

Contributions to the evaluation of the third Brazilian report on the International Covenant on Civil and Political Rights (Committee on Human Rights, 138th Session)

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Rights of minorities (arts. 1 and 27)

A. Marco Temporal (Time Frame thesis)

A.I - Federal Supreme Court (STF) trial of Extraordinary Appeal No. 1.017.365

1. The Federal Constitution of Brazil, enacted on October 5th, 1988, established a deadline of five years for the Union to demarcate all the indigenous lands in Brazil. However, currently, there are at least 242 indigenous lands that have not been demarcated, with processes that drag on for years, either in administrative or judicial procedures. The indigenous lands not yet demarcated represent today about 33% of the indigenous territory in Brazil.
2. The guarantee of indigenous territorial rights by the Brazilian State has suffered an abrupt decline in recent years. Land demarcation is an administrative process under the responsibility of the federal government. In the period between 2018 and 2022, there was no advance in the three main stages of the demarcation process of indigenous lands, namely: i) the identification, carried out by the National Foundation of Indigenous

¹ The [Articulation of the Indigenous Peoples of Brazil \(APIB\)](#) was created by the national indigenous movement in 2005, to make visible the situation of indigenous rights and to demand that the Brazilian State attend to their demands and claims. Composed of seven regional indigenous organizations, APIB represents the Brazilian indigenous movement at the national and international level.

² The [Indigenous Missionary Council \(Cimi\)](#) is an organization linked to the CNBB (National Conference of Brazilian Bishops). Through its eleven regional offices, Cimi works with more than 180 indigenous peoples in 26 states and in the five regions of Brazil.

³ [Amazon Watch](#) is a nonprofit organization founded in 1996 to protect the rainforest and advance the rights of Indigenous peoples in the Amazon Basin. Amazon Watch partners with Indigenous and environmental organizations in campaigns for human rights, corporate accountability, and the preservation of the Amazon's ecological systems.

Peoples (Funai); ii) the declaration, carried out by the Ministry of Justice; and iii) the homologation, carried out by the Presidency of the Republic.

3. The table below presents the number of lands that went through each of these stages by presidential term since 2011 and shows a serious downward trend:

Demarcation of indigenous lands in Brazil by administrative stage and presidential term, 2011-2022

Presidential Term	Identified Indigenous Lands	Declared Indigenous Lands	Homologated Indigenous Lands
President Dilma Rousseff (2011-2014)	31	11	11
President Dilma Rousseff (2015-2016)	16	15	10
President Michel Temer (2017-2018)	8	3	1
President Jair Bolsonaro (2019-2022)	0	0	0

4. Such a decline is unprecedented in the history of Brazilian democracy and cannot be attributed to a supposed complexity of the demarcation process, which has been the same since the 1990s. It is, in fact, the result of the convergence of two factors: first, the political position of the administration of former president Jair Bolsonaro, who, since the 2018 presidential campaign, made explicit his intention that, if elected, he would not demarcate "even one centimeter" of indigenous lands. Bolsonaro not only kept his promise, but also returned lands that were in more advanced stages of demarcation to earlier stages of the administrative process.
5. Second, the stalling of land demarcations is related to the so-called Time Frame (*Marco Temporal*) thesis, a political thesis transformed into an *ad hoc* constitutional interpretation device that limits the rights of indigenous peoples to their traditional lands by applying an arbitrary, restrictive, and legally unsupported temporal cut-off. According to the thesis, the right of indigenous peoples to their traditional lands only applies to the lands occupied by them on the date of the enactment of the Federal Constitution, in October 1988. The Time Frame thesis also ignores that due to centuries of persecution

and violence, many indigenous peoples were not allowed to live on their traditional lands on that date.

6. This interpretative thesis radically redefines the concept of the original right to the territory, enshrined in the Federal Constitution, making it difficult and even impossible to recognize and protect a large part of the indigenous lands (ILs) in Brazil. The Federal Constitution Article 231 recognizes the indigenous peoples' original right to traditionally occupied lands and defines these lands as the set of areas used by the indigenous peoples for habitation, those used for their productive activities, those indispensable for the preservation of the environmental resources necessary for their well-being, and those necessary for their physical and cultural reproduction, according to their uses, customs, and traditions.
7. There is no mention in the Federal Constitution or in international treaties of a certain date of possession to access an original right that must be recognized - and not constituted - by the Brazilian State. The Time Frame thesis has been on the trial agenda of the Federal Supreme Court (STF) for years. Meanwhile, it is already responsible for the paralysis and revision of demarcation processes around the country, directly impacting the lives of thousands of indigenous people who, having had their fundamental right to territory violated, face a series of physical and symbolic violations, from murder to the criminalization of their political, cultural, and associative activities.
8. The Time Frame trial, represented by the Extraordinary Appeal No. 1.017.365, was resumed by STF on June 7, 2023, after almost two years of no advances. The case deals, in substance, with a possessory action involving the Xokleng Ibirama Laklaño Indigenous Land, of the Xokleng, Kaingang and Guarani peoples, against the state of Santa Catarina. With the status of a general appliance, the Supreme Court ruling about this case will serve as a guideline for all indigenous land demarcation processes in the country.

A.II - Federal Attorney General's Office's Opinion No. 01/2017/GAB/CGU/AGU

9. In the Executive branch, there has been an accelerated process of setbacks in Indigenous rights since 2016, following the coup against President Dilma Rousseff and the ascension of President Michel Temer. On July 20, 2017, the Federal Attorney General's Office published Opinion No. 01/2017/GAB/CGU/AGU, which obliges the Federal Public Administration to apply the 19 conditions that the Supreme Court established for demarcating Raposa Serra do Sol Indigenous Land in 2009, which in practice institutionalizes the Time Frame thesis.

10. The effects of Opinion No. 01/2017/GAB/CGU/AGU were extremely negative, as immediately after its publication, the National Foundation of Indigenous Peoples (Funai) resumed the evaluation of several administrative procedures for the demarcation of indigenous lands throughout the country, and even of processes that were in advanced demarcation stages, under the appraisal of the Civil House and Ministry of Justice, which were returned to Funai to be reanalyzed.
11. Without a doubt, this Opinion influenced by the ruralist sector in the context of Michel Temer's government has brought serious consequences to the rights and interests of indigenous peoples. The Opinion was published at the very moment when President Temer needed the support of the rural caucus at the National Government to prevent the admissibility of accusations against him by the Legislative Branch.

A.III - National Congress Bil 490/2007 / Bill 2903/2023

12. On May 30, 2023, the House of Representatives approved Bill 490/2007, which promotes the Time Frame thesis into law and makes the protection of indigenous lands more flexible - both by transferring the demarcation of lands to the Legislative Branch, and by violating the right of indigenous people to Free, Prior, and Informed Consultation. Following its approval by the lower house, Bill 490/2007 is currently being evaluated by the Federal Senate, now named Bill 2903/2023. So far, the Bill analysis has been led without prior consultation and ignoring the indigenous movement's continuous manifestation against its approval, and against any institutional recognition, whether by legislative, executive, or judicial means, of the Time Frame thesis.

B. Provisional Measure 1154/2023: Weakening of the Ministry of Indigenous Peoples

1. In December 2022, the elected president of Brazil, Luiz Inácio Lula da Silva (PT), announced the creation of the Ministry of Indigenous Peoples (MPI), considered by the Articulation of Indigenous Peoples of Brazil (APIB) a historic achievement of the Brazilian indigenous movement. In addition, Lula appointed Sonia Guajajara, an exponent representative of the Brazilian indigenous movement, former executive coordinator of APIB, and elected Federal Representative in the 2022 elections, to head the Ministry, representing a symbolic event of reparation against centuries of violation of indigenous rights in Brazil.
2. The new federal administration proposal (Provisional Measure 1154/2023) included the National Foundation of Indigenous Peoples (Funai) under the structure of the Ministry of Indigenous Peoples, which in practice established that the identification and declaration of indigenous lands would be under the competence of indigenous political leaderships.

However, such administrative organization was interrupted by a maneuvering by the National Congress, which, when evaluating Provisional Measure 1154/2023, removed Funai from the MPI and returned it to the Ministry of Justice, including the attribution of declaring indigenous lands.

3. The attribution of the demarcation stages to the MPI represented an immense advance for the promotion of the indigenous peoples' right to their traditional lands. However, the alteration of that attribution configures a weakening of the Ministry's portfolio and an alarming legal regression in the guarantee and protection of territorial rights.
4. It is worth mentioning that Funai has undergone a strong dismantling process since the presidency of Jair Bolsonaro. A report produced in 2022 by the Associated Indigenists (INA) and the Institute for Socioeconomic Studies (INESC), entitled "Anti-Indigenous Foundation: a portrait of Funai under the Bolsonaro government", shows that, from 2018 to 2023, Funai was prevented from fulfilling its constitutional mission of protecting indigenous rights, whether by the absence of budget forecasting, the institutional harassment practiced against servers, or the patently anti-indigenous position of its presidency.⁴

C. Legislative Decree Bill 177/2021

1. The Legislative Decree Bill 177/2021 proposes to allow the President of the Republic to denounce Convention 169 of the International Labor Organization (ILO) and is currently being analyzed by the National Congress. There is a consensus among environmental and indigenous organizations that the objective of the Bill is to extinguish indigenous peoples' and traditional communities' right to Free, Prior, and Informed Consultation.

D. Worrying Rates of Murders of Indigenous Peoples

1. In 2021, there were 176 murders of indigenous individuals⁵ - only six less than the registered in 2020, which recorded the highest number of homicides since the Indigenous Missionary Council (Cimi) started to count this data based on public sources, back in 2014. The number of 148 suicides of indigenous people in 2021 was the highest ever recorded in the same period.
2. The general context of attacks on indigenous territories, leaders, and communities is related to a series of measures by the Executive branch, especially during President Bolsonaro's administration, that favors the exploitation and private appropriation of

⁴INA e INESC: [Fundação Anti-indígena: um retrato da Funai sob o governo Bolsonaro](#). (2022).

⁵ Cimi: [Violence Against Indigenous Peoples in Brazil – 2021](#), p. 278. (2022).

indigenous lands and also, at the Legislative branch, of bills aimed at dismantling the constitutional protection of indigenous peoples and their territories. According to Cimi's report, the Amazon region concentrated 66.22% of all 1,815 deaths related to the struggle for and on land in Brazil, with a disproportionate impact on traditional peoples⁶.

E. Growing Practice of Executions by Police Forces

1. The pattern of racism and police brutality in Brazil extends to indigenous peoples. Two emblematic cases, showing a national pattern, are described below:
2. The Chiquitanos Massacre: On August 11th, 2020, four members of the Chiquitano people, from the São José da Fronteira community (Mato Grosso do Sul state, border with Bolivia), were executed by the Special Border Group (Gefron), a police group from the State Police. There were serious indications of torture executions, including a broken leg and jaw, deformed faces, a broken clavicle, and several wounds in their bodies. Their bodies were taken to the municipality of Cáceres without the knowledge or consent of their relatives, who could bury their bodies only after much bureaucracy and resistance by the authorities.⁷
3. The Abacaxis River Massacre: On August 3rd, 2020, indigenous and riverine inhabitants were ambushed by eight plainclothes and heavily armed men, who have indications of being members of the Amazonas state military police. These men were wearing balaclavas. After a conflict on that day, two policemen were killed, which led to a vendetta raid by the military police, which deployed around 50 officers heavily armed, leading to the killing of two indigenous Munduruku, four riverines, and the disappearance of two others. Dozens were subject to torture *in loco*. Communities report on the increase in the violence and expansion of drug trafficking, illegal invasions by loggers, hunters, predatory fishery, and mining, allied to the State leniency.⁸
4. In both cases, the criminal investigations underwent critical delays and no criminal charges were presented at the moment by the prosecutors.

F. Extreme Violence in the Context of Traditional Land Reclaim

1. A worrying trend is the high number of road killings of Indigenous peoples: 19 cases in 2021, in the states of Bahia (2), Maranhão (1), Mato Grosso (2), Mato Grosso do Sul (3), Paraná (7), Rio Grande do Sul (4), and Roraima (1). Among the victims, two were

⁶ Sobreiro Filho and Barros Sodré: [Violence in the Field of the Amazon: analysis of data on murders, threats and profiles of those killed](#). (2019)

⁷ Cimi: [Chacina de indígenas chiquitanos segue impune e mobiliza organizações sociais do Brasil e Bolívia](#) (2020).

⁸ Cimi: [Em nota, organizações cobram justiça pelo massacre do Rio Abacaxis, impune há um ano](#).(2021).

children, ages 4 and 6, and one was an 84-year-old man. The lack of assistance to the victims shows the neglect and disrespect for the lives of the indigenous people: in 19 cases, the drivers fled the scene without providing assistance to the victims⁹. In Roraima, a young indigenous woman died after being hit by a car while she had her one-year-old son in her arms. In Bahia state, a 4-year-old boy was with his parents at the door of their house when he was hit by a truck. The driver fled the scene without providing help, as did the other occupants of the vehicle.

2. These cases are frequent year after year, usually victimizing indigenous people who live in rural areas where there is territorial conflict, or around makeshift dwellings on the side of highways. For this reason, there is doubt about the nature of several of these cases: if they were, in fact, accidents or intentional acts against indigenous peoples. The death of indigenous people living on the side of the roads or on highways that cut through their territories is the tragic outcome of an accumulation of violations, which begin with disrespect for their territorial rights.

G. Defenders of Indigenous Peoples, Climate and the Environment

1. Among the 1,815 deaths related to the struggle for and on land in Brazil¹⁰, there have been several killings of defenders of indigenous rights and the environment. These victims include: **Paulino Guajajara, 26** (forest guardian) on November 1st 2019, at the Araribóia Indigenous Land (Maranhão State); **Maciel Pereira dos Santos, 34** (indigenous expert) on September 6th 2019, at the Javari Valley (Amazonas State); **Cacique Emyra Wajäpi, 62** (forest guardian) on July 22nd 2019, at the Aldeia do Waselty (Amapá State); **Ari Uru-eu-wau-wau, 33** (forest guardian) on April 17th, 2020, in Tarilândia, Jaru (Rondônia State); **Issac Tembê, 24** (forest guardian) on February 12th 2021, in Capitão Poço (Pará State); **Isolated Indigenous Persons Moxihatëtëma**, between August and October 2021, in the Yanomami Indigenous Territory (Roraima State); **Bruno A. Pereira 41** (indigenous expert) in June 2022, in the Javari Valley; **Dom Philips, 57** (journalist), in June 2022, in the Javari Valley; and **Vitor Fernandes Guarani Kaiowá, 42** (land guardian); on July 24th 2022, in Guapoy (Mato Grosso do Sul State).
2. A large number of defenders of indigenous rights and the environment are officially under Brazil's human rights defenders' program, which has undergone several structural and budgetary restrictions in recent years. These defenders frequently claim that the program does not have constant monitoring of the defenders' situation and that, in some cases, the same police agents in charge of their protection are hired by non-state actors to

⁹ Cimi: [Violence Against Indigenous Peoples in Brazil – 2021](#), p. 181. (2022).

¹⁰ Sobreiro Filho and Barros Sodré: [Violence in the Field of the Amazon: analysis of data on murders, threats and profiles of those killed](#). (2019)

perpetrate violence against indigenous communities. One of these defenders at constant risk is **Cacique Babau**, from the Tupinambá people, in the Serra do Padeiro (Bahia State). Despite being officially included in the defenders' protection program and a Special Procedures' letter to Brazil¹¹, he continues under threat to defend his people, including undergoing current threats to his life and of his family.

3. A set of government lax regulations gave land invaders and criminal groups confidence to proceed with their illegal actions in the indigenous lands. Illegal gold miners developed extensive infrastructure, invaders expanded the deforestation for the opening of pastures and the planting of monocultures, and hunters, fishermen and loggers intensified their incursions into the indigenous territories. The attempt to approve these law projects, the context of the offensive against their rights and the worsening of the situation in the territories motivated strong mobilizations of indigenous peoples throughout the country, with two large national protest camps in Brasília¹².

H. Deaths by State Negligence

1. State omission has also led to a high number of deaths. CIMI's report shows an overall increase in 2021, compared to 2020. Based on the Access to Information Law (LAI), from the Indigenous Health Department (Sesai), partial information on the deaths of indigenous children aged 0 to 5 years old reveals the occurrence of 744 deaths of indigenous children from 0 to 5 years old in 2021. The Brazilian states with the highest number of deaths in this age group were Amazonas (178), Roraima (149) and Mato Grosso (106). Despite the likely lag of data for 2021, the number of child deaths was only higher in three years in the last decade, in 2014 (785), 2019 (825) and 2020 (776).¹³

I. Discrimination against Indigenous Peoples

1. The Karipuna people live under a great deal of pressure on their quality of life. The Karipuna Indigenous Land, in Rondonia, even though it has been demarcated, is under pressure from all sides, where a criminal organization acts in order to legitimize the illegal possession of the land. Since 2015, it has been under pressure from loggers and miners, and in recent years a new strategy of illegal land tenure and expropriation has advanced, with land grabbing that is legitimized by the Rural Environmental Registry, which is granted by the Department of Development and Environment of the Roraima state.

¹¹ [Mandates of the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the rights of indigenous peoples UABRA 6/2019](#). (2019).

¹² Cimi: [Violence Against Indigenous Peoples in Brazil – 2021](#), p. 8. (2022).

¹³ *Id.* p. 9.

2. But recently, with the approval of the Roraima Complementary Law 1089/21, which reduced the protected areas of the Jaci Paraná Natural Reservation and part of the Guajará Mirim State Park, strong pressure was felt in the southern part of the Karipuna land, with reported deforestation of over 570 hectares, from January to September 2021, not to mention the bridges built illegally, which were used for the theft of wood and led to rampant deforestation in the interior of the Indigenous Land.
3. The Karipuna people and the other uncontacted peoples who live in the Karipuna Land are surrounded on all sides, with the advance of increasing deforestation. In an area three kilometers away from Aldeia Panorama, land grabbers are cultivating plantations of bananas, corn, cassava and others. In addition to land invasions, the Karipuna people are unassisted by public policies, such as the opening and maintenance of the access road to the village for the flow of their production, electricity, housing, quality health and education.¹⁴

J. Hate Speech against Indigenous Peoples

1. Hate speech against indigenous peoples has been present for centuries in Brazilian society, however, it gained a strong impetus and legitimation in recent years, especially at the highest levels of the federal government. During the 2018 electoral campaign, Jair Bolsonaro, the then-leading candidate in the polls, expressed his aversion to minorities in Brazil¹⁵. During a ministerial meeting held in May 2020, the then Minister of Education said "I hate this term, indigenous peoples, I hate it, I hate it...", among other pronouncements that propagate hatred against indigenous peoples¹⁶.
2. The threats and attacks suffered by indigenous peoples have been perpetrated, for the most part, by President Bolsonaro's government, either through the public manifestation of hate speech and racist messages against indigenous peoples, or in the hasty process of dismantling public policies and bodies that should promote the rights of indigenous peoples. The hate speech promoted by the federal government has direct consequences on indigenous peoples, as it amplifies and legitimizes the invasion of indigenous lands, land grabbing, and the practice of environmental crimes such as deforestation and burning, thus increasing the pressure on territories across the country, as well as the escalation of violence against indigenous peoples and their rights.¹⁷

¹⁴ CIMI, Internal Reports.

¹⁵ "Let's make a Brazil for the majority; minorities have to bow to majorities; laws must exist to defend majorities; minorities adapt, or simply disappear" [https://www.youtube.com/watch?v=X_z6Hakdw3A] September 2018.

¹⁶ Former Minister Abraham Weintraub, May 2020 [https://www.youtube.com/watch?v=8RkSi1Qwl_M]

¹⁷ APIB - [INTERNATIONAL DOSSIER ON COMPLAINTS OF INDIGENOUS PEOPLES OF BRAZIL](#) (2021).

3. However, hate speech was not limited to the acts and omissions of the Executive branch, being also present in debates in the Legislative and in relevant decisions of the Judiciary. This institutional scenario has a direct effect on the increase of invasions and conflicts in indigenous territories, promoted by large corporations and individuals interested in exploiting Indigenous lands for mining, agriculture and other interests, bringing more violence and death to indigenous peoples.¹⁸
4. For example, in the Tekoha Je'y land in Paraty (Rio de Janeiro state), the mayor of the municipality misled the population and spread hate speech and disinformation on social media, which was replicated by other local politicians, against the local Nhandeva and Mbya indigenous peoples, inciting the population to act aggressively against the indigenous community that advocates for the demarcation of their lands.
5. Without the demarcation process concluded, however, given the slow pace of the federal government, legal uncertainty, over the years, has generated several attacks against the Nhandeva and Mbya communities, as well as intimidation and hate speech. For decades, those two peoples have lived together harmoniously in the territory, based on marital ties, contrasting with the hostile attitude of the society that surrounds them nowadays.¹⁹

¹⁸ Jornalistas Livres: [Two Yanomami children die sucked into mining machines in Roraima](#) (Oct 2021).

¹⁹ Cimi - [Guarani indigenous people are pressured by hate speech and incitement to violence as they fight for the demarcation of the Je'y TI](#) (2020).

ANNEXES

Annex 1 - Cases of Violence against Indigenous Peoples (2021)

CHAPTER II – Violence Against the Person

States and FD	Abuse of power	Death threats	Multiple threats	Murder ¹	Manslaughter	Grievous bodily harm	Racism and ethnic-cultural discrimination	Attempted murder	Sexual violence	Total cases
BRASIL	1		1				3			5
AC	1		4	3		1	1			10
AL	1									1
AM	6	4	8	38			1	2		59
AP									1	1
BA		3	1	6	2			1		13
CE	2			5						7
FD	3					1	1			5
ES				1						1
GO				2						2
MA	1	5		10	1		2			19
MG			1	1		1				3
MS	1	2	10	35 ²	3	8	5	8	6	78
MT	2	1	3	4	2	1	1		1	15
PA	1	2	1	8						12
PB				2						2
PE		1	1	4						6
PR	1		1	5	7	4	3		1	22
RJ		1		4					1	6
RN				3						3
RO	3		2	2		1	1			9
RR	6		4	32 ³	1	2		1	3	49
RS			1	6	4				1	12
SC	1			2			1			4
SP	2		1	1			1			5
TO	1			2		2	1			6
TOTAL	33	19	39	176	20	21	21	12	14	355

¹ Source: Mortality Information System (SIM) - June 2022. Data collected on 07/22/2022, subject to review

² Source: MS/SVS/CGIAE - Mortality Information System - SIM. Data collected on 07/21/2022, subject to review

³ Source: SIM/NSIS/DVE/CGVS/SESAU-RR. Data collected on 07/21/2022, subject to review

Annex 2 - Indigenous Childhood Mortality (2021)

Childhood Mortality

States	Cases ¹
AM	178
RR	149
MT	106
MA	50
MS	44
PA	65
AC	37
TO	13
PE	16
AP	12
MG	14
PR	9
RS	11
RO	9
PB	7
SC	7
BA	6
ES	4
AL	4
CE	1
RJ	1
SE	1
Total	744

¹ Source: SIASI/SESAI/MS. Data collected on: 01/25/2022. Reference date 01/01/2021 to 12/31/2021. Data subject to change by system feed process and database qualification.

Annex 3 - Indigenous Suicides (2021)

Suicides

States	Number of cases ¹
Acre	3
Amazonas	51
Ceará	1
Goiás	3
Maranhão	5
Mato Grosso	3
Mato Grosso do Sul ²	35
Minas Gerais	4
Pará	2
Paraná	11
Pernambuco	1
Rio de Janeiro	1
Rio Grande do Norte	2
Rio Grande do Sul	1
Rondônia	4
Roraima ³	13
Santa Catarina	2
São Paulo	3
Sergipe	1
Tocantins	2
Total	148

¹ Source: Mortality Information System (SIM) - June 2022. Data collected on 07/22/2022

² Source: MS/SVS/CGIAE - Mortality Information System - SIM. Data collected on 07/21/2022, subject to review

³ Source: SIM/NSIS/DVE/CGVS/SESAU-RR. Data collected on 07/21/2022, subject to review