

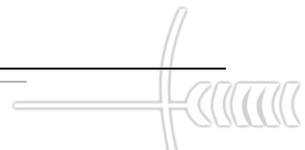
**INDIGENIST MISSIONARY COUNCIL – CIMI**

Body vinctuated to the National Conference of Bishops of Brazil - CNBB  
National Secretariat – Brasília – DF - Brazil



**Brazil**

**Submission to the List of Issues to be taken up in connection with the  
consideration of Brazil's initial report by the UN Committee on Enforced  
Disappearances**





## **Questions for the UN Committee on Enforced Disappearances regarding Indigenous Peoples in Brazil**

### **1. Summary**

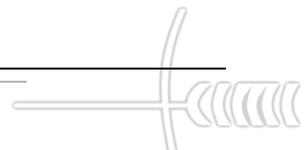
This document intends to provide suggestions of questions for consideration regarding CED List of Issues on Brazil. Our main objective is to address the theme of enforced disappearances in a dimension that is still little explored: the situation of indigenous peoples in Brazil. Since these ethnic groups as a whole are disadvantaged economically and in terms of access to political power, they are particularly exposed to a series of risk factors predisposing to the occurrence of atrocity crimes, including enforced disappearances. Making explicit reference to a set of articles from the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), we suggest questions to the Brazilian state concerning its obligations under international law.

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### **2. Questions and considerations concerning the ICPPED**

#### **1) Art. 12 - Right to denounce**

Although the 1988 Federal Constitution, ILO Convention 169 and other applicable normative instruments in the Brazilian legal system guarantee the right of access to justice for indigenous peoples, in accordance with the culture, customs and original languages of these communities, Brazilian authorities have disrespected these obligations. There is a pattern of racial discrimination that manifests itself in multiple dimensions. Firstly, the indigenous peoples face enormous obstacles in order to make complaints, which involve, among other problems, lack of translators, inadequate legal assistance and even difficult logistical access to state agencies. Furthermore, even when formalized, complaints by indigenous persons regarding enforced disappearances are most often not taken seriously by the authorities due to a pejorative and discriminatory way of treatment.





**Question:**

Why in cases of enforced disappearance of indigenous persons, such as the ones involving Nisio Gomes and Rolindo Vera<sup>1</sup>, of the Kaiowá and Guarani peoples of Mato Grosso do Sul, the reports of indigenous witnesses are not considered in the course of the investigations? And why access to justice and the right to denounce is not guaranteed for the communities and relatives of the victims in their original languages?

**2) Art. 3 - Investigation and punishment**

Regarding the investigation of enforced disappearances, in addition to the absence of a unified database on missing persons that would aggregate and centralize all occurrences in the country, Brazilian authorities do not have a sufficiently integrated structure among the various state and federal agencies that should take care of the elucidation and punishment of these crimes. This situation impedes the creation of full diagnostics, preventing the implementation of institutional measures of non-repetition. Without concrete and evidence-based measures to tackle enforced disappearances, about 80,000 people disappear annually in the country<sup>2</sup>. In cases involving enforced disappearance of indigenous persons, this situation is even more serious, since ethnic discrimination means that state agencies devote even less resources and attention to the tasks of investigating and punishing such crimes. According to the Report of the Special Rapporteur on the rights of indigenous peoples on her mission to Brazil, “The lack of access to justice for indigenous peoples is a major issue. In Brazil, indigenous peoples face significant barriers in accessing justice owing to a lack of resources, cultural and linguistic barriers, institutional racism and ignorance of their cultures and rights on the part of the judiciary and the law enforcement forces”<sup>3</sup>.

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<sup>1</sup> The indigenous teacher Rolindo Véra was disappeared in the Ypo'i village in October 2009. Leader Nisio Gomes, from *tekohá* Guaiviry, was disappeared on 18 November 2011.

<sup>2</sup> International Committee of the Red Cross, “Brazil: With more than 80,000 people reported missing in 2018, families are still searching for answers”. Available at: <https://www.icrc.org/en/document/brazil-82094-people-were-reported-missing-2018-families-search-answers>. Last access: 02 February 2020

<sup>3</sup> Victoria Tauli-Corpuz. “Report of the Special Rapporteur on the rights of indigenous peoples on her mission to Brazil”, p. 17. A/HRC/33/42/Add.1. United Nations, Human Rights Council, 33rd Session, 08 August 2016.





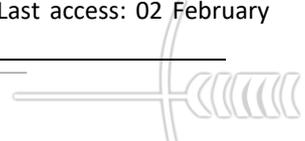
**Question:**

What measures have been taken to tackle institutional racism, which contributes to the unjustified delay in investigating cases of enforced disappearance of indigenous persons, such as Nisio Gomes and Rolindo Vera, leading therefore to the non-punishment of the responsible? And why is the treatment of cases involving indigenous persons negligent compared to cases of non-indigenous persons in terms of employed resources (financial, human and institutional) and due diligence, even in the face of evidence, testimonies and material evidence?

**3) Arts. 4 and 5 – Typification of the crime**

In the last decade Brazil ratified and promulgated the International Convention for the Protection of All Persons from Enforced Disappearance, but there is still no national legislation incorporating the figure of enforced disappearance as a formal crime to Brazil's domestic juridical order. In this sense, the Brazilian state has refused to adapt its legal, jurisdictional and administrative apparatus to enforce compliance with the rules of the Convention. In the case of indigenous person, the non-typification of the crime is serious, especially because the enforced disappearance of indigenous leaders produces a multiplying effect that not only frightens entire indigenous communities, but also deprives them of key signifying elements of their world visions and cosmologies, triggering negative effects on culture, social cohesion and conditions for the reproduction of traditional ways of life.

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**Question:**

Considering the destabilizing and multiplying impact that the enforced disappearance of indigenous leaders has on the individual and collective rights of indigenous peoples and ethnic groups, why does Brazil refuse to typify the crime of enforced disappearance in its national legal system?

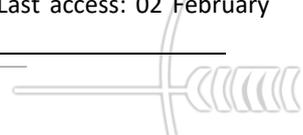
**4) Art. 6 - Definition of the chain of command**

Many of the Brazilian indigenous peoples whose traditional lands have been occupied by farmers live in a situation of frequent conflicts and violence. In this context, lethal paramilitary attacks promoted by associations of rural producers are common, often with the collusion of the State and the help of powerful political and economic actors. International organizations, researchers and the national and international media have abundantly recorded innumerable attacks, some of which have resulted in cases of enforced disappearance. In most cases, these incidents do not lead to prosecution and punishment of perpetrators. According to the UN Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, “Attacks and killings are frequently reprisals after indigenous peoples reoccupy ancestral lands following long delays in demarcation processes (...) efforts of indigenous peoples to reclaim their lands, resist evictions and protect their territories from illegal activities frequently placed them in conflict situations, as was the case of the Guarani-Kaiowá and Terena in Mato Grosso do Sul (...) impunity is pervasive in relation to serious violations of indigenous peoples’ rights, including killings of their leaders<sup>4</sup>”.

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<sup>4</sup> Victoria Tauli-Corpuz. “Report of the Special Rapporteur on the rights of indigenous peoples on her mission to Brazil”, p. 6-9. A/HRC/33/42/Add.1. United Nations, Human Rights Council, 33rd Session, 08 August 2016. Available at: [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/33/42/Add.1](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/42/Add.1). Last access: 02 February 2020





**Question:**

Why has the Brazilian state not made efforts to disclose the financing and intellectual authorship networks of armed groups involved in cases of enforced disappearance of indigenous persons? Considering that these networks often act with state complicity, as in the case of Rolindo Vera, whose disappearance involved official cars, is Brazil interested in tackling these criminal links with state officials?

**5) Art. 8 - Reparations**

Given the marginalized status of Brazil's indigenous peoples, serious violations of their rights, over recent decades, have not been adequately investigated or remedied. In this sense, cases involving the enforced disappearance of indigenous leaders have not led to any kind of reparation programs either to the families or communities. Thus, the Brazilian State persists in reproducing a history of massacres and decimation of indigenous peoples in favor of the implementation of economic and political projects.

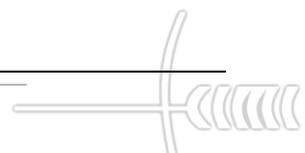
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**Question:**

What measures have been taken by Brazil to ensure the right to adequate reparation for indigenous families and communities who are victims of the crime of enforced disappearances? For instance, why, after ten years, there has been no reparation in the cases of enforced disappearance of Nisio Gomes and Rolindo Vera?

**6) Art. 24 - Truth, Memory and Justice**

Indigenous peoples in Brazil have been targeted in multiple occasions by deliberate and systemic acts of human rights violations, either by colonialist forces or the national state apparatus, with the most recent incidents dating from the military dictatorship (1964-1985). Created by Law 12528/2011, the National Truth Commission was





established on May 16, 2012 and operated until December 2014. Its main objective was to investigate serious human rights violations that occurred between 1946 and 1988, with emphasis on the period of the military dictatorship.

According to official figures produced by the Brazilian National Truth Commission (NTC), there are records of at least 8,350 Indians killed or disappeared in such period as a direct result of the actions and omissions of state's forces and policies<sup>5</sup>. In many cases, various indigenous peoples were left at the brink of total annihilation and the toll of deaths is exponentially greater than the estimations, since only a small fraction of the affected indigenous communities was analyzed in the works of the NTC.

Amidst the prevalence of the doctrine of internal security, indigenous peoples were portrayed and treated by the state as threats to the Brazilian nationhood and national security, under the allegation that they were influenced by foreign interests<sup>6</sup>. Vicious strategies were employed by companies, government officials and private agents in their efforts aimed at physically extinguishing entire ethnic groups in order to free the land once occupied by indigenous peoples and guarantee the successful completion of infrastructure projects, mining activities and colonization programs focused on agriculture and cattle.

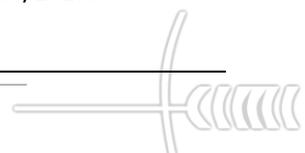
At least thirteen different recommendations on indigenous peoples' rights to memory, truth and justice regarding this history of enforced disappearances and other atrocity crimes have been made by the National Truth Commission<sup>7</sup>. However, none of them were carried out by the Brazilian State. In the absence of these non-repetition measures, indigenous peoples in Brazil continue to be exposed to enforced disappearances.

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<sup>5</sup> BRASIL. Comissão Nacional da Verdade (CNV). Relatório Volume II: Textos temáticos. Texto 5 - Violações de direitos humanos dos povos indígenas. Brasília: CNV, 2014, vol 2, p. 205. Available at: <[http://www.cnv.gov.br/images/pdf/relatorio/volume\\_2\\_digital.pdf](http://www.cnv.gov.br/images/pdf/relatorio/volume_2_digital.pdf)>. Last access: 10/06/2017.

<sup>6</sup> Ibid., p. 211.

<sup>7</sup> Ibid., p. 253-4.





**Questions:**

A) Why the Brazilian state has not so far presented a public apology to the indigenous peoples for the enforced disappearances and other serious human rights violations that occurred under the direct or indirect responsibility of state officials between 1964 and 1985, as recommended by the National Truth Commission in its final report?

B) What has Brazil done to punish and repair the cases of 8,000 indigenous persons who were killed or disappeared between 1964 and 1985, according to an estimate by the National Truth Commission?

C) Why has Brazil not yet installed a National Indigenous Truth Commission, exclusively for the study of serious human rights violations committed between 1964 and 1985 against indigenous peoples, including enforced disappearances?

D) Considering that disinformation of the population leads to a repetition of enforced disappearances and systematic abuses against indigenous peoples, why, even in the face of documented cases of enforced disappearance of indigenous persons during the period 1964-1985, Brazil disrespects the right to memory of indigenous peoples and to this day does not promote national information campaigns on the serious violations of the past?

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