



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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30 April 2021

Excellency,

I write to inform you that in the course of its 103rd session, the Committee considered further the situation of the building of highways and railroads in the State of Mato Grosso, in Brazil, and its impact on Xavante and other indigenous peoples' rights, under its early warning and urgent action procedure. In this regard, the Committee refers to its previous letter of 10 May 2019 relating to the same matter.

The Committee would like to thank your Government for the information provided in its reply of 8 July 2019 to the Committee's letter. Based on the reply submitted by your Government and on new information received since then, the Committee would like to address the following issues:

FUNAI's mandate

Regarding the mandate of the National Indian Foundation (FUNAI) to demarcate indigenous territories and lands, the Committee takes note of the information provided about the judicial decision taken by the Supreme Court of Brazil on 25 June 2019, suspending the "Medida Provisória" no. 886 of 18 June 2019, aimed to transfer this mandate of FUNAI to the Ministry of Agriculture.

Highway BR-080

The Committee also takes note of the information provided according to which the building of the highway BR-080 is still in the planning and preparation phase and the environmental and indigenous studies, as well as the consultations with the indigenous populations, are still to finalise. The Committee further takes note that the tentative route chosen for highway BR-080 is subject to changes according to future considerations, including those related to the concerns raised by indigenous communities.

According to new information received by the Committee at its 103rd session, the National Institute of Historic and Artistic Heritage (IPHAN) released a report on 14 May 2020, which indicates that the BR-080 highway would run within 16 kilometres of the Tsõrepré village, and concludes that the layout of the highway will negatively affect Xavante's territories. It is claimed that the highway will affect the health of Xavante's peoples, their access to natural resources and the preservation of their culture.

Her Excellency Mrs. Maria Luisa Escorel de Moraes
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The information received also alleges that, in spite of IPHAN's findings, the Minister of Infrastructure of Brazil has indicated that the construction of the highway will resume once the restrictions on public movement due to COVID-19 are lifted.

It is also claimed that FUNAI has consulted only with the Xavante residents who live in proximity to the BR-080 project, and that it has excluded from such consultations all other Xavante communities, which will also be affected by the project and to whom Tsõrepré village is sacred. The Committee was informed that Xavante peoples in Areões, Marawãitsede, Parabubure, Chão Preto, Ubawawe, Marechal Rodon, and Sangradouro Indigenous Territories are all committed to protecting this cultural site and demand to exercise their right to participate in meaningful consultations. Moreover, according to information received, the consultations are mostly about information sharing with no real attempt to consider the concerns raised by the indigenous communities, or to obtain their free, prior and informed consent with regard to the project.

FICO railway project

The Committee takes note of the information provided by your Government in relation to the FICO railway project, stating that according to the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA), the project does not encroach any indigenous lands. Furthermore, IBAMA has indicated that the project will not be located within any areas close enough to indigenous lands to justify consultation by FUNAI, based on the rules set forth by Interministerial Ordinance n° 60/2015.

According to new information received, the FICO railway project threatens to traverse multiple areas within the Xavante indigenous territories and would impact the 21,000 Xavante and 6,000 Xingu Indigenous peoples living within the Mato Grosso State. It is also alleged that the Minister of Infrastructure of Brazil announced that the contract which initiates the construction of the railway will be signed in the coming months. According to information received, Xavante rely on all of these traditional lands to hunt, fish, collect fruits and vegetables from the forests, and also to perform important cultural rituals. They are concerned that the railway project would threaten their food security and would put the region's biodiversity at risk.

Small Hydropower Plants along the rivers "Rio das Mortes" and "Rio Cumbuco" (a tributary to "Rio das Mortes")

According to the information received, these hydropower plants have the capacity to affect all Xavante peoples and not just the communities living near the construction or alongside these rivers. It is reported that "Rio das Mortes" is a sacred river for all Xavante peoples, where major traditional rituals take place, and that Xavante people's existence depends on the river's resources. The Committee was informed that Xavante are concerned that such changes to the river can provoke serious consequences, such as large fish die-offs, damaged flora and fauna, psychological impact, and even human deaths. Reportedly, these types of consequences have already impacted Xavante and other Indigenous communities as a result of previously constructed hydropower plants, which had also contributed to the suspension of other hydropower plant construction projects on the Rio das Mortes in 2011.

The information received also alleges that, despite the importance of this river for all Xavante peoples, Brazilian authorities have only consulted the communities living in proximity to the river. Reportedly, this exclusion of other communities has been based on a technical detail in the Interministerial Ordinance No. 60/2015, which defines the affected construction areas as only those located within a radius of 40 km of the project. It is claimed that this Ordinance prevents other affected Xavante's communities from participating in the consultations and in the process aimed at organizing the relevant impact studies.

The Committee remains concerned about the adverse impact of the above-mentioned large-scale infrastructure projects on Xavante and other indigenous peoples. In particular, the Committee is concerned about the reiterated allegations of the lack of inclusive consultation in all these projects, and the alleged failure to seek to obtain the free, prior and informed consent of all the impacted indigenous peoples.

In this regard, the Committee recalls its general recommendation No. 23 (1997) on the rights of indigenous peoples, in which it calls upon States parties to ensure that no decisions directly relating to the rights or interests of indigenous peoples are taken without their informed consent.

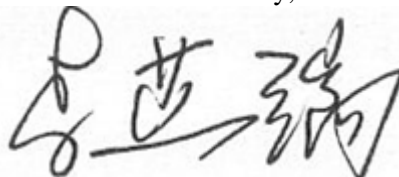
In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee would be grateful to receive a response to these additional allegations as outlined above by 14 July 2021. In particular, it requests the State Party to provide information on measures taken to:

- (a) Finalize the environmental and indigenous studies relating to the building of the highway BR-080 and, if applicable, the results of these studies;
- (b) Prevent any adverse impact of the highway BR-080, the FICO railway project, and the three hydropower plants on the livelihood and the rights of Xavante and other indigenous peoples, including information on the steps taken to consider their suspension;
- (c) Guarantee an inclusive and adequate discharge of the duty to consult all Xavante and other indigenous peoples that could be affected by these large-scale projects, and to obtain their free, prior and informed consent;
- (d) Review Interministerial Ordinance n° 60/2015, with a view to provide the opportunity to all affected indigenous peoples to participate in the consultations processes organised by the State Party, regarding the above-mentioned projects or other infrastructure projects.

The Committee also requests the State party to provide information on the administrative situation of FUNAI and in particular on its mandate to demarcate indigenous people's territories and lands.

Allow me, Excellency, to reiterate the wish of the Committee to continue to engage in a constructive dialogue with the Government of Brazil, with a view to ensuring the effective implementation of the Convention.

Yours sincerely,



Yanduan Li
Chair

Committee on the Elimination of Racial Discrimination