



# General Assembly

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## Human Rights Council

Twenty-first session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

**Joint written statement\* submitted by France Libertés:  
Fondation Danielle Mitterrand, the Society for Threatened  
Peoples, non-governmental organizations in special  
consultative status, the Mouvement contre le racisme et pour  
l'amitié entre les peuples, a non-governmental organization  
on the roster**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 August 2012]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Indigenous peoples' rights and large dams – the case of Brasil\*\***

### **Reminder of the last statement on the respect of indigenous people's rights in Brazil**

During the 19<sup>th</sup> session of the Human Rights Council, we warned the Council about the Brazilian state's non-respect of indigenous peoples' rights, as guaranteed by the International Labour Organisation (ILO) Convention No. 169 and by the United Nations Declaration on the Rights of Indigenous Peoples, in particular in the application of its energy strategy in the Amazon. The building of many hydroelectric dams, such as the highly symbolic Belo Monte dam, and the watering down of its forest code threaten the lifestyle of numerous indigenous peoples, who denounce lack of consultation.

Several times, Brazil has been reminded about its obligations: the Environmental Brazilian Institute, the Federal Public Ministry, the Supreme Court of Brazil, James Anaya (United Nations Special Rapporteur on indigenous peoples' rights), the Inter-American Commission on Human Rights,<sup>1</sup> and then by the federal justice of the Para region.

Facing those critics, "the president of Brazil, Mrs. Dilma Rousseff, decided to suspend relations between her government and the Inter-American Commission on Human Rights (IACHR) of the Organisation of American States (OAS)"<sup>2</sup> by calling back its ambassador. She also decided not to participate in the audience at the OAS in Washington on October 27<sup>th</sup> 2011. The Commission changed the protective measures as a result of pressure from the Secretary General, and cancelled the suspension of the project.<sup>3</sup>

In Brazil, the Attorney General of the Union lodged an administrative procedure against the federal attorneys, and finally obtained on November 9<sup>th</sup> 2011 a revision of the first federal judgement (September 27<sup>th</sup> 2011) which had ordered suspension of work.

### **Worsening non-respect of indigenous peoples' territorial rights in Brazil in 2012**

Two events in 2012 led to hope that Brazil would respect its constitutional and international obligations.

In March 2012, the ILO urged Brazil to "take the necessary measures to carry out consultations with the affected aboriginal communities, on the construction of the Belo Monte Dam, irreversible effects of that plant being at risk" (article 6 and 15 of the Convention) and then to "inform the Inter-American of Human Rights and the Federal Court of Para about the results of the procedure".

In Brazil, on August 14<sup>th</sup> 2012,<sup>4</sup> the Regional Federal Court of the 1<sup>st</sup> Region (TRF1) announced it had "ordered suspension of construction work because indigenous peoples had not been consulted before the beginning of construction" during a judgement given the day before on the request of the Federal Public Ministry of Para. The Court underlined that "in 2005, when the Brazilian Parliament<sup>5</sup> approved the construction, it demanded an

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\*\* Planète Amazone, Amazon Watch, ICRA (International Commission on the Rights of Aboriginal peoples), NGOs without consultative status, also share the views expressed in this statement.

<sup>1</sup> Preventive measure from IACHR: MC 382/10.

<sup>2</sup> «Le Brésil suspend ses relations avec la Commission interaméricaine des droits de l'Homme», Centre d'Etudes interaméricaines (May 5th 2011).

<sup>3</sup> Amnesty International-2012 Report.

<sup>4</sup> AFP telegram, August 14th 2012 11.59pm.

<sup>5</sup> Legislative decree 788/2005.

environmental impact study subsequent to the beginning of work and not prior, as required by law”.

However, the actions of the Brazilian government over the last months illustrate a will to free itself from all obligations linked to indigenous territorial rights (inscribed in the 1988 Constitution). The public consortium in charge of work, Norte Energia, is expected to appeal this federal judgement.

In May 2012, the Brazilian government agreed, after 12 vetoes and 31 amendments, to the law modifying the 1965 Forest code. It was voted by Congress in April 2012 and the Senate is in the process of approval.

The government kept the requirement of preserving up to 80% of forests in the Amazonian large-scale properties in Amazon and 20% of it as tropical forest. On the other hand, the government accepted more flexibility with smallholders, without any safeguards against deforestation. This is an ambiguous and dangerous measure as large agricultural firms can buy land, selling them off one by one to smallholders, who represent a quarter of farms. So deforestation may continue in spite of the law.

Indigenous peoples are affected in many ways by deforestation. Places to live and subsistence are destroyed for the benefit of intensive agriculture. People are violently expelled from their lands. The Guarani of Laranjeira Nanderu or the Apyka'y are emblematic examples, as most of them live in precarious roadside settlements, their homes having been burnt, and members of the community shot by armed gunmen in order to take over their lands.

This situation is giving even more cause for concern since an ordinance (July 17<sup>th</sup>, 2012) has stopped the demarcation of indigenous lands initiated in 1989 and which is far from being completed. This demarcation, inscribed in the 1988 Constitution, makes it possible to recognize inalienable rights to indigenous lands.

Once the demarcation is acquired, it gives indigenous communities exclusive use of the resources of the land, rivers and lakes. It is also specifically recognised that the lands of indigenous peoples are inalienable, that they cannot be controlled by others and that they cannot be subject to prescription. The territory is declared property of the Union. The federal government is responsible for marking boundaries, protecting and respecting all their properties (art. 231). This article takes into account the principles of the ILO Convention N°169.

Ordinance 303, published in the Official Journal on 17<sup>th</sup> July 2012, states on the contrary that “the usufruct of the resources of the land, rivers and lakes contained in the indigenous territories can be put into perspective each time there is public interest from the Union”.

This ordinance is the result of agribusiness lobbying, supported by parliamentarians and senators who were asking for a constitutional amendment proposal on transfer of competencies from the government to the national Congress to be put to the vote.

Ordinance 303, to the dearest wishes of the National Confederation of Agriculture and the Federation of Agriculture and Livestock of Mato Grosso do Sul, is also of a great help for the Brazilian administration, which wants to extract many minerals in Amazon. The dams built on the rivers of the Amazon would give the necessary amount of electricity for the exploitation of such mines. The construction of 21 dams is planned from now up to 2020. Transport costs to ports of call will be reduced by transforming rivers into shipping routes. The only problem remaining is that these rivers and mineral deposits are mainly in indigenous territories.

As a result of this, the attorney of Mato Grosso do Sul state called that demarcation studies of indigenous territories should be redone, with local government participation. He stated

that “it is necessary to cancel what had been done and start again, by modifying technical groups”.<sup>6</sup>

Having seen recurrent claims and international campaigns over 20 years aiming at demarcation and certification of their ancestral by indigenous leaders such as Chief Raoni Metuktire-Kayapo or the Guarani-Kaiowa spokespersons it is easy to understand the dismay among these populations. The demarcation of the Kayapo territory started in 1994, and yet it is not over: certification of the Kapot Nhinor zone, identified only in 2010, is still pending. In the light of this new ordinance, the Kayapo people realize that they must start all over again. And this situation is just one example of Brazilian indigenous territorial claims.

So indigenous peoples of the Brazilian Amazon see their territorial rights and the use of their lands under a free, prior and informed consent particularly denied by the Brazilian State.

### **Recommendations**

Brazilian indigenous peoples, relayed by our organisations and whose rights are threatened by new Brazilian legislation, call for the Brazilian state to:

- respect ILO recommendations about their right to free, prior and informed consent when they are affected by industrial or agricultural projects, and, as ILO requested, informs the Federal Court of Pará and the IAHCR about the results of the procedure;
- not adopt this new forest code that would allow illegitimate appropriation of indigenous lands and would threaten the Amazonian ecosystem;
- repeal ordinance 303 which goes against inalienable territorial rights of indigenous peoples, acquired by the 1988 Constitution;
- resume and complete demarcation of indigenous territories started in 1989.

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<sup>6</sup> «Quase três décadas após queda do regime militar povos indígenas ganham o seu AI-5, denuncia indigenista», Segunda, 23 de julho de 2012, Instituto Humanitas Unisinos.