



# General Assembly

Distr.: General  
23 February 2012

English and French only

---

## Human Rights Council

Nineteenth 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 American Association of  
Jurists, the Society for Threatened Peoples, non-  
governmental organizations in special consultative status,  
Survival International, the Mouvement contre le racisme et  
pour l'amitié entre les peuples, International Educational  
Development, Inc., non-governmental organizations 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.

[13 February 2012]

---

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

## **Indigenous peoples' rights and large dams: Urgent need to strengthen States' juridical protection of peoples affected by industrial lobbies' activities\*\***

### **Overview of indigenous peoples' rights in Brazil**

In his report on the situation in Brazil (August 2009- Report A/HRC/12/34/Add.2) James Anaya, Special Rapporteur on the rights of indigenous peoples, called on the Brazilian State to respect various international conventions concerning the protection of indigenous peoples that it has ratified. Respective conventions imply adequate consultation of indigenous peoples for every project affecting them.

ILO Convention 169 concerning indigenous and tribal peoples, ratified by the Brazilian State in 2002, requires in its article 7-1 that peoples «shall participate in the formulation, implementation and evaluation of plans and programs for national and regional development which may affect them directly». Even if many States consider they have respected this obligation, a juridical uncertainty remains concerning the concept of « participation ». This can be interpreted as a simple duty of information, but should rather aim at applying the principle of free, prior and informed consent.

Brazil also supports the adoption of the 2007 UN Declaration on the Rights of Indigenous peoples. Article 32-2 of this declaration provides that “States shall consult and cooperate in good faith with the indigenous peoples concerned (...) in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”

In another 2010 report on Belo Monte hydroelectric dam in the state of Para (A/HRC/15/37/Add.1), the Special Rapporteur James Anaya calls on Brazil to strengthen its protection of indigenous peoples heavily impacted by the project. These recommendations were followed by a non-binding judgement by the Inter-American Commission on Human Rights on 1st April 2011<sup>1</sup>. The Commission requires that the Brazilian State set up a consultation process in accordance with international laws and its own Constitution. Indeed, this kind of project threatens the effectiveness of the 1988 Brazilian Constitution's chapter ensuring indigenous people's rights.

### **Industrial lobbies confronted with the respect of national and international law**

Many emerging countries respond to growing energy demands by setting up large scale hydroelectric projects, massively exploiting their water resources. In the past 50 years, 45 000 large dams have been constructed around the world, displacing populations, mostly indigenous, and causing disastrous ecological impacts in regions where ecosystems should benefit from special protection.

---

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

<sup>1</sup> IACHR Preventive measure MC 382/10

The World Commission on Dams, in a report published in 2000, denounced impacts of large dams on indigenous peoples whose livelihoods depend on rivers, and set out guidelines that States should respect during the project planning process. The industrial lobbies' role in these projects, dedicated to economic growth, energy production and job creation, causes disastrous effects on ecosystems and many violations of international Law, and even of national law in some cases such as the Brazilian one.

The current Belo Monte large dam project has already drawn the attention of the Special Rapporteur on indigenous peoples' rights in 2009 and 2010. He concluded that the Brazilian State had to strengthen the protection of its peoples, their lands and resources.

Unfortunately, the UN Declaration on the Rights of Indigenous peoples is not binding and ILO Convention 169 concerning indigenous and tribal peoples gives too much latitude to States to interpret the rules and so, makes it possible to ignore juridical limits in their activities carried out along with multinational companies.

Livelihoods of at least 24 indigenous tribes are threatened by this dam and territories will be directly impacted for those ones: Juruna, Arara de la Volte Grande, Xipaya, Kuruaia, Xicrin de la région d'Altamira, Kararaô, Asurini, Parakanã, Baú, Menkragnoti and Paraná du Arauato. These peoples, through their leaders such as Sheyla Juruna or Raoni Metuktire (welcomed in September 2011 by UN bodies in Geneva) are calling for a strengthening of international rules protecting indigenous peoples.

In the Belo Monte case, a federal justice decision on 27th September 2011 required the suspension of Belo Monte construction work, threatening the right to water and resources of peoples depending on the river for their survival. This decision has been annulled by a federal appeal Court on 9<sup>th</sup> November 2011, this turnaround raising doubts about the independence of the judiciary concerning this project. Stricter international rules have to be imposed in order to defend human rights in this kind of context.

### **Persecution of human, cultural and natural rights' defenders**

The international community has to mobilize its forces now because, over and above the ecological risks, lobbying activities supported by the Brazilian State are threatening people's survival. The Brazilian State has to protect its peoples. In his 2009 report about the Brazilian situation, James Anaya calls upon the State to adopt all necessary measures to ensure the security of indigenous persons and communities and the protection of their lands.

And yet, projects such as Belo Monte have been producing strong reactions among many local communities and creating serious tensions. In recent years, repeated violent attacks in states of Para and Mato Grosso do Sul have been recorded, where a majority of indigenous peoples live. Many NGOs denounce the persecutions of peoples defending their lands and access to water, in other words their lives.

The CIMI (Conselho Indigenista Missionário), a Brazilian NGO, published a survey in 2010<sup>2</sup> on violence committed against indigenous peoples in Brazil, reporting more than 1700 acts of violence against individuals, including 60 murders, mostly in the state of Mato Grosso do Sul, but also in the state of Para, where the Belo Monte project is to be set up. For example, Raimundo Anilton Alves da Silva from the Tembê tribe, assassinated in June 2010, or environmental activists José Cláudio Ribeiro da Silva and his wife Maria do

<sup>2</sup> To consult this report: [http://www.cimi.org.br/pub/publicacoes/1309466437\\_Relatorio%20Violencia-com%20capa%20-%20dados%202010%20%281%29.pdf](http://www.cimi.org.br/pub/publicacoes/1309466437_Relatorio%20Violencia-com%20capa%20-%20dados%202010%20%281%29.pdf)

Espírito Santo da Silva, murdered by two men after being ambushed. Direct threats were made to indigenous leaders from various tribes in Altamira during a meeting with Eletronorte Company in charge of the Belo Monte project, in June 2010. More recently in November 2011, Sheyla Juruna, indigenous activist, was violently harassed. Other industrial projects in Mato Grosso do Sul, such as the increase of sugar cane plantations on Guarani land, is also leading to targeting and assassination of Guarani-Kaiowá leaders like Nisio Gomes, assassinated in November 2011. These examples confirm that violence against peoples' rights' activists is still very present.

## **Recommendations**

These alarming observations did not prevent Brazil from reducing a series of protected areas along the Tapajos River, to open the way for other dams, without any prior analysis of the social and environmental impacts, which is a violation of the Brazilian Constitution (article 225). The upcoming Universal Periodic Review of Brazil in May 2012 must denounce these situations and call upon the Brazilian State for a change.

Brazilian indigenous peoples threatened by this large dam and supported by our organizations, call on:

- The Special Rapporteur on indigenous peoples' rights to carry out another urgent assignment to Brazil, in order to ensure the protection of most vulnerable peoples from every threat of violence or death and the prosecution of those who committed them.
- The Special Rapporteur to require from Brazil that it ensures the effective protection of its peoples. The Brazilian State, like any democratic State, must ensure the security of its population, including of human rights' defenders and social movement leaders.
- The Brazilian State to respect and make effective indigenous peoples rights guaranteed by ILO Convention 169 concerning indigenous and tribal peoples, in particular their right to free, prior and informed consent for every decision affecting them.
- The Brazilian State to adopt a democratic energy strategy and forest Code, including the protection and respect of peoples and natural resources they depend on to survive, whatever pressure industrial lobbies may be applying.