



13 February 2019

Dr. Paulo Abrão
Executive Secretary
Inter-American Commission on Human Rights
1889 F Street NW
Washington, DC 20006
USA

RE: National Thematic Hearing - Human Rights Situation of Indigenous Peoples in Brazil

Your Excellency Dr. Paulo Abrão,

1. *Articulação dos Povos Indígenas do Brasil* (APIB) and the Indian Law Resource Center (Center) address your Excellency, and to whom it may concern at the Inter-American Commission on Human Rights (Commission, Inter-American Commission, or IACHR), to present the following memorandum.
2. The petitioners requested a thematic hearing to discuss the human rights situation of indigenous peoples in the Federal Republic of Brazil (Brazil, State, or State of Brazil) within the framework of the 171st Period of Sessions to be held February 7 - 16, 2019, in Sucre, Bolivia. The hearing request was granted by the Commission. The applicants confirmed their interest in participating in the hearing to be held on February 13, 2019, from 10:15 – 11:15 a.m., in Reception Room B.
3. In this regard, the petitioners submit this memoranda, in accordance with Article 66 of the IACHR's Rules of Procedure, along with the oral testimony to be given at the public hearing, reiterating the information presented at the thematic hearings held in 2017 and information collected and presented to the Commission during their visit *in loco* in 2018, and presenting new facts to demonstrate the human rights violations against indigenous peoples of Brazil that have occurred in recent months.
4. The following points will be especially addressed: (i.) context of Brazil after the Commission's visit; (ii.) alterations to democratic institutionalism within the State of Brazil and its impact on the recognition, titling, delimitation, and demarcation of

indigenous lands; (iii.) acts of violence against indigenous peoples and their leaders. To conclude, the petitioners present their requests to the IACHR.

5. The petitioners hope that this information will be useful in the preparation of the final report on the Commission's visit *in loco* to Brazil and, if possible, a report on the rights of indigenous peoples of the Amazon.
6. The Inter-American Commission on Human Rights convened a visit *in loco* to Brazil from November 5 - 12, 2018 in response to an invitation from the State of Brazil on November 29, 2017.

CONTEXT OF BRAZIL AFTER THE COMMISSION'S VISIT

7. The objective of this visit was to observe the human rights situation in the country. The delegation that carried out the visit *in loco* was led by President Margarette May Macaulay and composed of First Vice-President, Commissioner Esmeralda Arosemena de Troitiño; Commissioner Francisco Eguiguren Praeli; Commissioner Joel Hernández García; and the National Rapporteur for Brazil, Commissioner Antonia Urrejola Noguera. The delegation was joined by the Deputy Executive Secretary, María Claudia Pulido; the Chief of Staff of the Executive Secretary, Marisol Blanchard Vera; the Special Rapporteur for Freedom of Expression, Edison Lanza; the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (DESCA), Soledad García Muñoz; and experts from the Executive Secretariat of the IACHR.
8. The Inter-American Commission held meetings with federal authorities, such as the Ministry of Human Rights, the Ministry of Foreign Affairs, the National Human Rights Council, the Attorney General, the Federal Prosecutor for Citizens' Rights, the Federal Public Defender, Federal Court, the Federal Supreme Court, and various state authorities; as well as representatives of civil society, social movements, favela residents/urban poor, human rights defenders, indigenous and *quilombo* communities, as well as international agencies of the United Nations system and diplomatic representatives. Likewise, the Commission collected testimonies from victims of human rights violations and their relatives.
9. The IACHR visited various cities and states in Brazil, including, Brasília, Minas Gerais, Pará, São Paulo, Maranhão, Roraima, Bahia, Mato Grosso do Sul, and Rio de Janeiro; and also visited various state institutions, including detention centers, homeless shelters, migrant and refugee centers, and the migrant center in Pacaraima, Roraima. The IACHR also carried out visits to *quilombo* communities as well as territories of indigenous communities and bordering districts. Furthermore, the Commission had the opportunity to sign cooperative agreements with both the Federal Public Defender's Office and the National Public Prosecutor's Office.
10. Since then, events have occurred that have altered the situation in Brazil, which deserve to be brought to the attention of the IACHR.

11. The composition of the Legislative Branch was profoundly altered by the national elections held in October 2018. Of the 513 Federal Deputies, only 251 were re-elected. Of the 51 contested positions for the Senate, only 8 were filled by candidates seeking re-election.¹ The Parliament Members that ideologically identified with the "center" decreased, while those that identified with the "left" slightly increased, and those that identified with the "right" greatly increased. In Congress, during the formation of party blocs, which took place on February 1, 2019, 301 Deputies integrated with the right block, 105 with the center block, 97 with the left block, and 10 with independent blocks. To make amendments, the Federal Constitution requires 308 votes, Complementary Law requires 257 votes, and Ordinary Law requires a simple majority. Without a doubt, this is the most conservative Congress since the re-democratization process of Brazil during the 1980s.²
12. The composition of the Executive Branch was also altered. President Jair Messias Bolsonaro was elected with 57.7 million votes, while Fernando Haddad, his rival, received 47 million votes. The number of State Governors that identified with the right also exceeds the number of those who identified with the center and the left.
13. Those candidates who commonly used hate speech in regards to indigenous peoples were among those receiving the most votes.
14. In 2019, President Jair Bolsonaro announced on his personal Twitter account that "more than 15% of the national territory is demarcated for indigenous reserves or *quilombo* communities. Less than a million people live in these isolated areas of Brazil, exploited and manipulated by NGOs. Together, we're going to integrate these citizens and take care of all Brazilians."³
15. In 2018, President-elect Bolsonaro expressed, in "the Paris Agreement, over the past 20 years, I have always noticed an external pressure – and that has been welcomed in Brazil – for example, increasing land demarcations for Indians, demarcating land for environmental reserves, among other agreements, that in my opinion were harmful to Brazil. Nobody wants to mistreat the Indian. Now, you see, in Bolivia we have an Indian who is president. Why in Brazil do we have to keep them as prisoners in reserves, as if they were zoo animals?"⁴ According to Bolsonaro, "the Indian is a human being just like us, wants what we want, and we cannot use the Indian, who is still in an inferior situation to us, in order to demarcate this enormity of land, which in my opinion may be, according to a determination of the UN, new countries in the future. It [the UN] justifies,

¹ Information available here: <https://politica.estadao.com.br/blogs/gestao-politica-e-sociedade/e-o-congresso-nacional-mudou-de-fato/>

² Information available here: <https://g1.globo.com/mundo/blog/helio-gurovitz/post/2018/10/09/o-congresso-vira-a-direita.ghtml>

³ Information available here: <https://twitter.com/jairbolsonaro/status/1080468589298229253?lang=en>

⁴ Information available here: <https://g1.globo.com/sp/vale-do-paraiba-regiao/noticia/2018/11/30/indios-em-reservas-sao-como-animais-em-zoologicos-diz-bolsonaro.ghtml>

for example, having the Yanomami reserve, which is twice the size of the state of Rio de Janeiro, for perhaps nine thousand Indians? That is not justifiable.”⁵

16. In 2018, while still a presidential candidate, Bolsonaro promised “to end all forms of activism”⁶ and ban “red fringes”⁷ from the country, which refers to political opponents. In 2017, recounting a visit to a traditional *quilombo* community, Bolsonaro said that “the lightest Afro-descendant there weighed seven *arrobas*. They do not do anything. I do not think even for procreation they serve [a purpose].” At that same moment, he said that if he were elected president, he would not have “a centimeter demarcated for an indigenous reservation or *quilombo* community.”⁸
17. Senator-elect Luis Carlos Heinz referred to “Indians, *quilombolas*, gays and lesbians” as “everything that is not good.” He also suggested using weapons against indigenous peoples, “what are the farmers doing in Pará? In Pará, they hired private security. Nobody invades Pará, because they have to defend their properties and the Military Brigade does not allow them there.” He continued, “so, guys, there’s only one way: defend yourself. Defend yourselves as Pará is doing. Defend yourselves as Mato Grosso do Sul is doing. The Indians invaded property. They were chased out of the property. It happened there.”⁹
18. Federal Deputy-elect Alceu Moreira also encouraged using weapons against indigenous peoples. He stated, “we are not going to start a war, but I tell them: get in warrior form and do not let these swindlers take a step on your property. None! None! Use any type of network. Everyone has a phone. Call one another immediately. Gather crowds and drive them out in any way necessary. It’s a disgrace, the disorder, a war is better than an injustice.”¹⁰
19. Federal Deputy Osmar Serraglio criticized indigenous groups that focus on the question of land demarcation, because “that does not fill anyone’s belly.” In addition, he promised “we are going to give them good living conditions, so let’s stop with this discussion about land.” He also insinuated that NGOs would divert public funds. “I hear a lot of these NGOs taking money, including official welfare funds.” Finally adding that indigenous people are being treated “like animals.”¹¹

⁵ Information available here: <https://g1.globo.com/sp/vale-do-paraiba-regiao/noticia/2018/11/30/indios-em-reservas-sao-como-animais-em-zoologicos-diz-bolsonaro.ghtml>

⁶ Information available here: <https://www1.folha.uol.com.br/poder/2018/10/organizacoes-repudiam-fala-de-bolsonaro-contrativismos.shtml>

⁷ Information available here: <https://veja.abril.com.br/brasil/esses-marginais-vermelhos-serao-banidos-de-nossa-patria-diz-bolsonaro/>

⁸ Information available here: <http://www.justificando.com/2017/04/04/nem-um-centimetro-para-quilombola-ou-reserva-indigena-diz-bolsonaro/>

⁹ Information available here: <https://g1.globo.com/rs/rio-grande-do-sul/noticia/2014/02/em-video-deputado-diz-que-indios-gays-e-quilombos-nao-prestam.html>

¹⁰ Information available here: <https://www.socioambiental.org/pt-br/noticias-socioambientais/ataque-de-deputado-ruralista-a-indios-quilombolas-e-gays-repercute-na-imprensa-e-na-internet>

¹¹ Information available here: <https://veja.abril.com.br/politica/ministro-da-justica-critica-indigenas-terra-nao-enche-barriga/>

20. Ms. Luana Figueiredo, Assistant Secretary for Land Affairs of the Ministry of Agriculture, said that indigenous people “were not the first inhabitants of Brazil.”¹² Likewise, she defended the use of weapons against indigenous peoples, “they [indigenous peoples] are committing crimes and violating the law. When a rural farmer retakes [land] as we have done, the law permits me, the law guarantees me, the law says that it is the owners right to defend their property, even with the use of weapons. I am acting within the law and within the right to exercise that right. They are the ones acting against the law and above all else disrespecting the judicial ruling.”¹³
21. The manifestos of these representatives in high political positions serve to increase the tension with indigenous peoples and indicate the position being adopted by the Brazilian State. Such evidence can already be confirmed by the alteration of Brazil’s democratic institutionalism; the policies of recognition, titling, delimitation, and demarcation of indigenous lands; and the acts of violence against indigenous peoples and their leaders; all of which have occurred within the last three months.

ALTERATIONS TO THE STATE OF BRAZIL’S DEMOCRATIC INSTITUTIONALISM AND ITS IMPACT ON RECOGNITION, TITLING, DELIMITATION, AND DEMARCATION OF INDIGENOUS LANDS

22. Jair Messias Bolsonaro was sworn in as President on January 1, 2019. In the days that followed, he adopted a series of measures in order to establish the basic organization of the organs of the Presidency of the Republic and of the Ministries. As such, the petitioners consider it relevant to bring to the Commission’s attention the normative changes that provoke, or have the potential to provoke, human rights violations against indigenous peoples in Brazil.
23. Provisional Measure 870¹⁴ creates three alterations to the organs of the Presidency of the Republic and to the Ministries that merit attention.
24. First, in accordance with Article 5, Section II, the creation of a new mandate for the Secretary of Government of the Presidency of the Republic, to “supervise, coordinate, monitor and accompany the activities and actions of international organizations and NGO’s in Brazilian territory.” This role did not exist in the power structures of previous governments, thus it is a new innovation. There are no guidelines from the new government nor any institutional precedents on how the supervision and monitoring will be conducted. For this reason, the petitioners express their concern regarding the State’s laws to be adopted and, mainly, their impact on the activities of civil society organizations that work to defend the human rights of indigenous peoples in Brazil.

¹² Information available here: <https://blogs.oglobo.globo.com/lauro-jardim/post/amiga-de-tereza-cristina-secretaria-diz-que-indios-nao-foram-os-primeiros-habitantes-do-brasil.html>

¹³ Information available here: <https://www.campograndenews.com.br/cidades/interior/advogada-rompe-o-silencio-e-defende-uso-de-arma-por-direito-de-propriedade>

¹⁴ Information available here: http://www.planalto.gov.br/ccivil_03/ Ato2019-2022/2019/Mpv/mpv870.htm

25. The second alteration concerns transferring the National Indian Foundation's (FUNAI's) jurisdiction over indigenous land demarcation to the Ministry of Agriculture (MAPA). According to Article 21, Paragraph 2, Section I, MAPA will assume the work to "identify, delimit, demarcate and record the lands traditionally occupied by indigenous peoples."
26. The third alteration concerns the transfer of the National Council of Indigenous Policy (CNPI) from the Ministry of Justice to the Ministry of Family, Women, and Human Rights, which until 2018, was known as, the "Ministry of Human Rights." The CNPI is a governmental body with consultative capacities and is responsible for the elaboration, monitoring, and implementation of public policies aimed at indigenous peoples. It was created by Decree 8593 in 2015, consisting of 45 members: 15 representatives of the Federal Executive Branch, all with voting rights; 28 representatives of indigenous peoples and their organizations, with 13 voting rights; and two representatives of indigenous entities with voting rights.
27. Decree 9660¹⁵ transfers FUNAI from the Ministry of Justice, as it has been since 1991, to the Ministry of Family, Women, and Human Rights.
28. Decree 9667¹⁶ transfers the responsibilities of "environmental licensing in *quilombo* and indigenous lands, in conjunction with relevant bodies" from FUNAI to the Special Secretariat of Land Affairs of MAPA. The decree created the "Identification, Demarcation and Licensing Department" within the scope of the Secretariat. The Department will, among other tasks, identify and demarcate indigenous lands and will manifest "in any and all permits that directly or indirectly affect *quilombo* and indigenous lands."¹⁷
29. Decree 9465¹⁸ disabled the Secretariat for Continuing Education, Literacy, Diversity and Inclusion (SECADI) and the General Coordinator of Indigenous Education (CGEEI); both of which were part of the Ministry of Education and were responsible for the implementation of public policies aimed at indigenous education and diversity.¹⁹
30. Mr. Ricardo Salles, the new Minister of Environment, through "Circular Letter 05-MMA,"²⁰ is instituting a 90-day suspension prior to the transfer of resources to civil society. His office has also decided that all agreements, cooperative agreements, acts, and projects of IBAMA (Brazilian Institute of Environment and Renewable Natural Resources, ICMBio (Chico Mendes Institute for Biodiversity Conservation), and JBRJ (Botanical Garden Research Institute of Rio de Janeiro) signed with NGOs must be sent

¹⁵ Information available here: http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2019/Decreto/D9660.htm

¹⁶ Information available here: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9667.htm

¹⁷ Information available here: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9667.htm

¹⁸ Information available here: http://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/57633286

¹⁹ Information available here: <http://www.justificando.com/2019/01/17/extincao-secadi-campo-educacao-conjuntura-atual/>

²⁰ Information available here: <https://amazonasatual.com.br/decisao-do-ministerio-do-meio-ambiente-e-visto-com-reserva-por-ambientalistas/>

to the Minister's office for prior consent. The suspension will allow for the evaluation of contracts on a continual basis, as well as eventual adjustments to those that "may merit reparations."²¹

31. The petitioners emphasize that all these changes were implemented without the procedure of free, prior, and informed consent of indigenous peoples, as determined by the jurisprudence of the International Court of Human Rights.²² The petitioners understand that the changes may imply a loss of institutional autonomy as well as resources for the defense and guarantee of the rights of indigenous peoples in Brazil. The measures violate the rights of indigenous peoples, who are already mobilizing against the changes.²³
32. It is important to highlight that proposals to distance FUNAI were already underway in the National Congress. For example, citing the most emblematic effort, the proposed Amendment to the Constitution 215 (PEC-215)²⁴ would withdraw the function of the Executive Branch to approve the demarcation of the lands and ratify those already demarcated and transfer that authority to the National Congress in order to establish new criteria for its regulation.
33. It should also be noted that the current federal government chose Ms. Tereza Cristina Corrêa da Costa Dias, a farmer in Mato Grosso do Sul whose family has had a historical conflict with the Terena Indians, as Minister of Agriculture.²⁵ She is a member of parliament and currently serves as the President of the Parliamentary Livestock Front (FPA).²⁶ The FPA, as described on their website, pursues the following objectives: "[...] to stimulate the expansion of public policies for the development of national agribusiness. Among the current priorities are the modernization of labor, land, and tax legislation, including indigenous lands and *quilombo* area regulations, in order to guarantee the legal security necessary for the competitiveness of the sector."²⁷

²¹ Information available here: <https://noticias.uol.com.br/ultimas-noticias/agencia-brasil/2019/01/17/ricardo-salles-diz-que-suspensao-de-contratos-com-ongs-esta-mantida.htm>

²² Corte IDH. Caso Pueblo Indígena Kichwa de Sarayaku Vs. Ecuador. Sentencia de fondo y reparaciones, de 27 de junio de 2012, párr. 166: "La obligación de consultar a las Comunidades y Pueblos Indígenas y Tribales sobre toda medida administrativa o legislativa que afecte sus derechos reconocidos en la normatividad interna e internacional, así como la obligación de asegurar los derechos de los pueblos indígenas a la participación en las decisiones de los asuntos que conciernan a sus intereses, está en relación directa con la obligación general de garantizar el libre y pleno ejercicio de los derechos reconocidos en la Convención (artículo 1.1).

²³ Information available here: <https://mobilizacaonacionalindigena.wordpress.com/>;
https://www.socioambiental.org/pt-br/noticias-socioambientais/povos-indigenas-realizam-primeira-grande-mobilizacao-contra-governo-bolsonaro?utm_source=isa&utm_medium=site&utm_campaign=Governo+Bolsonaro

²⁴ Information available here: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=14562>

²⁵ Information available here: <https://www.campograndenews.com.br/politica/familia-da-ministra-tereza-cristina-tem-conflito-historico-com-indios-em-ms>

²⁶ Information available here: <https://fpagropecuaria.org.br/integrantes/>

²⁷ Information available here: <https://fpagropecuaria.org.br/historia-da-fpa/>

34. This parliamentary group is considered the most influential in the discussions, articulations, and negotiations of public policies within the Legislative Branch.²⁸ In line with its defense of agribusiness interests and pursuing the objectives of the FPA, we believe that the new minister may subordinate the guaranteed right to indigenous territories to the needs of expanding agricultural frontiers. In addition, it should be noted that the Indigenous Missionary Council (CIMI), in a specific thematic report on the subject, listed Ms. Tereza Cristina, MAPA's current Minister, as a parliamentary antagonist of the indigenous cause.²⁹
35. The petitioners are particularly concerned about the progress that has been made in implementing the "*Marco Temporal*" proposal, which has a direct consequence of annulling demarcated indigenous territories and/or preventing others from being demarcated. Although not yet adopted by the Federal Supreme Court (STF) - the Constitutional Court of the Brazilian State - the proposal has been used by Brazilian parliamentarians, especially in the work of those linked to the FPA, as an official policy to support legislative proposals that would restrict the right of indigenous peoples to demarcate their ancestral territories. The argument is being used to suspend the titling of indigenous lands that are already demarcated. For example, the indigenous Guarani community of *Kaiowá Ñade Ru Marangatu*, located in Mato Grosso do Sul, had its land approved in 2005 by then-president Lula. That approval was suspended by an injunction of Nelson Jobim of the STF on July 21, 2005; since then, the indigenous community has been awaiting a judicial ruling.³⁰
36. The "*Marco Temporal*" proposal was first introduced in 2009 during the Federal Supreme Court trial of the Raposa Serra do Sol case (PET 3388) and was rejected for disregarding the context of compulsory expulsion of indigenous peoples from their ancestral territories that occurred before 1988, which provoked forced internal displacement. According to the proposal, physical presence in the claimed area is a requirement for demarcating that area on the date Brazil's new Constitution came into force, October 5, 1988; it further states that lands already demarcated cannot be extended.
37. In the Federal Congress, the proposal appears in Bill 1216/2015,³¹ authored by Deputy Covatti Filho, a member of the FPA; the bill is being processed by the Chamber of Deputies. Within the sphere of administrative power, it is defended by the Opinion of the General Council of the Union (AGU) 001/2017³² and signed by former president Michel Temer. After the president signed the Opinion, all public federal administrative bodies, including FUNAI, must follow those guidelines.

²⁸ Information available here: <https://fpagropecuaria.org.br/historia-da-fpa/>

²⁹ Information available here: <https://cimi.org.br/wp-content/uploads/2018/09/congresso-anti-indigena.pdf>

³⁰ Information available here: <https://terrasindigenas.org.br/pt-br/noticia/154615>

³¹ Information available here:

<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=1214955>

³² Information available here: <https://www.conjur.com.br/dl/parecer-agu-raposa-serra-sol.pdf>

38. It is noted that, in the context of human rights violations against indigenous peoples of Brazil, the impossibility of enjoying their territories exclusively and peacefully is one of the most serious, since excessive delays in the demarcation of territories contributes to the perpetuation of violence and killings. This has been noted by others in: (1) the report issued by the UN Special Rapporteur for the Rights of Indigenous Peoples after a visit to Brazil in 2016;³³ (2) preliminary observations issued by the Inter-American Commission on Human Rights after a visit to Brazil in 2018; and (3) and the report, “Violence Against the Indigenous Peoples of Brazil - Data for 2017,” by the Indigenous Missionary Council (CIMI).³⁴

ACTS OF VIOLENCE AGAINST INDIGENOUS PEOPLES AND THEIR LEADERS

39. The current situation allows for the proliferation of acts of violence against indigenous peoples, especially as perpetrated by large landowners and squatters. Such conflicts lead to violations of other rights, such as life, personal liberty, personal integrity, and other forms of violence. A lot can be observed by the IACHR’s visit *in loco* to Brazil in November 2018. However, other factors have intensified conflicts over land, further aggravating the vulnerability of rights to life and personal integrity of indigenous peoples, which is born, in turn, by the inability of the Brazilian State to reverse the scenario of conflict and violence that is driven by the struggle waged by indigenous peoples for their ancestral territory. We bring the following cases to the attention of the IACHR.

40. In September 2018, Cirleudo Cabral Monteza Manchineri, a one year old Manchineri Indian child, was killed in the municipality of Sena Madureira, Acre, as he was sleeping on his mother’s lap. Cirleudo’s family was traveling on the Purus River to Sena Madureira when he was shot after his father refused to turn off a flashlight.³⁵ Before the child was killed, the *Cacique* (chief) of the community had already been the target of three assassination attempts, one of them the day before the murder of Cirleudo. Similarly, on October 14, 2018, a group of indigenous peoples entered a FUNAI base in Cuiabá, Mato Grosso, which led to a confrontation between state and indigenous agents and the death of Erivelton Tenharin, an indigenous person.³⁶

41. The election of President Jair Bolsonaro worsened the situation, driven by his speeches. On October 28, 2018, the night of the second-round election results that confirmed Bolsonaro’s victory, Pankararu lands in Jatobá, Pernambuco, were attacked. The Family

³³ Information available here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/174/05/PDF/G1617405.pdf?OpenElement>

³⁴ Information available here: https://cimi.org.br/wp-content/uploads/2018/09/Relatorio-violencia-contra-povos-indigenas_2017-Cimi.pdf

³⁵ Information available here: https://brasil.elpais.com/brasil/2018/09/26/politica/1537978764_156884.html; <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2018/10/29/aldeia-indigena-em-pe-tem-escola-e-posto-de-saude-incendiados-indios-temem-novos-ataques.htm>; <https://g1.globo.com/pe/caruaru-regiao/noticia/2018/12/26/incendio-e-registrado-em-escola-de-aldeia-indigena-em-jatoba.ghtml>

³⁶ Information available here: <https://g1.globo.com/mt/mato-grosso/noticia/2018/10/14/indio-morto-durante-ataque-a-base-da-funai-e-identificado-pela-politec-em-mt.ghtml>

Health Post and the Municipal School that community members attended were burned.³⁷ Months prior to the attack, a Federal Justice began the removal of squatters from the Pankararu Indigenous Land, in compliance with rulings of the Federal Court, Federal Regional Court of the 5th Region, and Superior Court of Justice in a judicial proceeding that began 25 years ago. Although the Pankararu peoples have been able to obtain a favorable judicial ruling that recognizes their territorial rights after years of fighting and waiting, they remain targets of constant threats and violence and are unable to take full possession of all their demarcated territory, which is still occupied by families of small and medium farmers. It should be noted that the Pankararu Indigenous Land was formally demarcated in 1987, by decree of homologation by the Presidency of the Republic; however, the Pankararu peoples still cannot occupy their land, and this compromises their economic activities and their culture.

42. Cases of violence against the Pankararu peoples continue. On December 8, 2018, the indigenous village of Quer Querde de Baixo was attacked again, and this time the church was the target – including fire and broken windows and doors.³⁸ About 40 days after the first attack on the Pankararu lands, the José Luciano Indigenous State School, located in the Caldeirão Village of the Pankararu Indigenous Land, was also burnt down on the dawn of December 26, 2018.³⁹ In addition to the incendiary crimes and depredation of the Pankararu peoples, squatters continue to enter the indigenous area without permission and hamper the development of agricultural activities as well as cutting protective fencing and destroying their old dwellings even though they have received indemnities from the state. Even with all these recent and longstanding human rights violations, state institutions ignore their responsibility and have yet to finalize the divestment process of indigenous lands. The Pankararu peoples argue that the state should resettle squatters in dignified conditions on other lands so that peace is guaranteed in the region.

43. The episodes of violence, however, were not restricted to the Pankararu peoples. Following the election of Bolsonaro, a series of acts of intimidation were perpetrated against indigenous peoples: the Guarani Kaiowá Indigenous Community of the village of Caarapó was intimidated by convoys of farmers' vehicles; the same occurred in the Pilad Rebuá Indigenous Land, where farmers in convoys fired shots towards the community; in Dourados, Mato Grosso do Sul, which was visited by the IACHR in November 2018, 15 indigenous peoples were injured and 35 facilities were destroyed after a rubber bullet attack on a camp near the village of Bororo.⁴⁰

³⁷ Information available here: https://brasil.elpais.com/brasil/2018/10/30/politica/1540932003_110027.html

³⁸ Information available here: : <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2018/12/09/aldeia-indigena-e-alvo-de-novo-ataque-em-pe-igreja-e-vandalizada.htm?cmpid=copiaecola>

³⁹ Information available here: http://www.diariodepernambuco.com.br/app/noticia/vida-urbana/2018/12/26/interna_vidaurbana.772183/incendio-atinge-segunda-escola-indigena-pankararu-no-sertao-do-estado.shtml

⁴⁰ Information available here: <https://cimi.org.br/2018/10/conjuntura-politica-acentua-violencia-contra-os-povos-indigenas-no-brasil/>; <https://exame.abril.com.br/brasil/morte-incendios-e-agressoes-no-campo-marcam-ascensao-de-bolsonaro/>

44. On November 6, 2018, Donecildo Agueiro, of the Aran-Guarani ethnic group of Tekoha Tatury, was the victim of a shoot-out in Paraná upon leaving a meeting with FUNAI about the demarcation of indigenous lands in the region of Guaíra.⁴¹ As a result, he suffers paraplegia.⁴² Furthermore, days after the attempted murder, the Regional Court of the 4th Region (TRF-4) suspended the demarcation of land in Guaíra, traditionally occupied by the Avá-Guarani people, in response to a request by the Federation of Agriculture of Paraná and in opposition to an anthropological report.⁴³
45. On the same day, indigenous leader Reinaldo Silva Pataxó, of the Pataxó HãHãHãe people, was killed by four shots in the village of Catarina Caramuru Paraguassu, in the municipality of Pau Brasil, Bahia.⁴⁴ The following day, Raimundo Nonato Conceição dos Anjos was assassinated in the state of Tocantins. The crime occurred when Raimundo, his companion and his children were leaving a village located in the municipality of São Bento do Tocantins. At the time of the murder, a child was also killed.⁴⁵
46. At the end of 2018, Djokro Kayapó, from the Kayapó Village, was stabbed to death in the municipality of Ourilândia do Norte, Pará.⁴⁶
47. Later, a center that housed about 700 men and women of the Warao and E'ñepa peoples in Boa Vista, Roraima and served indigenous people who have common territory with Brazil and Venezuela was militarized.⁴⁷
48. After the president's inauguration, violence against indigenous peoples has increased and intensified in a short time. On January 1, 2019, the residence of an indigenous Huni Kuin couple within the São Francisco Community was burned in the municipality of Feijó, Acre. A few days before the fire, the man, who is an indigenous leader, had held a meeting with the community to establish the planning for the year 2019.⁴⁸

⁴¹ Information available here: <https://cimi.org.br/2018/11/indigena-ava-guarani-donecildo-agueiro-sofre-atentado-a-tiros-em-guaira-pr/>; <https://exame.abril.com.br/brasil/morte-incendios-e-agressoes-no-campo-marcam-ascensao-de-bolsonaro/>

⁴² Information available here: <https://cimi.org.br/2018/11/indigena-donecildo-agueiro-fica-paraplegico-apos-atentado-a-tiros-em-guaira-pr/>

⁴³ Information available here: <https://veja.abril.com.br/blog/parana/trf4-suspende-demarcacao-de-24-000-hectares-de-terra-indigena-no-parana/>; <https://exame.abril.com.br/brasil/morte-incendios-e-agressoes-no-campo-marcam-ascensao-de-bolsonaro/>; More information can be found in the proceeding decision filed under number 5000604-89.2018.4.04.7017 of the Regional Federal Court of the 4th Region (TRF4).

⁴⁴ Information available here: <https://g1.globo.com/ba/bahia/noticia/2018/11/07/indio-e-morto-com-mais-de-seis-tiros-na-bahia-suspeita-e-de-emboscada-diz-policia.ghtml>; <https://exame.abril.com.br/brasil/morte-incendios-e-agressoes-no-campo-marcam-ascensao-de-bolsonaro/>

⁴⁵ Information available here: <https://g1.globo.com/to/tocantins/noticia/2018/11/08/indigena-e-assassinado-com-tiro-nas-costas-em-aldeia-do-interior-do-tocantins.ghtml>

⁴⁶ Information available here: <https://globoplay.globo.com/v/7265117/>; <https://g1.globo.com/pa/para/noticia/2018/12/29/indigena-e-encontrado-morto-em-ourilandia-do-norte-no-para.ghtml>

⁴⁷ Information available here: <https://cimi.org.br/2018/05/militarizacao-dos-abrigos-para-imigrantes-indigenas-em-roraima-preocupa-entidades-e-organizacoes-da-sociedade-civil/>

⁴⁸ Information available here: <https://g1.globo.com/ac/acre/noticia/2019/01/01/indigenas-tem-casa-incendiada-no-interior-do-ac-e-acreditam-que-ato-foi-criminoso-perseguido.ghtml>

49. On January 6, 2019, Willismar Barbosa Garcia was stabbed to death while in a commercial establishment near the village of Jaguapiru in the municipality of Dourados, Mato Grosso do Sul.⁴⁹
50. Recently, indigenous leader Rosivaldo Ferreira da Silva, known as Cacique Babau, of the Tupinambá peoples in Bahia, asked Brazilian authorities for help as a plan to kill him was revealed. The persecution and criminalization process against Cacique Babau, who was even arrested in 2016, is nothing new. According to reports, the assassination plot was revealed to him at the end of January 2019, and, according to witnesses, was planned by local farmers and the civilian and military police.⁵⁰
51. Likewise, on January 14, 2019, Ure-eu-wau-wau Indigenous Land, located in the Municipality of Governor Teixeira, Roraima, was invaded by about 40 land grabbers who threatened to kill indigenous residents. Although the invaders were detained by the community, the invaders said that another 200 people will participate in an upcoming invasion. The land grabbers then deforested about 25 square km of the reserve as an act of intimidation.⁵¹ Jeferson de Oliveira was stoned to death in the Votouroro Indigenous Reserve in the municipality of Erechim, Rio Grande do Sul, on January 19, 2019.⁵²
52. Similarly, the number of indigenous people deprived of their liberty in the municipality of Dourados is alarming; they do not have legal representation, a lawyer they trust, or medicines they need.⁵³
53. It should be noted that even the development model adopted by the Brazilian State has a potential impact on vulnerable communities - like indigenous communities - such as what occurred with the rupture of the Brumadinho Dam (as well as in Mariana). On January 25, 2019, the waste dam in the municipality of Brumadinho, Minas Gerais, which was classified as “low risk” and “high potential for damage”, ruptured,⁵⁴ causing the destruction of more than 100 hectares of forests and more than 150 deaths⁵⁵ in addition to disappearances.⁵⁶
54. The rupture of the dam made it impossible to use water from the Paraopeba River. For the indigenous peoples of the Nao Xoha Village of the Pataxó peoples, which is located

⁴⁹ Information available here: <https://g1.globo.com/ms/mato-grosso-do-sul/noticia/2019/01/06/indigena-e-morto-a-facadas-quando-tentava-cumprimentar-homem-em-meio-a-briga-em-dourados-ms.ghtml>

⁵⁰ Information available here: <https://www1.folha.uol.com.br/poder/2019/02/lider-indigena-na-ba-pede-protecao-a-familia-e-apuracao-de-suposto-plano-de-mortes.shtml>

⁵¹ Information available here: <https://g1.globo.com/ro/rondonia/noticia/2019/01/14/indigenas-tem-terras-invadidas-e-sao-amecados-em-ro-veja-video.ghtml>

⁵² Information available here: <https://globoplay.globo.com/v/7315503/>

⁵³ Information available here: <https://www.dailymail.co.uk/wires/reuters/article-6601799/Without-defence-indigenous-Brazilians-left-languish-jail.html>

⁵⁴ Information available here: <http://g1.globo.com/globo-news/estudio-i/videos/t/todos-os-videos/v/imagem-mostra-rompimento-da-barragem-em-brumadinho-pelo-alto/7347740/>

⁵⁵ Information available here: <https://g1.globo.com/mg/minas-gerais/noticia/2019/02/07/tragedia-de-brumadinho-14o-dia-de-buscas-numero-de-mortes-sobe-para-157.ghtml>

⁵⁶ Information available here: <https://g1.globo.com/natureza/noticia/2019/01/30/impacto-ambiental-da-tragedia-de-brumadinho-sera-sentido-por-anos-diz-fundo-mundial-para-a-natureza.ghtml>

on the banks of the river, the rupture of the dam directly affects their livelihoods and violates elements of their cosmivision. In an interview granted by Cacique Hayóo, “our river is dead. We are heartbroken because now there is no way to survive.”⁵⁷ According to Angohó, an indigenous woman and the wife of the Cacique, “[the river] died at 9 o'clock on Saturday morning when that regent came from here to there, taking away our dreams.”⁵⁸

55. Therefore, the community was prevented from practicing its traditional activities and even drinking water,⁵⁹ which jeopardizes the community’s right to life, not just because of the possibility of causing illness but also communal suffering given their relationship with the water.⁶⁰ In this sense, the IACHR has already determined that states have an obligation to mitigate the damages to water sources caused by companies and to stop extractive activities that contaminate rivers and affect the living conditions of people in order to guarantee minimum living conditions.⁶¹ Likewise, the Inter-American Court recognizes the importance of clean water so that indigenous peoples can carry out essential activities, such as fishing,⁶² which is why states must prevent extractive activities from compromising potable water sources.⁶³ This has not been observed by the Brazilian State.

56. With the contamination of the Paraopeba River, it was necessary for the Pataxó people to leave their ancestral lands, implying forced internal displacement (although some have chosen to remain in the area), which is contrary to the right to movement and residence.⁶⁴ The displacement of the community implies a risk to a range of its rights, which is heightened given its vulnerable condition. For these reasons, the State should adopt positive measures to reverse the effects of weakness and vulnerability conditions of the Pataxó Indians.⁶⁵

⁵⁷ Information available here: <https://g1.globo.com/mg/minas-gerais/noticia/2019/01/29/nosso-rio-esta-morto-lamenta-cacique-de-aldeia-indigena-a-22-km-de-brumadinho-afetada-por-rompimento-de-barragem.ghtml>

⁵⁸ Information available here: <https://g1.globo.com/mg/minas-gerais/noticia/2019/01/29/nosso-rio-esta-morto-lamenta-cacique-de-aldeia-indigena-a-22-km-de-brumadinho-afetada-por-rompimento-de-barragem.ghtml>

⁵⁹ Information available here: <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2019/01/31/homem-branco-fez-terra-vomitou-diz-lider-de-aldeia-afetada-em-brumadinho.htm>

⁶⁰ UN Committee on Economic, Social and Cultural Rights. General Comment No. 15, “The Right to Water,” (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights). E/C 12 / 2002/11, Paragraph 2, IACHR, 20 January 2003; Case of Sawhoyamaxa Indigenous Community v. Paraguay. Fund, Repairs and Costs. Judgment of March 29, 2006. Series C No. 146, Paragraphs 150-154, 168.

⁶¹ IACHR. “Access to Justice and Social Inclusion: The Road to Strengthening Democracy in Bolivia.” OAS/Series L/V/II. Doc. 34, Paragraphs 252-253, 28 June 2007.

⁶² Inter-American Court. Case of Sawhoyamaxa Indigenous Community v. Paraguay. Fund, Repairs and Costs. Judgment of 29 March 2006. Series C No. 146, Paragraph 126.

⁶³ IACHR. “Mayan Indigenous Communities and their Members vs. Belize.” Report 40/04. Background Case 12.053, Paragraph 145, 12 October 2004.

⁶⁴ Inter-American Court. Case of the Mapiripán Massacre vs. Colombia. Judgment of September 15, 2005. Series C No. 134, Paragraph 207; Inter-American Court. Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, Paragraph 139; Inter-American Court. Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, Paragraph 110.

⁶⁵ Inter-American Court. Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, Paragraph 141.

57. In this case, the Brazilian State has contradicted the responsibility to preserve the bond of indigenous people with their territory, and this has serious consequences for the community. The Inter-American Court⁶⁶ states that depriving indigenous peoples of their natural resources, such as water, makes it impossible for them to continue practicing their ancestral culture, as evidenced by the necessary cancellation of the Water Festival, the second largest Pataxó event, which was scheduled to be held on April 19 of this year.⁶⁷
58. The situations of Brumadinho and Mariana, however, are not isolated. In Brazil, the number of mining dams classified as having a high or unknown potential for damage, such as the cases of Brumadinho and Mariana, transcends 200 enterprises,⁶⁸ 50 of which are in Minas Gerais.⁶⁹ There is no obligation of the part of the Brazilian State, including private enterprises, to act in accordance with respect for human rights as well as to prevent, mitigate, and take responsibility for the negative consequences of extractive industries, and in addition, investigating and eventually sanctioning those who responsible for the damages to provide adequate reparation to the victims.⁷⁰
59. However, as observed in the breakdown of the dam of Mariana in 2015, whose damages were numerically inferior to that of Brumadinho, the indemnifications still have not been completely paid,⁷¹ and the mining company did not make a single payment on the environmental fines.⁷² The fact that there was a new dam rupture shows that the Brazilian State has not complied with the responsibility of prevention, even though inspections indicated problems according to the reports issued by the State.⁷³

⁶⁶ Inter-American Court. Case of the Yakye Axa Indigenous Community v. Paraguay. Fund, Repairs and Costs. Judgment of June 17, 2005. Series C No. 125, Paragraph 135; Inter-American Court. Case of Sawhoyamaya Indigenous Community v. Paraguay. Fund, Repairs and Costs. Judgment of March 29, 2006. Series C No. 146, Paragraph 82.

⁶⁷ Information available here: <https://www1.folha.uol.com.br/cotidiano/2019/02/sem-agua-pataxos-cancelam-festa-e-gravidas-deixam-aldeia.shtml>

⁶⁸ Information available here: <https://g1.globo.com/economia/noticia/2019/01/31/brasil-tem-88-barragens-do-tipo-a-montante-ou-desconhecido-metade-com-alto-potencial-de-dano-diz-agencia.ghtml>; <https://g1.globo.com/economia/noticia/2019/01/30/pais-tem-quase-200-barragens-de-mineracao-com-alto-potencial-de-dano.ghtml>

⁶⁹ Information available here: <https://oglobo.globo.com/brasil/minas-gerais-tem-50-barragens-construidas-no-mesmo-modelo-de-brumadinho-mariana-23416585>

⁷⁰ United Nations. “Guiding Principles on Business and Human Rights.” Report of the Special Representatives of the Secretary-General on the issue of human rights and transnational corporations and other enterprises. Presented at the seventeenth session of the United Nations Human Rights Council, A/HRC /17/31, March 21, 2011, Principles 1, 11, 12, 13, 14, 15, 17, 18, 22, 25; Inter-American Court . Case of Kaliña and Lokono Peoples v. Suriname. Fund, Repairs and Costs. Judgment of November 25, 2015. Series C No. 309, Paragraph 224; IACHR. “Indigenous Peoples, Communities of African Descent and Natural Resources: Protection of Human Rights in the context of Extraction, Exploitation and Development. OAS /Series L/V/II.Doc. 47/15, p. 185-190, 2016.

⁷¹ Information available here: <https://g1.globo.com/mg/minas-gerais/desastre-ambiental-em-mariana/noticia/2018/10/03/indenizacao-aos-atingidos-por-barragem-em-mariana-comeca-a-ser-paga-assim-que-cadastrados-forem-concluidos-diz-mp.ghtml>

⁷² Information available here: https://brasil.elpais.com/brasil/2017/08/08/politica/1502229456_738687.html

⁷³ Information available here: <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2019/02/06/indenizacoes-pendentes-e-ninguem-presos-3-anos-apos-a-tragedia-de-mariana.htm>; <https://noticias.uol.com.br/ultimas-noticias/agencia-estado/2019/02/01/inspetores-de-barragem-que-ruiu-em-brumadinho-tinham-vinculos-proximos-com-vale.htm>

REQUESTS

In view of the above, we respectfully request that the Commission:

- A. Urge the State to restore the functions of the National Council for Indigenous Politics (CNPI), which is an adequate forum for the discussion and consultation with indigenous representatives legitimately elected by indigenous peoples themselves.
- B. Urge the State to consult indigenous representatives on any administrative or political measures affecting indigenous peoples, especially: (1) the recognition, delimitation, demarcation, and titling of indigenous lands and (2) the protection of indigenous peoples in situations of voluntary isolation or initial contact.
- C. Encourage the State to: (1) prioritize the recognition, delimitation, demarcation, and titling of indigenous lands and (2) to refrain from performing acts that may lead agents of the State itself or third parties acting with their permission or tolerance to affect indigenous lands or the environment.
- D. Urgently request a Precautionary Measure, which the petitioning organizations will submit for the Pankararu peoples and other indigenous communities.