, it will affect the following indigenous peoples: the Juruna from the Indigenous territory of Paquiçamba, the Assurini of Xingu, the Araweté, the Parakanã, the Kararaô, the Xikrin of Bacajá, the Arara, the Xipaia, the Kuruaia and the Kayapó. Environmental damage and the cultural destabilization of these peoples stand out among the main negative effects, threatening the safety of food sources and, consequently, the very existence of these peoples. To have an idea regarding the dimensions of the project, the Xingu River Hydroelectric Inventory Study, which includes the possibility of dam construction on various indigenous lands, was drafted, finalized and is about to be approved by the National Electric Energy Agency (Agência Nacional de Energia Elétrica – ANEEL), without any consultation with the indigenous peoples it will affect.

B) Transposition of the Sao Francisco River: Construction project for water use with potential impact for the entire Sao Francisco River Basin, where the following peoples live in 38 territories¹¹: Kaxago, Kariri-Xocó, Tingui-Botó, Akonã, Karapotó, Xocó, Katokin, Koiupanká, Karuazu, Kalankó, Pankararu, Fulni-ô, Xucuru-Kariri, Pankaiuká, Tuxá, Pipipã, Kambiwá, Kapinawá, Xukuru, Pankará, Tupan, Truká, Pankararé, Kantaruré, Atikum, Tumbalalá, Pankaru, Kiriri, Xacriabá, Kaxixó and Pataxó. All of these are considered potentially affected peoples, in spite of the fact that FUNAI only considers the Truká, Tumbalalá, Kambiwá and Pipipã peoples.¹² The project includes the construction of two additional hydroelectric dams (UHE Pedra Branca and UHE Riacho Seco), nine pumping stations, twenty-seven aqueducts, eight tunnels and thirty-five reservoirs. The perspective is that more than 8,000 indigenous individuals will be directly affected.¹³ Outside the basin, the project also affects the Anace people in the state

¹⁰ Electric utility company, a subsidiary of Centrais Elétricas Brasileiras – ELETROBRÁS. It is linked to the Ministry of Mines and Energy and is an incorporated not publicly traded company operating in power generation and transmission of high and extra-high voltage electricity in the Amazon Region.

¹¹ São Francisco River passes over a continual traditional territory [...] in its more than 2800 km in length, where 31 indigenous peoples and 38 indigenous territories are distributed (Ecologias do São Francisco, Juracy Marques)

¹² Project for Sao Francisco Basin Integration with the Northern Region – Ethnoecological Studies: Truká , Tumbalalá, Pipipã, Kambiwá –FUNAI, 2005.

¹³ Preliminary Opinion nº 18/2001, referring to the “Diversion of the Waters of the Sao Francisco River”. The point where water is captured in the northern axis of the project is located less than 80 meters from Asunção Island, an

of Ceara, where the diverted waters will serve the Pecem Industrial Complex and Port. The implementation of the project already implied the forced displacement of nearly 30 families.¹⁴ The government, in disobedience to what is stipulated in Article 49 XVI of the Federal Constitution,¹⁵ did not obtain the authorization from the National Congress to exploit these natural resources on indigenous lands.¹⁶ It also did not carry out any public consultation with the indigenous peoples regarding the diversion, as it is determined in Article 6 of Convention 169.

C) Raposa Serra do Sol Indigenous Territory: The Raposa Serra do Sol indigenous territory is situated to the northeast of the state of Roraima, bordering Guiana and Venezuela. It has a surface extension of 1,747,465 hectares and it is “formed to the south by extensive savannah plains and to the north by mountain ranges covered by forests”.¹⁷ It is inhabited by 19,078 indigenous people who live according to their own social organization, habits, costumes and traditions in 194 communities, including the Macuxi, Taurepang, Patamona, Ingaricó and Wapichana. By the Presidential Decree of April 15th 2005, these peoples received formal recognition of their original and inalienable rights to permanent possession and exclusive utilization of the available natural resources, as stated in the 1988 Federal Constitution. A project considered important for “development” is under way in the National Congress – Bill 2540/2006, which proposes authorization for the construction of a hydroelectric plant at the Tamanduá Waterfall in the Cotingo River within the Raposa Serra do Sol indigenous territory and is under discussion in the House of Representatives. Such a legislative proposal negates and excludes the right to consultation. Thus far, none of the commissions that make up the House of Representatives and of the Federal Senate have listened to the interested indigenous peoples.

D) Guarani-Kaiowá Indigenous Territory: This indigenous people lives in settlements on roadsides or “confined” to reservations, such as the one in Dourados in the south of the state, where 12 thousand indigenous individuals live on nearly 3.4 thousand hectares. They live in the cities

indigenous territory of the Truká (city of Cabrobó-PE) and the trajectory of the eastern axis of the project, Section V, crosses the Pipipã indigenous territory and passes near the Kambiwá territory.

¹⁴ The Anace people, with 1,265 individuals distributed among villages, are increasingly more alienated from their territory by the implementation of the Pecem Industrial Complex and Port between the cities of Caucaia and São Gonçalo in the state of Ceará.

¹⁵ The Federal Constitution states in Article 49 XVI, the exclusive competence of the National Congress to “authorize in indigenous territories, the exploitation and use of hydrologic resources and the research and extraction of mineral wealth”, while § 3 of art. 231 in the constitutional chapter that deals exclusively with indigenous populations, establishes that the use of hydrologic resources on indigenous lands can only be made effective with the authority of the National Congress, after having listened to the communities affected.

¹⁶ Throughout the 20 years since the Constitution was drafted, all administrations have always ignored this constitutional tool and there has never been any public hearing in Congress to listen to the indigenous communities.

¹⁷ Opinion emitted by FUNAI in 1993.

of Dourados and Amambai, state of Mato Grosso do Sul. The inhumane situation of the Guarani-Kaiowá, where policies are implemented without any consultation with the indigenous peoples, may be one of the most explicit examples of the violation the consultation law. No consultations have ever been carried out with this indigenous people with regard to their territory, overcoming the conditions of hunger and misery in which they live and actions for protecting their basic human rights.

E) Mining in the territory of the Cinta Larga indigenous people: Nearly 1,400 Cinta Larga live on 2.7 million hectares of territory in the states of Rondonia and Mato Grosso. First contact between the Cinta Larga and non-indigenous occurred at the beginning of the 19th century and in such a violent manner that it nearly decimated this people. Violation and aggression against this people continues uninterruptedly in the 21st century from their neighbouring population and agents of the different federal, state and municipal powers as well as gold prospectors and gunmen. Among the factors that contribute to this situation in the Cinta Larga indigenous territory, there is intense interest in exploiting the wealth of the forest as well as water and mineral resources, especially diamonds. In current Brazilian law, the extraction of diamonds on indigenous lands is illegal. There is no consultation with the Cinta Larga people regarding their situation. Congress is currently discussing a bill addressing mining in indigenous territories without consulting the interests of indigenous peoples, as in the case of Cinta Larga.

2.2.1- Administrative and legislative measures¹⁸

The right to prior consultation, defined in Article 6, can be considered as the right indigenous peoples have to participate in and influence the decision-making processes that directly affect them, as the cases cited above reflect, but also in processes related to administrative and legislative areas.¹⁹

Regarding the right to participate in the administrative and legislative processes, there are situations of non-consultation with the indigenous peoples, which is in violation of the stipulations of Convention 169. Currently, there are bills in Congress as well as constitutional amendments that directly affect indigenous peoples and their basic human rights, without their ever having been consulted. In the House of Representatives, there are seven constitutional

¹⁸ With acknowledgement to the contributions of the ISA staff

¹⁹ Organización Internacional del Trabajo OIT/ILO. Convenio Numero 169 sobre Pueblos Indígenas y Tribales. Un Manual. Primera Edición Ginebra 2003. Pp 15

amendment proposals that seek to alter Article 231, which regards territorial rights; and forty-two bills that address a number of issues that are of undeniable interest to indigenous peoples: mining on indigenous lands; indigenous education; demarcation of indigenous territories; environment and natural resources; culture; penal norms; healthcare; genetic resources, etc. In the Federal Senate, there are two constitutional amendment proposals that seek to alter Article 231; four bills and two legislative decree projects that will try to suspend the effects of the demarcation law regarding the Raposa Serra do Sol indigenous territory.

Among the legislative initiatives related to indigenous peoples, the bill denominated the *Indigenous Peoples Statute* has been in existence for 14 years. By initiative of the indigenous peoples themselves, this statute includes integral regulation of all the specific rights recognized by the Brazilian State. This bill was introduced to Congress in 1991, but it has been paralyzed for the past 14 years.

Despite the decision by indigenous peoples and their organizations to integrally regulate all matters related to their specific rights in the Indigenous Peoples Statute, some members of congress intend to oppose the statute and regulate matters such as the exploitation of minerals on indigenous lands on their own accord. This issue is of great interest to large corporations and is understood by the government as strategic for the economic development of the country. Thus, in 1996, Bill nº 1610 was presented to the Federal Senate addressing “*the exploitation and use of mineral resources on Indigenous Territories, mentioned in Article 176 – first paragraph – and Article 231 – third paragraph – of the Federal Constitution*”. Twenty years later, the bill was approved in the Senate and sent to the House of Representatives, where it still sits today.

The bill regarding mining on indigenous lands is a legislative measure that directly affects the indigenous peoples, their territories and natural resources, jeopardizing their cultural and physical survival. This project is unarguably subject to mandatory prior consultation by the National Congress, however, both the executive branch, which took more than four years to prepare a preliminary bill proposal, and the legislative branch, which is proceeding with the project without having done any consultation, have been disrespecting Convention 169 of the ILO regarding one of its most important rights – that of the legitimate participation of the indigenous peoples in decisions that affect them and directly compromise their future as distinct peoples.

2.3 Territorial Rights (art. 13 and 15)

The right of indigenous peoples to their territories is established in Article 231 of the Federal Constitution, which defines these territories as lands traditionally occupied by native peoples to which they have original rights. The 1988 Constitution required the demarcation of all indigenous lands within a five-year period. However, twenty years later, this goal had not yet been reached. Among the 611 officially recognized indigenous lands in Brazil, only 398 have been demarcated.²⁰

Article 231 and its paragraphs raises the issue of indigenous lands to the category of constitutional topic, which ensures indigenous territorial rights: “lands traditionally occupied by indigenous peoples” are those inhabited by these peoples in a permanent manner, used for their productive activities, which are essential to the preservation of the environmental resources necessary to their wellbeing as well as physical and cultural reproduction based on uses, customs and traditions (Constitution, Art. 231, §1º).

The Federal Constitution establishes that lands traditionally occupied by indigenous people are part of the national property²¹, ensuring the indigenous peoples that occupy these lands permanent ownership and exclusive utilization of the riches from the soil, rivers and lakes that lie within these territories.²² As ownership of indigenous lands corresponds to the State, the demarcation of these lands (carried out by the State) is the result of an administrative process, the objective of which is to establish the limits of traditional occupation. Article 25 of the 1973 Indigenous Statute states that “recognition of the right of indigenous peoples and tribal groups to the permanent possession of the lands that they inhabit, in terms [...] of the Federal Constitution, does not depend on their demarcation [...]”. (our emphasis).

The Constitution also determines that these lands of permanent possession of indigenous peoples are inalienable assets and the rights regarding them are indefeasible.²³ It is the responsibility of the State to demarcate and protect these lands as well as enforce respect for all their assets.²⁴

²⁰ Source: FUNAI (in www.funai.gov.br).

²¹ Article 20. “Assets of the State: (...) XI – lands traditionally occupied by indigenous peoples.”

²² Article 231, §2º. “Lands traditionally occupied by indigenous peoples are destined to their permanent possession, allowing such peoples the exclusive use of the riches from the soil, rivers and lakes within these territories.”

²³ Article 231, §4º. “The lands this article addresses are inalienable and the rights regarding them are indefeasible.”

In practice, conflicts experienced by indigenous peoples have historically been directly related to the demarcation of their lands. In recent years, these conflicts has increased in significant proportion, as can be seen in the 64% increase in the number of indigenous individuals killed in the country between 2006 and 2007, with the greatest concentration of crimes occurring in the state of Mato Grosso do Sul.²⁵ The cases below illustrate situations of severe violation of territorial rights, which are encountered in different regions of the country:

A) Belo Monte Hydroelectric Plant: The indigenous territories closest to the project are: Paquiçamba, Arara da Volta Grande, Trinchreira Bacajá and Juruna of Km 17. According to data from Eletronorte, there will be no direct flooding. However, there will be a direct, immense impact on the way of life of these and other peoples. The reduction in runoff should not have a negative affect on the navigation of the river on the part of the indigenous people, but the harm to the safety of food resources for these peoples is incalculable, as their traditional form of fishing as well as the number and variety of fish, which is the basis of their sustenance, will be profoundly affected.

B) Transposition of the São Francisco River: The initial point of the transposition project is the taking of water from the territory of the Truká (northern axis) and the Pipipã (eastern axis), which are currently occupied by Brazilian army forces and access has been denied in order to ensure the commencement of the projects. In July 2007, the Truká people was evicted from its own territory on Assunção Island in the state of Pernambuco by a court order solicited by the Brazilian government.²⁶ Other affected peoples, such as the Pipipã and Tumbalalá, await the sluggishness of FUNAI for the demarcation of their lands while the construction of the canals encroaches on their lands. The territorial insecurity and struggle against the transposition of the São Francisco River has generated innumerable conflicts: violent acts committed against indigenous leaders (murder of the Truká leader and his son in 2005 by police officers who have never been held accountable)²⁷ and judicial criminalization processes; ownership conflicts with

²⁴ Article 231. “The social organization, customs, languages, beliefs, traditions and original rights to traditionally occupied lands are recognized for indigenous peoples, with the responsibility of the State for the demarcation and protection of these lands as well as enforcing respect for all their assets.

²⁵ Source: CIMI- Violence Against Indigenous Peoples in Brazil - 2006/2007 Report.

²⁶ “The Government is the greatest invader of our territory”, Chief Neguinho Truká, August 2008.

²⁷ Another case of violence against an indigenous leader occurred during the drafting of this communiqué. On August 23, 2008, Mozeni Araújo de Sá, 36, leader of the Truká people, was killed. Araújo de Sá struggled to expel invaders from the traditional territory of the Truká. Impunity has contributed toward the murders of Truká leaders.

other groups intruding on indigenous lands, such as farmers and settlers displaced by the Itaparica Dam²⁸; conflicts with non-indigenous individuals linked to groups with economic interest in the project and who have promoted the identity disqualification of the indigenous individuals mobilized to intervene in the project, disrespectfully accused as “vandals, savages, thieves, phoney Indians, people standing in the way of progress.”²⁹ The transposition has a direct impact on indigenous peoples not only with regard to the use but also the symbolism of the river, which “*is a source of life and culture for the populations that live on its banks; it serves as transportation, as source to obtain food, a health source; it is a sacred place, for it houses rituals and the spirits of ancestors; it is the source of indigenous science.*”³⁰

C) Raposa Serra do Sol Indigenous Territory: Although the process of formal recognition of this indigenous land began in the 1980s, the area was only approved by the Brazilian President in April 2005. A one-year deadline was established for the removal of invaders from the area, but this deadline was not met. Nearly the entirety of the non-indigenous who lived in small communities on this indigenous land received financial compensations and left the area. Part of the invaders who remained are responsible for acts of violence committed against the indigenous individuals and also have an environmental impact: deforestation, use of agrottoxins and water contamination. After three years awaiting action from the Executive Branch, the Supreme Court decided to suspend “Operation Upatakon”, which sought to actualize the decree of approval for the land. The state of Roraima does not fully recognize indigenous rights, which generates unnecessary doubts among the non-indigenous population regarding the use of these lands and leads to a process of continual colonization as well as an increase in violence perpetrated against the indigenous peoples on their own lands. An analysis of the quest to exercise territorial rights and demand the demarcation of indigenous lands reveals a series of rights violations of which the indigenous peoples have been the target, including murder, persecution, emotional suffering, damage to both material and immaterial indigenous assets, omissions and abuse of authority on the part of the public powers.

On June 30, 2005, four armed undercover military police officers invaded the site of a community festival and shot Adenilson dos Santos, 38, and his son Jorge, 17, to death.

²⁸ Hydroelectric dam built by CHESF, the Sao Francisco Hydroelectric Company, on the Sao Francisco River and inundating the traditional territory of the Tuxá.

²⁹ Chief Neguinho Truká, at a workshop in 2008

³⁰ 1st Encounter of APOINME- Articulation of the Indigenous Peoples of the Northeast, Minas Gerais and Espírito Santo on the São Francisco River Integration project and the construction of dams that affect both the river as well as the indigenous peoples and quilombolas (descendants of escaped slaves).

D) Guarani-Kaiowá Indigenous Land: The Guarani-Kaiowá have suffered the consequences of territorial losses as a result of long-standing fighting with farmers in the region. The proximity of the city has provoked desperate reactions from this people in an attempt at survival. The frightening increase in violence with 80 indigenous people murdered, 27 in 2006 and 53 in 2007, a 99% increase from one year to the next.³¹ This people is also plagued with infant mortality due to malnutrition. According to the report by the Missionary Indigenous Council,³² the non-recognition of areas claimed by this people contributes to the dire situation in which they live. Their lands are insufficient in ensuring a healthy life and the Kaiowás are subjected to precarious housing conditions, poor health and nutrition, and insufficient work. They subsist by cutting sugarcane on farms or at alcohol processing plants and are often exploited and submitted to conditions resembling slavery. Therefore, the Guarani-Kaiowá communities should be urgently assured of their right to their traditional territory. The biggest obstacle standing in the way of their conquering this right is that the claimed lands are occupied by cattle breeders and plantations of sugarcane and soybeans.

E) Indigenous Land of the Cinta-Larga: Invasion and the threat of invasion to the Cinta Larga territory is a constant, generating insecurity among the entire Cinta Larga community. There are currently seven Federal Police barriers, where FUNAI employees also work with the aim of ensuring protection of the Cinta Larga territory. However, according to reports from several indigenous leaders, this people has been persecuted and humiliated innumerable times by public agents, who accuse them of trafficking diamonds. They are constantly frisked, even the women, in an insulting, invasive manner and are arbitrarily arrested on occasion. There are records of police inquiries, indictments and administrative procedures at the Public Prosecutors' offices and judicial cases against Cinta Larga individuals, reaching approximately 1500 cases against an indigenous population that only has a total of 1400 people. This unprecedented criminalization reveals the intense territorial dispute that the Cinta Larga face on a daily basis on their own indigenous territory.

2.3- Development [Articles 2, 7 and 19];

According to Article 7 of Convention 169, interested peoples have the right to choose their priorities in the development process and participate in the local development plans that affect them. In Brazil, government actions have generally disrespected the ethnic and cultural

³¹ Source: CIMI- Violence Against Indigenous Peoples in Brazil - 2006/2007 Report

³² Source: CIMI- Violence Against Indigenous Peoples in Brazil - 2006/2007 Report

specificities of indigenous peoples, with the drafting of development plans that are inappropriate for indigenous cultural as well as national development plans that fail to examine the complexities and intensity of the impact on indigenous peoples.

An important aspect that should be considered is the March 2008 budget cut of more than 105 million Reais in resources destined to indigenous policies and assistance to indigenous peoples when Congress approved the overall national budget.³³ This measure will mainly affect indigenous healthcare, sanitation in villages, the ethno-sustainability of indigenous territories and the demarcation of lands.

Another action with considerable impact on indigenous peoples has been the federal government's Growth Acceleration Plan (Plano de Aceleração do Crescimento- PAC), launched in January 2007. According to the National Indigenous Foundation, 201 PAC projects affect indigenous lands and 21 projects affect lands of autonomous indigenous peoples, who FUNAI traditionally calls isolated peoples.

Illustrating this situation, the federal government has made public announcements stating that indigenous peoples are an obstacle to the development of the country.³⁴ The indigenous movement of the Amazon rebutted, saying *“Our territories and forests that have been conserved standing by our peoples currently constitute barriers against deforestation and environmental degradation, as well as significantly contribute toward containing global warming and the climatic changes that currently threaten human existence and life on the planet. [...] We therefore protest the exclusion of our people from discussions on the development model for the Amazon and refuse to accept the characterization of our peoples as stumbling blocks to development. The indigenous peoples are not against development, but would like to know what type of development it will be; whether it will favour the impoverished, excluded masses, with their socio-cultural differences and specificities. We therefore stress: development, yes, but not at all cost!”*³⁵

³³ Source: Inesc- Institute of Socioeconomic Studies

³⁴ According to declarations made in November 2006, in which the Brazilian President stated that "issues with the Indigenous, Quilombolas, environmentalists and the Public Prosecutors Office" are hindrances that impede investments in the country, especially with regard to generating electricity. (source: Folha de São Paulo *on line*).

³⁵ Final document of the 3rd Permanent Forum on Indigenous Peoples of the Amazon– November 2007

Following this same pattern, the dissatisfaction of farmers and the state of Roraima regarding the demarcation of the Raposa Serra do Sol indigenous land reached the Federal Senate, where a senator from Roraima presented a bill³⁶ proposing the revocation of an ordinance³⁷ that established this demarcation. His argument was based on the notion that the indigenous land impedes the progress of the state and there were innumerable productive farms of non-indigenous ownership that should be allowed to continue as they were doing.

In order to overcome these problems and ensure the right to development of indigenous peoples, it is fundamental to consider the ways of life and concepts that these peoples have regarding development, which do not necessarily have the same meaning they have for the “homogenous” State. From this diversity stems the need to hear these people with regard to what they consider “development” to be. This dialogue is an imperative and a benchmark in the practical recognition of the right to differences. It is vital for the Brazilian government to see itself as a multicultural State and re-establish relations with these peoples based on mutual respect.

RECOMMENDATIONS

For the reasons given above, we request that the ILO Committee of Experts require from the Brazilian government, as an ILO member state having signed Convention 169, the fulfillment of the following recommendations:

1. That the Brazilian government establish a new legal framework and consolidate national legislation regarding indigenous peoples, especially with the approval of the Indigenous Peoples Statute, thereby ensuring compatibility to international human rights and Convention 169 of the International Labour Organization;
2. That the Brazilian government actualize the recognition of the ethno-cultural differences of indigenous peoples with regard to self-identification, social identification of belonging and historical continuity with their ancestors, as stated in Article 1 of Convention 169;
3. That the Brazilian government fully comply with Articles 6 and 15 of Convention 169, consulting the interested peoples in an adequate manner and in good faith whenever

³⁶ PDL n° 106

³⁷ Ordinance 820 of the Ministry of Justice

legislative or administrative measures are proposed that affect these peoples as well as prior to authorizing and implementing any program for the exploitation of natural resources on indigenous territories;

4. That the Brazilian government fully apply Article 6 of Convention 169 and ensure the participation of interested peoples, respecting their ethnic and cultural specificities as well as their own institutions of representation at all decision-making levels in administrative agencies and agencies of any other nature that are responsible for policies and programs regarding indigenous peoples;
5. That the Brazilian government facilitate the processes of demarcation, sanctioning and removal of intruders from indigenous lands, ensuring all necessary means for the complete regulation of all indigenous lands, in compliance with Articles 13 and 14 of Convention 169;
6. That the Brazilian government adopt effective measures for safeguarding the integrity of the territory of indigenous peoples throughout the process of land regularization in such a way as to avoid the intrusion of indigenous lands or their non-authorized use, as outlined in Articles 13, 14, 15 and 18 of Convention 169;
7. That the Brazilian government promote effective, efficient measures to ensure the protection of the territorial rights of indigenous peoples in such a way that ensures the right to collective ownership, as envisaged in Article 14 of Convention 169. As the Brazilian government has yet to fully consider the right of collective ownership, special measures should be adopted so that ownership is accompanied with complete security that Brazilian law provides to the individual right to property, as well as special measures to ensure the security and monitoring of the demarcations and removal of invaders;
8. That the Brazilian government promote development with respect to the identity of indigenous peoples, thereby ensuring the full actuality of their social, economic and cultural rights as well as respecting their cultural specificities, uses, customs and traditions, as envisaged in Articles 2, 7 and 19 of Convention 169;

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