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## **PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT**

**Report of the Special Rapporteur on the situation of human rights and fundamental  
freedoms of indigenous people, James Anaya\***

### **Addendum**

**REPORT ON THE SITUATION OF INDIGENOUS PEOPLES IN BRAZIL\*\***

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\* Late submission.

\*\* The summary is being circulated in all official languages. The report, which is annexed to the summary, is being circulated in the language of submission only.

### **Summary**

The present report follows a visit to Brazil by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and focuses on the issues of indigenous peoples of Brazil in relation to the realization of their right to self-determination and related human rights. The Special Rapporteur notes that the Government of Brazil has manifested a commitment to advance the rights of indigenous peoples in accordance with relevant international standards, having ratified International Labour Organization Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries and supported adoption of the United Nations Declaration on the Rights of Indigenous Peoples. Additionally, Brazil has important constitutional and other legal protections for indigenous peoples, and its Government has developed a number of significant programs in areas of indigenous land rights, development, health and education. Nonetheless, the Special Rapporteur observes that indigenous peoples of Brazil continue to face multiple impediments to the full enjoyment of their human rights. Further efforts are needed to ensure that indigenous peoples are able to fully exercise their right to self-determination within the framework of a Brazilian state that is respectful of diversity, which means exercising control over their lives, communities, and lands; and effectively participating in all decisions affecting them, in accordance with their own cultural patterns and authority structures. Conscious of these challenges, the Special Rapporteur offers several recommendations that may serve to enhance the recognition and protection of the rights of the indigenous peoples in Brazil in line the Government's commitments.

## ANNEX

**REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION  
OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF  
INDIGENOUS PEOPLE, JAMES ANAYA, ON HIS MISSION  
TO BRAZIL (18-25 AUGUST 2008)**

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1-6	
I. BACKGROUND AND CONTEXT	7-35	
A. The indigenous peoples of Brazil	7-10	
B. Applicable law and indigenous-specific government policy	11-20	
C. Self-determination of indigenous peoples	21-25	
D. Indigenous issues within the current political environment	26-30	
E. The Raposa Serra do Sol case	31-35	
II. LAND AND RESOURCE ISSUES OF INDIGENOUS PEOPLES	36-58	
A. Protecting indigenous lands and resources	36-40	
B. Process of land delimitation, demarcation and titling	41-45	
C. Non- indigenous occupation and invasion of indigenous Lands	46-54	
D. Large-scale development and mining projects	55-58	
III. INDIGENOUS DEVELOPMENT AND RELATED HUMAN RIGHTS CONCERNS	59-69	
A. Policy issues	59-61	
B. Health	62-65	
C. Education	66-69	
IV. CONCLUSIONS	70-76	
V. RECOMMENDATIONS	77-99	

## **Introduction**

1. This report examines the human rights situation of indigenous people in Brazil in light of relevant international human rights standards, and makes a series of recommendations to assist ongoing efforts to implement these standards. The report is based on information gathered by the Special Rapporteur during a visit to Brazil from 18-25 August 2008 and on subsequent research and exchanges of information. The visit followed requests by various indigenous peoples' organizations throughout the country and was carried out with the cooperation of the Government of Brazil.

2. During his visit to Brazil, the Special Rapporteur consulted with government officials, indigenous peoples and their organizations, representatives of the United Nations, and members of civil society. In Brasilia, the Special Rapporteur held meetings with officials of the Ministry of Foreign Affairs, the Ministry of Justice, including the National Indian Foundation (FUNAI), the Special Secretariat for Human Rights, the Office of the Federal Prosecutor, the Ministry of Education, and the National Foundation for Health (FUNASA); and with the Attorney General of Brazil and members of the Indigenous Front of the National Congress. He also held consultations with the United Nations Resident Coordinator and with representatives of United Nations agencies with offices in Brazil.

3. The Special Rapporteur met with representatives of various indigenous organizations of the country at the national and regional levels, including the Coordinator of Indigenous Organizations of the Brazilian Amazon (COIAB) and its affiliates; Articulation of Indigenous Peoples of the Northeast, Minas Gerais and Espírito Santo (APOINME); the Federation of Indigenous Organizations of the Rio Negro (FOIRN); and Indigenous Council of the State of Roraima (CIR); as well as with civil society organizations, including the Socio-Environmental Institute (ISA). The Special Rapporteur participated in a forum with various indigenous organizations during a seminar to discuss proposals for a new statute on indigenous peoples organized by the National Commission of Indigenous Policy (CNPI).

4. The Special Rapporteur conducted field trips to Manaus and the Alto Rio Negro region in the state of Amazonas; Boa Vista and the Raposa Serra do Sol and Yanomani indigenous territories in the state of Roraima; and Campo Grande, Dourados, and nearby indigenous communities in the state of Mato Grosso do Sul. During these trips he consulted with state and local government officials, military authorities, indigenous communities and organizations, and members of civil society.

5. Within the short time period in which the visit took place, the Special Rapporteur endeavored to consult with and receive information from as many indigenous communities and their representatives as possible, and had the opportunity to visit among others, the communities of Cunuri in Amazonas; Serra do Sol, Surucucu, Demini Malacacheta, and Surumú in Roraima; and Panambizinho, Passo Pirajú, Bororó, and Jaguapiru in Mato Grosso do Sul, as well as the Aldeia Urbana in Campo Grande.

6. The Special Rapporteur expresses his appreciation to the Government of Brazil, especially the Ministry of Foreign Affairs and FUNAI, and indigenous peoples' organizations for the support they provided for the visit. The Special Rapporteur would like to thank the staff of the United Nations Development Program in Brasilia and the interpreter for the visit for their instrumental role in the preparation and execution of the visit. Finally, the Special Rapporteur expresses his gratitude to Dr. Erika Yamada and to the staff of the Office of the High Commissioner for Human Rights in Geneva for their assistance in undertaking the visit and in the preparation of this report.

## **I. BACKGROUND AND CONTEXT**

### **A. The indigenous peoples of Brazil**

7. According to government statistics, indigenous people constitute approximately 0.43 per cent of the Brazilian population, somewhere between 700,000 and 750,000 people.<sup>1</sup> Despite a history of invasion and ongoing threats to their survival, indigenous peoples are

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<sup>1</sup> The 2000 national census of the Brazilian Institute of Geography and Statistics (IBGE) estimated a total of 734,127 indigenous people in Brazil. Survey informants were asked to identify themselves by race or skin colour using the following classifications: "white", "black", "brown" (mixed-race), "yellow" and "indigenous".

still characterized by immense diversity and cultural wealth. There are at least 225 indigenous peoples speaking some 180 different languages throughout Brazil, living both on traditional indigenous lands and in urban centers. Their languages, customs, rituals, and material and non-material heritage, which are fundamental to their survival, contribute to Brazil's rich demographic mosaic. The states comprising the Amazon region have the highest concentrations of indigenous peoples, followed by the state of Mato Grosso do Sul. There are indigenous peoples in every other state of Brazil except, according to Government information, the states of Piauí and Rio Grande do Norte.

8. Academic literature estimates that there were around five million indigenous peoples living in the territory that is now Brazil, speaking as many as 1,300 languages, when Europeans first arrived centuries ago. Due to various factors common to the history experienced throughout the Americas – including diseases introduced by Europeans, forced displacement, and violent confrontation with invaders – the indigenous population decreased dramatically, and numerous ethnically or linguistically distinct indigenous groups disappeared.

9. Despite Government policies that now favor indigenous peoples, historically-rooted patterns of discrimination against them persist and are pervasive in many spheres of social and political life, the most recurrent manifestations of which are lack of participation in decision-making, threats to cultural integrity, poor living conditions, and, all too often, violence.<sup>2</sup> Many of the surviving indigenous groups no longer live on their traditional lands, resulting in urbanization of indigenous communities and a consequent weakening of their cultures, traditions and languages. Of those indigenous peoples that remain on traditional lands, many live in precarious conditions. According to the Brazilian Institute of Geography and Statistics (IBGE), while 15.5 per cent of the Brazilian population lives in extreme poverty, among indigenous people the figure reaches 38 per cent. In applying the concept of poverty in this context, due regard should be given the reduced role of consumerism and market economies among indigenous peoples. It appears clear, however, that by any standard, indigenous peoples as a whole are disadvantaged economically and in terms of access to political power in relation to most of the rest of Brazilian Society.

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<sup>2</sup> E/CN.4/2006/16/Add.3, 28 February 2006.

10. There are a significant number of indigenous groups that have had little or no contact with outsiders and about which little information is available. Surveys conducted by FUNAI identify 65 isolated indigenous groups, in addition to five others that have been recently contacted, in the state of Amazonas, and one such group in the state of Goiás in central Brazil. FUNAI has spearheaded the Government's policy of guaranteeing for these groups the right to remain isolated and the integrity of their territories.

### **B. Applicable law and indigenous-specific government policy**

11. Brazil is a federal republic, composed of a federal Union (*União*) with 26 states, a Federal District (where the capital, Brasília, is located) and 5,507 municipalities. The 1988 Constitution of the Federal Republic of Brazil reflects the efforts of lawmakers to consolidate a democratic State aimed – as stated in the preamble and affirmation of “Fundamental Principles” (Title I) – at ensuring social harmony and individual rights on the basis of equality and the rule of law. The five chapters of Title II are devoted to detailing a catalogue of “Fundamental Rights and Guarantees”.

12. The specific protections for fundamental rights provided in the 1988 Constitution are supplemented by the several human rights treaties to which Brazil is a party. Under article 5 of the Constitution, as amended in 2004, and in accordance with judicial doctrine, the human rights guaranteed in treaties duly ratified through acts of Congress and the President are incorporated into domestic law and in some cases have constitutional status. Brazil has ratified the core United Nations human rights instruments<sup>3</sup> and some of their optional protocols.

13. The domestic legal framework for the protection and promotion of the rights of indigenous peoples in particular is based primarily on the 1988 Constitution, which recognizes the cultural diversity of the country and includes a specific chapter with two articles on “Indians”. This Constitution was one of the first in the world to secure indigenous peoples rights within the framework of contemporary thinking on indigenous-

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<sup>3</sup> The sole exception being the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

state relations, and it remains one of the most progressive in this regard. Article 231 of the Constitution calls for recognition of “their social organization, customs, languages, creeds and traditions, as well as their original rights to the lands they traditionally occupy”; provides protections for these rights, especially in relation to the exploitation of natural resources on indigenous lands; guards indigenous peoples against dispossession of or forced removal from their lands; and places a duty upon the Union to demarcate the lands traditionally occupied by indigenous peoples and “to protect and ensure respect for all their property”. Article 232 of the Constitution provides indigenous peoples and their organizations with standing to sue to defend their rights, and authorizes the Federal Prosecutor’s Office to intervene on behalf of indigenous peoples in all pertinent cases

14. In addition, indigenous peoples and their rights are the subjects of the Indian Statute of 1973 (Law 6001). Although at the time the law was adopted it was considered progressive, it has come to be widely criticized for being out of step with contemporary constitutional and international standards in its position of encouraging indigenous peoples to “evolve” and become more “civilized”. The law’s implementation has been adjusted to reflect the standards of the 1988 Constitution, and since 1991 there have been debates in the Congress to replace the law with a new one, but those debates are ongoing.

15. In 2002 Brazil enacted a new Civil Code<sup>4</sup>, which, in line with the Constitution, eliminates discriminatory restrictions on the exercise of civil rights by indigenous peoples that were contained in the former 1916 Civil Code. Previous to the enactment of this new code, indigenous peoples were categorized as “relatively incapable” and effectively treated as “minors”, with FUNAI in a guardianship (*tutela*) position.

16. FUNAI is the State agency principally responsible for executing government policy on indigenous peoples and developing programs to advance their interests. It was established in 1967 and is now an agency of the Ministry of Justice. It is headquartered in the capital of Brasilia, with projects in its 45 regional offices, 14 support centers (*núcleos de apoio indígena*), and 344 indigenous outposts (*postos indígenas*) throughout the country. FUNAI is responsible for promoting and protecting indigenous peoples’ interests and rights; demarcating and ensuring protection of indigenous lands; carrying out studies

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<sup>4</sup> Law 10.406, 10 January 2002.



on the various indigenous groups; and raising awareness on indigenous peoples and their challenges.

17. FUNAI has done exemplary work in several areas, including in the development and execution of a methodology for identifying and demarcating indigenous lands, and has contributing to advancing social welfare benefits for indigenous communities. However, its history is that of an agency dominated by non-indigenous bureaucrats and social scientists who shared a highly paternalistic posture towards indigenous peoples and a model of development that does not keep with contemporary standards of indigenous self-determination. It was evident to the Special Rapporteur that FUNAI's leadership is conscious of the need to abandon the paternalistic postures of the past and that FUNAI has made decided efforts to incorporate a policy orientation consistent with contemporary international norms. Nonetheless, he observed during his visit that, in many ways, the history of paternalism continues to shape FUNAI's operations. FUNAI has also been hampered by a significant shortage of resources and qualified staff to carry out its myriad responsibilities.

18. In a positive development, the Presidency of the Union established in 2006 the National Commission of Indigenous Policy (CNPI). It is composed of representatives of government agencies, indigenous organizations and other civil society organizations. By all accounts, the CNPI is a welcomed initiative to ensure greater indigenous participation in the process of defining State policy on indigenous issues in Brazil and in reforming relevant laws and government programs to better accord with indigenous peoples' own aspirations.

19. Also significant is the Indigenous Peoples' Social Agenda, a government program launched in 2007 to advance a series of inter-ministerial actions aimed at improving the living conditions of indigenous peoples. The program established benchmarks for action in three areas: 1) protection of indigenous lands; 2) promotion of indigenous cultures and economic self-sufficiency; and 3) enhancement of indigenous peoples' quality of life.

20. Signifying an international commitment to respect and promote the rights of indigenous peoples in line with contemporary standards, on 25 July 2002 Brazil ratified

International Labour Organization Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries (hereafter “Convention 169”), and the Convention’s implementation was mandated by a presidential decree in 2004<sup>5</sup>. Also a reflection of this commitment, Brazil voted in favor of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (hereafter “United Nations Declaration” or “Declaration”) on 13 September 2007.

### **C. Self-determination of indigenous peoples**

21. Overall, the human rights situation of indigenous peoples in Brazil can be described as involving both steps toward, and ongoing barriers to, the realization of their right to self-determination. The Special Rapporteur notes with satisfaction the advanced nature – relative to other countries – of Brazil’s applicable law and many of its policies and programmes concerning indigenous peoples. Despite the notable advances, however, indigenous peoples’ human rights, beginning with their fundamental right to self-determination, have yet to be fully realized.

22. The United Nations Declaration on the Rights of Indigenous Peoples affirms, in its article 3, that “Indigenous peoples have the right to self-determination. By virtue of that right they determine their own political status and pursue their own economic, social and cultural development”. This provision of the Declaration, which mirrors common article 1 of the international human rights covenants<sup>6</sup> to which Brazil is a party, responds to the aspirations of indigenous peoples worldwide to be in control of their own destinies under conditions of equality, and to participate effectively in the making of all decisions affecting them. The right of self-determination is a foundational right, without which indigenous peoples’ other human rights, both collective and individual, cannot be fully enjoyed.

23. The Declaration, through its overall structure and article 46, makes clear that the exercise of self-determination for indigenous peoples is to be exercised within the framework of the unity and territorial integrity of the State, just as it ordinarily is to be exercised by all other peoples. Promoting self-determination for indigenous peoples can

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<sup>5</sup> Decree 5.051, 19 April 2004.

<sup>6</sup> International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights.

only strengthen Brazil as a democratic State respectful of diversity, by enabling indigenous peoples to become full participants in the life of the State with due regard for their own cultural patterns, authority structures and connections to land. The Government has expressed a commitment to self-determination in these terms, and has initiated a number of programs to that end.

24. Still, it is evident that indigenous peoples lack adequate participation in all decisions that affect their lives and communities, and that they do not adequately control their territories, in many cases, even when lands are demarcated and registered. As discussed below (paras. 45-53) indigenous peoples persistently suffer invasions and resource extraction on their lands by outsiders. Also, Government management of natural resources on indigenous lands and NGOs' programmes, according to several reports, often inhibit indigenous peoples from a wide range of development options involving the use of the resources within their lands. The Special Rapporteur also has observed a lack of effective mechanisms for consultations with indigenous peoples on development projects such as mining and hydroelectric dams that, despite being outside of demarcated indigenous lands, have direct impacts on these peoples (see below, paras. 54-57).

25. As discussed below (paras. 60, 63, 65-67), the State has made significant strides in providing culturally-adapted social services and education to many indigenous communities, and in including indigenous individuals in the management of these services. On the basis of the multiple accounts he heard from both indigenous and Government representatives, however, the Special Rapporteur can only surmise that more is need to fully integrate into these services the goal of ultimately empowering indigenous peoples to take control of their own affairs in all spheres of life. A lack of empowerment of indigenous peoples in the design, management, and delivery of services, and in the decisions affecting their territories and resources, through their own institutions, in partnership with the State and other actors, contributes to a persistent relationship of dependency and inhibits the realization of the right to self-determination.

#### **D. Indigenous issues within the current political environment**

26. The current challenges to the full realization of self-determination by indigenous peoples in Brazil are inextricably linked to historical patterns of discrimination along racial, cultural, linguistic, and ethnic lines that have their roots in Portuguese colonization, which lasted from 1500 to 1822. Despite the introduction of State policies to reverse the historical oppression against indigenous peoples, one sees continued but yet more subtle manifestations of the historical disrespect for the interests of indigenous peoples and disregard for their welfare and human rights.

27. Over the last couple decades, the growth and fortification of autonomous indigenous organizations have contributed to indigenous peoples' survival, enabling them to become greater protagonists of their own struggles at the local, regional, national, and international levels. While this, along with certain favorable state policies and constitutional protections, have generated greater advances for indigenous peoples and increased visibility for them, these advances have attracted controversy and an often antagonistic political environment.

28. In Brazil, the news media seems to have a key role in shaping, as well as in reflecting, this political environment. During his visit, the Special Rapporteur witnessed and a polemical news media climate that exhibited a misunderstanding about--and even hostility towards--indigenous issues. With a few notable exceptions, while the Special Rapporteur was in Brazil the demands being made by indigenous peoples and the gains they have made in the recognition of their rights were treated with suspicion or worse. There seemed to be minimal representation of indigenous peoples or their organizations in the news media, with little opportunity for indigenous peoples to influence the content of material that was published or broadcast about them or on their behalf. The Special Rapporteur encourages further initiatives such as the Ministry of Culture's "Cultural Points" ("Pontos de Cultura") Program and Law 11645 (March 2008), which seek to promote public awareness of indigenous cultures and rights, respectively, in the media and the general educational system.

29. At the heart of the discordant attitude in the media are several controversial political and economic issues that shape some of the public discussion. There is an apparent tension in public debate between, on the one hand, economic development and, on the other, conservation of the environment and the recognition of indigenous rights, particularly with regard to land. While there are elaborate and ground-breaking federal programs devoted to

advancing the rights of indigenous peoples over their lands and natural resources, these programs have not always been understood as being in accordance with the mainstream development policies and objectives of the country.

30. Especially pertaining to large-scale development projects, mining and industrial farming, some officials at the state and municipal levels have expressed concerns that indigenous peoples' rights may be a constraint to economic development, and have actively pursued a reversal of the gains achieved for the protection of indigenous peoples' lands and resources. In addition, while legislation is being developed to further advance indigenous peoples's rights, such as a new Indian Statue, several bills have been introduced in the National Congress to reverse or limit the protections for indigenous rights already established. Brazilian military officials also have a role in the controversy and on occasion have engaged the media in anti-indigenous rhetoric. Some military authorities have publicly criticized the State policy of demarcating large areas of lands for indigenous peoples, especially land bordering other countries in the relatively isolated Amazon region, over purported concerns about security and national sovereignty.

#### **E. The Raposa Serra do Sol case**

31. Emblematic of the various elements of the controversy over indigenous rights is the Raposa Serra do Sol case, which involved a dramatic challenge to the demarcation of an indigenous territory of 1.74 million hectares. A Presidential Decree, issued on 15 April 2005, ratified the administrative delimitation and demarcation of the Raposa Serra do Sol indigenous land, located in the state of Roraima, for the benefit of Ingaricó, Macuxi, Patamona, Taurepang and Wapichana indigenous groups (adding up to a population of as many as 20,000 people). The demarcation process had been opposed by powerful non-indigenous farmers who had invaded the land to farm rice on an industrial scale and who had punctuated their opposition with violence against indigenous people. The 2005 Decree called for the removal of the non-indigenous occupants of the demarcated land within a year, but that removal was resisted by the farmers who further incited violence that culminated in the shooting of several indigenous persons on 5 May 2008.

32. It is noteworthy that such violence has occurred, not just in Raposa Serra do Sol but elsewhere in the country as well, especially in the states of Mato Grosso do Sul (against Guarani people), Maranhao (Guajajara people) and Pernambuco (Xukuru people). There are numerous cases of land and resource rights activists murdered by hired gunmen or private militias commissioned by powerful landowners in rural areas. Land rights activists have suffered harassment, intimidation and threats from large estate owners, sometimes in collusion with local authorities.<sup>7</sup> To its credit, the Brazilian justice system has investigated and prosecuted many of these cases, but apparently impunity persists in several others and the threat of further confrontation and violence remains.

33. Opponents of the demarcation of the Raposa Serra do Sol territory, supported by the state of Roraima, sought an injunction against the removal of the rice farmers and challenged the demarcation and recognition of the Rapasa Serra do Sol territory as a contiguous whole. Several rice farmers that stood to be removed from the area joined in the legal challenge to the demarcation. They and the state argued that the demarcation of such a large territory was not only without constitutional grounding, but that it also affronted economic development objectives that in their view are protected by the Constitution. Brazilian military officials weighed in publicly with pronouncements of concern that a quasi-autonomous indigenous territory running along a lengthy section of Brazil's border with Venezuela and Guiana would have implications for national security, perpetuating a broader concern about indigenous peoples rights as being a threat to national sovereignty. Indigenous peoples and organizations, especially the Indigenous Council of Roraima (CIR), intervened to back the Raposa Serra do Sol indigenous communities to oppose the challenge to the demarcation of the territory, with strategies that reached into the international arena, in an increasingly polarized political environment.

34. By the time the case reached the Federal Supreme Tribunal, its potential implications for the future of indigenous peoples' rights in Brazil, especially to lands, had acquired major proportions. The case represented the clash of two opposing visions of development and the place of indigenous peoples in relation to it--one which sees indigenous peoples in possession of the territories of their traditional use and occupancy and another which sees

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<sup>7</sup> A/HRC/4/37/Add.2, 19 December 2006, para.18-20 and 68.

those territories opened up to economic development by market forces, with indigenous peoples relegated to small parcels of land.

35. After a lengthy process, the Federal Supreme Tribunal reached a final decision in the case on 19 March 2009, with a majority of the 11 justices (*Ministros*) voting to uphold Raposa Serra do Sol demarcated land as a contiguous territory<sup>8</sup>. In this respect, the court's decision was undoubtedly a victory for the indigenous communities of the territory and of the country, confirming the essential legality of the demarcation model that has been replicated throughout the Amazon region and other parts of Brazil (see paras. 40-44), and rejecting the view that that model threatens the development or security of the Brazilian State. But while upholding the demarcation of the Raposa territory and ordering the removal of the non-indigenous rice farmers, the court pronounced an array of conditions, many of them limiting, on the land rights it was confirming and on the constitutional protections for indigenous lands more generally (see paras. 11-19, 35-39).

## **II. LAND AND RESOURCE ISSUES OF INDIGENOUS PEOPLES**

### **A. Protecting Indigenous Lands and Resources**

36. It is evident that secure rights to land and natural resources are essential to the survival and development of indigenous peoples in Brazil, and hence to their exercise of self-determination. Under the 1988 Constitution, indigenous peoples are entitled to the "permanent possession" of the lands they traditionally occupy and "have the exclusive usufruct of the riches of the soil, the rivers and the lakes existing therein" (Art. 231), while at the same time the Constitution deems these lands to be inalienable property of the Union (Art. 20).

37. Indispensable to securing indigenous peoples' rights to their traditional lands are the demarcation and official registration of those lands called for in Article 231 of the Constitution. Because the indigenous land rights under the Constitution are deemed to be

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<sup>8</sup> Federal Supreme Tribunal, decision on Petition 3388, 18-19 March 2009.

“original” – meaning they originate in the indigenous presence and not in a grant from the State – the acts of demarcation and registration are acts of recognition of the rights rather than being constitutive of them.

38. FUNAI reports that there are 611 indigenous land areas that are at different stages of the formal registration process. Of these, 488 are, at a minimum, at the surveying stage of the demarcation process, including 398 that have already been demarcated and registered. The 488 indigenous lands cover 105,673,003 hectares, approximately 12.41 per cent of the national territory. Undoubtedly, Brazil has distinguished itself as a leader worldwide in this regard.

39. The Supreme Federal Tribunal’s decision in the case of Raposa Serra do Sol, adopted on 19 March 2009, articulated 19 conditions that, in the view of the majority of the justices of the high court, shape the content of the constitutional recognition and protection of indigenous lands, including demarcated and registered lands. These conditions go far beyond the specific wording of the Constitution or of any applicable legislation, in what the federal Attorney General and some observers have deemed a questionable exercise of the court’s authority as a judicial, rather than a legislative, organ. Some of the 19 conditions confirm protections for indigenous lands, for example, exemption from taxation and prohibition of non-indigenous hunting, fishing and gathering activities. Several of the other conditions, however, limit constitutional protections by specifying State powers over indigenous lands on the assumption of ultimate State ownership. A number of conditions affirm the authority of the federal Union, through its competent organs, to control natural resource extraction on indigenous lands, install public works projects, and to establish on these lands, without having to consult the indigenous groups concerned, police or military or presence. Other provisions authorize specific government institutions to exercise certain monitoring powers over indigenous lands, in particular for conservation purposes and to regulate entry by non-indigenous individuals.

40. Brazil’s progressive constitutional provisions on indigenous peoples should be interpreted to conform to relevant international standards. Article 27 of the United Nations Declaration affirms the right of indigenous peoples to “own, use, develop and control the lands, territories and resources” they traditionally occupy; for its part, ILO Convention 169 declares in its article 14, “The rights of ownership and possession of the peoples concerned



over the lands which they traditionally occupy shall be recognized”. In light of these international standards, to which Brazil has committed, indigenous peoples must effectively enjoy rights over their lands that are the equivalent of ownership, and the State’s property interest in indigenous lands must operate only as a means of protection and not as a means of interference with indigenous control. Additionally, both under the Declaration (Arts. 19, 30, 32) and ILO Convention 169 (Arts. 6, 15.2), indigenous peoples have the right to be consulted on any decision affecting them with the objective of achieving their agreement or consent, including with regard to the exploitation of subsurface resources owned by the State or the establishment of military installations. Whatever the validity or ultimate disposition of the 19 conditions articulated by the Supreme Federal Tribunal, administrative, legislative, and military authorities should exercise their powers in relation to indigenous lands in a manner consistent with these international norms. Further, the enactment of domestic legislation or administrative regulations to implement these standards is desirable.

### **B. Process of land delimitation, demarcation and titling**

41. To its credit, Brazil has developed an advanced methodology to demarcate and register indigenous lands,<sup>9</sup> which is administered by FUNAI and the Ministry of Justice with participation by indigenous peoples. The demarcation process begins with the identification of the area through a detailed multidisciplinary study by FUNAI, conducted with the participation of the indigenous group or groups concerned through their own representative institutions. In identifying the area, attention is given to historical land use patterns, as well as to the present and future needs of the indigenous people for their physical and cultural survival, in accordance with the Constitution (art. 231).

42. The Ministry of Justice oversees the demarcation process and adjudicates competing claims or challenges to the demarcation. Any non-indigenous occupants of a demarcated area are to be resettled and provided compensation for and any bona-fide improvements made by them, in accordance with the pertinent legislation. Non-indigenous occupants may challenge the demarcation and the amount of compensation offered, before the process is

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<sup>9</sup> Defined in Presidential Decree 1775 (1996) and Ministry of Justice Regulation (Portaria) 14 (1996).

finalized. Often such challenges have result in the delay of registration of demarcated lands or the outright refusal of the indigenous occupants to leave once registration has occurred, or even an increase in illegal occupation, as exemplified in the Raposa Serra do Sol case.

43. An exemplary, integrative initiative for securing indigenous lands and building relevant capacity of indigenous peoples is the *Projeto Integrado de Proteção às Populações e Terras Indígenas da Amazônia Legal* (PPTAL), administered by FUNAI. The project, which has supported the identification and demarcation of 40 million hectares of indigenous land in the Amazon region, is reported to have contributed to ensuring indigenous peoples' access to natural resources and to have increased the participation and control of indigenous peoples in the process of securing and managing their lands.

44. Despite the advances and the exemplary initiative of the PPTAL project, a further commitment of resources is needed to strengthen and support land demarcation throughout various regions of the country in which indigenous peoples live. According to information received by the Special Rapporteur, FUNAI has been underfunded and understaffed, with a budget and personnel that falls short of what is needed to demarcate the numerous and vast indigenous territories in Brazil. In some cases in which the demarcation process has already begun, the completion of the process has been impeded by a lack of financial and human resources. In this connection, the Government reports recent increases in FUNAI's budget and steps to restructure and enhance its staff.

45. Another challenge is the discordant political forces seeking to undermine, halt, or even reverse the progress of the demarcation of indigenous land. During his visit to Brazil, the Special Rapporteur learned of five proposals to amend the provisions on indigenous peoples of the 1988 Constitution, and of 19 legislative proposals in the Senate and 15 in the Chamber of Deputies to suspend the effect of indigenous land demarcation decrees or to change the procedures to identify and demarcate indigenous lands. Added to these initiatives is one of the 19 conditions articulated by the Supreme Federal Tribunal in the Raposa Serra do Sol case, which forbids the amplification of lands that are already demarcated. This provision is feared to be an impediment to ongoing efforts to secure adequate land areas for indigenous communities that were provided with relatively small parcels of land prior to the current demarcation regime.

### **C. Non-indigenous occupation and invasion of indigenous lands**

46. As already noted, a recurrent impediment to securing indigenous lands is the presence of non-indigenous occupants. This can especially be seen in areas, such as in Mato Grosso do Sul, the state with largest indigenous population outside the Amazon region, where there is heavy non-indigenous settlement and land use that has displaced indigenous peoples from their traditional lands. Unlike the Amazon region, where vast expanses of land remain inhabited mostly by indigenous peoples, the rural areas of Mato Grosso do Sul have been mostly parceled out to non-indigenous farmers, many of them engaged in large-scale agribusiness. This is a result of an aggressive Government policy of titling land to private individuals in the last century, well prior to the 1988 Constitution and its recognition of indigenous rights. Indigenous peoples were forced off their land, or left only with small plots within their larger traditional use areas, thereby being deprived of adequate means of subsistence and cultural continuity. Paraná and Santa Catarina are two other states in the southwestern part of the country in which indigenous peoples have been left only with small patches of land, much of it infertile and providing little in the way of sustainable livelihood.

47. Extreme poverty and a range of social ills (even malnutrition and starvation in some cases) now plague the Guarani Kaiowá and Nhandeva peoples of Mato Grosso do Sul. The state has the highest rate of indigenous children's death due to precarious conditions of health, access to water and food, related to lack of lands. In 2007 the federal Government established the Dourados Indigenous Actions Management Committee, which has taken a number of initiatives to address the nutritional, health and other social welfare concerns of indigenous peoples in the state, through partnerships forged with various federal agencies and local authorities.

48. Indigenous peoples have attempted to regain traditional lands that are now under the control of non-indigenous occupants. In Mato Grosso do Sul and elsewhere, FUNAI is considering demands for the expansion of the indigenous land areas registered under the pre-1988 regime and has initiated the procedure, described above, for the demarcation of additional areas. In a number of instances, in advance of a final resolution by the State,

indigenous groups have simply reoccupied places within their traditional territories that are titled to non-indigenous farmers.

49. The efforts to regain traditional lands have lead to tensions that on numerous occasions have erupted into violence. Alarmingly, the homicide rate among the indigenous population in Mato Grosso do Sul has increased significantly in recent years, with 19 homicides in 2004, 28 in 2005, 27 in 2006, and some 53 in 2007. The homicides have been a result of both internal and external tensions, and many killings and threats of violence against indigenous individuals are either directly or indirectly related to the indigenous land struggle. The Special Rapporteur heard reports of violent clashes between local police forces and indigenous peoples, and accounts of harassment by local police forces. He also received reports of violent confrontations between private armed guards, allegedly hired by non-indigenous farmers, and indigenous groups that have reoccupied land to which the farmers claim title. Related to these kinds of confrontations is the criminal prosecution of indigenous individuals for occupying land or engaging in other acts of protest.

50. In Mato Grosso do Sul, the Special Rapporteur met with a group of farmers who asserted that they or their forbearers acquired in good faith government-sanctioned titles to the lands they now use for agricultural production, which is considered the backbone of the state's economy. They complained that the federal government now only offers compensation for improvements on the land, and not for the value of the land itself, when non-indigenous occupants are removed from land that is demarcated and registered as indigenous. They also expressed concern that they are unable to ascertain from FUNAI which lands in particular are being targeted for demarcation, leaving them in a condition of perpetual uncertainty. A polarization of positions and interests was apparent to the Special Rapporteur during the visit, and he observed the need for every effort to be made to form a transparent and constructive dialogue among all the stakeholders, including indigenous groups, FUNAI, and the non-indigenous occupants of lands that may be targeted for demarcation and registration as indigenous.

51. A related problem is the invasion of lands that have remained or are now in the possession of indigenous peoples, including lands that have been demarcated and registered. The Special Rapporteur heard reports of the presence of new or persistent invaders (usually for illegal mining or logging) on Yanomami and Yekua territory in the

Amazon, Cinta Larga lands in Rondônia and Mato Grosso, and on Guajajara lands in Maranhão. The invasion of miners and loggers has various residual security and health implications for indigenous communities, including restrictions to freedom of movement, sexual violence against women and girls, and the arrival of new diseases brought into the territory from which indigenous peoples have little or no immunity, including malaria, tuberculosis, and smallpox, among others. For example, in the territory of the Cinta Larga people, women and children are reported to have been particularly affected by abuse. In Mato Grosso the lack of adequate action to remove the illegal occupants of Maraiwatsede territory (ratified in 1998)—the land of the Xavante people—has intensified conflict.

52. A notable black market for minerals has been developed in Brazil, and many indigenous individuals have been criminally prosecuted for the exploitation of resources on their own land in the Government's efforts to regulate the extraction and marketing of minerals. For some indigenous peoples with lands rich in minerals, the exploitation and sale of the resources has enabled a chance for economic opportunity on the one hand, but also brought on problematic interaction with outsiders that has led to indebtedness by indigenous individuals and the weakening of indigenous cultural bonds.

53. The federal Government has sought to combat illegal mining and other resource extraction on indigenous territories, and to secure those territories from non-indigenous invasion. For example, from 2003 to 2008 FUNAI maintained a task force in the territory of the Cinta Larga people to address the issue, in conjunction with security forces. FUNAI employed its policy of not just evacuating the non-indigenous invaders but also promoting sustainable land and resource use projects with the indigenous communities. Such efforts have had varying levels of success, as non-indigenous invasion of indigenous lands for resource extraction remains a persistent problem for many indigenous peoples.

54. The removal of invaders and non-indigenous occupants of indigenous lands presents a significant challenge. While State security forces are necessary to ensure that indigenous communities and their lands are protected from invasion, there have also been reported abuses by these forces. The Special Rapporteur observed that while further resources need to be devoted to ensuring police enforcement for indigenous peoples' protection, there needs to

be a far more coordinated approach to security with the consultation of indigenous peoples and in conjunction with the work of FUNAI.

#### **D. Large-scale development and mining projects**

55. Further lacking has been an adequate mechanism of consultation with indigenous peoples affected by major development projects – such as the construction of highways and dams – and large-scale mining activities, including activities in areas outside demarcated indigenous lands but that nonetheless affect indigenous communities. According to numerous reports, with regard to many such projects consultations have not taken place directly with the affected indigenous peoples through their own representative institutions, prior to approval of the projects and with the objective of achieving informed consent, as required by ILO Convention 169 (Art. 6) and the Declaration on the Rights of Indigenous Peoples (arts. 19, 32.2). As noted above, the absence of an adequate consultation mechanism reflects a broader problem: the need for fully harmonizing government policies, laws and initiatives for economic development with those to ensure the realization of the self-determination and related rights of indigenous peoples.

56. In January 2007, President Luiz Inácio Lula da Silva announced the Program to Accelerate Development (PAC), a large investment package to spur economic growth in the country. The package would fund US\$50.9 billion in infrastructure and energy projects in the Amazon and elsewhere, many of them to be developed on or near indigenous lands. Representatives of indigenous peoples have raised concerns about a lack of participation in the planning and execution of the projects affecting them, and an absence of clear safeguards to protect indigenous peoples' rights as part of the PAC initiative. For its part, the Government reports that it has redoubled efforts to ensure indigenous peoples' right of consultation in regard to PAC projects, primarily through FUNAI, and maintains that consultations in some cases have led to suspension of the project because of indigenous opposition. In any case, there appears to be an absence of a well-defined procedure for consultations that conforms to the relevant international standards and that indigenous peoples consider will consistently provide them adequate opportunity to be heard.

57. Major infrastructure projects affecting, in the aggregate, thousands of indigenous peoples include the construction of dams on the Xingu, Tocantins, Madeira, Estreito,

Tibagu, Juluena, Cotingo and Kuluene rivers, and the transposition of the São Francisco River. The Tucuruí Dam on the Toncantins River has caused the displacement of numerous indigenous families. The construction of the Belo Monte hydroelectric dam on the Xingu river is one of series of dams that were planned as are part of the Complexo Hidrelétrico Xingu project, affecting at least 10 indigenous groups by the environmental changes caused by the dam. Faced with criticism about the impacts of the project on the environment and indigenous peoples, the Government reports that it has pledged not to pursue the project beyond the Belo Monte dam. Even so, indigenous groups and NGOs complain that the Belo Monte project is being carried out without adequate mitigations measures and consultations with the affected indigenous communities.

58. Indigenous peoples are also being affected by international initiatives for economic development, such as the South American Integrated Regional Infrastructure (IIRSA) project. With total investment estimated at \$37 billion from the Inter-American Development Bank and various sub-regional banks, including the Brazilian Development Bank and the Andean Promotional Corporation, an underlying project objective is to increase access to South America's natural resources and put them at the disposal of foreign markets. For example, the Madeira River Complex, in the tri-border region of Peru, Bolivia, and Brazil is one of the anchors of the project and would transform the Madre de Dios-Beni-Mamoré-Itenez-Madeira River system into a major corridor for energy production and raw material export. The proposal includes the construction of four hydroelectric dams, most importantly the Santo Antônio and Jirau dams in Rondônia that will affect numerous indigenous groups. Adequate consultations with indigenous peoples should be ensured for all these development initiatives.

### **III. INDIGENOUS DEVELOPMENT AND RELATED HUMAN RIGHTS CONCERNS**

#### **A. Policy issues**

59. Whereas large-scale development projects and other factors often have adversely affected indigenous peoples and their lands, indigenous peoples more generally face

significant challenges to their own development in economic, social, and related spheres. As mentioned, census data collected by the IBGE maintain that Brazilian indigenous peoples are the most impoverished sector of the country's population. For a number of reasons related to historical patterns of discrimination and loss of control over lands and resources, both rural and urban indigenous communities face obstacles to development and are challenged to support themselves in ways appropriate to their cultures and world views.

60. The Government has developed an important redistributive program, known as the Family Stipend (*Bolsa Família*), to address extreme poverty in Brazil. The transfer of cash to poor families is made according to the level of poverty per capita and is based on the number of children and adolescents in the household. The Government reports that nearly 56,000 indigenous families receive the Family Stipend benefit, but that the program needs to be adapted to the socio-cultural realities of indigenous peoples in order to better enable their development on the basis of their own values and ethnographic patterns.

61. A noteworthy development initiative that specifically targets indigenous peoples is the "Indigenous Portfolio" (Carteira Indígena), a program implemented in partnership with the Ministry of Social Development, the Ministry of Environment, and FUNAI to support food security, income generation, and cultural enhancement projects proposed and carried out by indigenous communities themselves. This program, along with several other government and NGO development initiatives, have achieved positive results in many cases, such as in the Cunuri community in Alto Rio Negro, Amazonas, helping to better social and economic conditions. Still, members of this community, as well as other indigenous persons interviewed by the Special Rapporteur in various localities, many of them in positions of leadership, reported that their communities and organisations, are not effectively in control of the design and delivery of the programs. In order to be successful and break from cycles of dependency, development programs for indigenous peoples need to be both culturally appropriate and serve to enhance indigenous autonomy, including in the management and delivery of the program benefits. The Special Rapporteur acknowledges the substantial financial resources that the Government of Brazil has devoted to the Indigenous Portfolio and other development initiatives for the benefit of indigenous peoples, and the steps it has taken to enhance indigenous participation in their implementation.



## **B. Health**

62. By all indicators, indigenous peoples in Brazil suffer from poor health conditions, malnutrition, dengue, malaria, hepatitis, tuberculosis, and parasites are among the frequent ailments and principal causes of death. Indigenous women suffer from a disproportionate number of cases of cervical cancer, most likely due to lack of early detection related to scant adequate pre- and post-natal care. Indigenous communities also on the whole suffer from alarming rates of alcoholism and suicide.

63. The poor health conditions are often tied to precarious land tenure situations. As already mentioned, the highest indigenous infant mortality rate is in the state of Mato Grosso do Sul, where indigenous communities face scarcity of land and consequent inadequate access to food (*supra* para. 45-46). The remoteness of some indigenous communities is clearly another barrier to access to health services. During the visit, representatives of FUNASA, the government health agency, reported difficulties in providing health services in remote areas, especially the Vale do Javari region, where its small population of approximately 3,700 is spread throughout the entire region, and where indigenous peoples have expressed feeling “abandoned to death.” In response FUNASA has undertaken special measures to provide health services for the remote indigenous communities of this region, although dire conditions persist.

64. The Government has made some noteworthy efforts to improve indigenous health services more generally and adapt them to the particular needs of indigenous communities, including the creation of 34 Special Indigenous Health Districts (DSEI), administrated by FUNASA, which provide a network of services either directly or through agreements with indigenous organizations or non-governmental organizations. FUNASA has made attempts to increase indigenous participation in the DSEI programs, through the creation of local indigenous health committees to participate in all phases of the planning and execution of the health programs, and a presidential decree of 18 June 2009 will make the DSEIs administratively autonomous.<sup>10</sup> Additionally, FUNASA has put in place a nutritional monitoring system for some indigenous communities and worked in partnership with Ministry of Social Development and Hunger Alleviation to distribute food and vitamins in

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<sup>10</sup> Decreto No. 6.878.

the most critical areas such as Mato Grosso do Sul. The Government has also established indigenous health posts, which are located in urban centers near indigenous-populated areas and are intended to provide secondary or tertiary health services to indigenous peoples.

65. Of ongoing concern, nonetheless, is that FUNASA has been hamstrung by financial limitations, as well as by severe management problems, resulting in persistent shortcomings in the delivery of the health services to indigenous peoples. According to one study, even with significant increases in government funding for indigenous health between 2003 and 2006, the delivery of services worsened in most areas and infant mortality rose among the indigenous population.<sup>11</sup> The Government reports initiatives to develop pilot programs for selected DSEIs and the formation of a working group within the Ministry of Health to advance in a new management model for indigenous health care policy and services. Indigenous peoples and organizations, however, have pressed for deeper reforms, advocating for a special secretariat within the Ministry of health to take over indigenous health care responsibilities from FUNASA and for further measures to increase indigenous participation in all levels of health services, including the training of indigenous health providers.

### **C. Education**

66. The Constitution of Brazil of 1988 affirms the right of indigenous peoples to their native languages and their own methods of learning (Art. 210(2)). To that end, a series of Government initiatives beginning in 1991 provided for a model of “indigenous education” that sought to transform the existing system of “indigenous schools” (*escolas indígena*) operating in indigenous communities into a vehicle of intercultural and bilingual education respectful of local indigenous cultural specificities. The Government reports that between 2002 and 2007 the total number of indigenous schools rose 45.4 per cent, from 1,706 to 2,480, and that the public resources designated for indigenous education have progressively increased. There has been a corresponding increase in the number of indigenous children enrolled in indigenous schools, from 117,196 in 2002 to 176,714 in 2007, as well as an increase in the number of indigenous teachers and an improvement in

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<sup>11</sup> Moraes, P.D., “Ávia cursis da saúde indígena no Brasil”, en Conselho Indigenista Missionário 2008, *Violência contra os povos indígenas no Brasil, Relatório 2006-2007*, CIMI, 2008, pp. 23-24.

their formal qualifications. According to the Government, 95 per cent of the nearly 10,000 educators employed in indigenous schools are indigenous, and an indigenous person is the head of the Indigenous Education Steering Committee of the Ministry of Education.

67. In 2004, with the participation of indigenous teachers and representatives of indigenous organizations, the Government created the National Commission on Indigenous Education as a consultative body. Its efforts have been directed at the development of infrastructure for indigenous schools, the training of indigenous teachers, and the development of indigenous educational materials. Efforts to further enhance indigenous participation and cultural values in the educational system include the organization of a National Conference on Indigenous Education, to take place in September of 2009. In regard to higher education, the federal Government programs known as “University Diversity” and “University for All” have supplemented affirmative action programs instituted in public university across the country to promote enrollment of indigenous people and other minorities.

68. The Special Rapporteur notes with satisfaction that the Government has taken steps to establish differentiated educational programs and enhance educational opportunities for indigenous peoples at all levels. Significant challenges remain, however, to ensure adequate financial and human resources and culturally appropriate programming to meet the educational needs of all of Brazil’s indigenous peoples. During his visit, the Special Rapporteur received repeated reports of inadequate incorporation of indigenous languages and cultural perspectives into educational curriculum and texts, which may contribute to fact that the vast majority of indigenous children still do not enroll in school beyond primary education, despite trends of improvement in this regard as reported by the Government.

69. Additionally, the Special Rapporteur observed rundown infrastructure, a lack of supplies, and a shortage of teachers in an indigenous school in Motto Grosso do Sul, conditions that are reported to exist in many indigenous schools, despite the increases in government funding. In fact, as recently as 2005, 34.2 percent of indigenous schools did not have their own buildings and instead functioned out of community buildings or churches, and almost half of those school buildings did not have electricity or running

water.<sup>12</sup> Even though resources have been devoted to teacher training, the level of teacher qualification is still inadequate, with only 11 per cent of teachers at indigenous schools having completed a teaching certification degree and 10 per cent not having completed primary education as of 2005.<sup>13</sup> The Special Rapporteur also heard repeated complaints by indigenous leaders that they still face obstacles to playing a meaningful role in the administration of indigenous education in their communities.

#### **IV. Conclusions**

**70. The Government of Brazil has manifested a commitment to advance the rights of indigenous peoples in light of relevant international standards, having ratified ILO Convention 169 and supported adoption of the United Nations Declaration on the Rights of Indigenous Peoples. Brazil has important constitutional and other legal protections for indigenous peoples, and its Government has developed a number of significant programs in areas of indigenous land rights, development, health and education.**

**71. Nonetheless, further efforts are needed to ensure that indigenous peoples are able to fully exercise their right to self-determination within the framework of a Brazilian state that is respectful of diversity, which means exercising control over their lives, communities, and lands; and participating in all decisions affecting them, in accordance with their own cultural patterns and authority structures. Sustaining such efforts is complicated by entrenched paternalism toward indigenous peoples, by an apparent lack of understanding among much of the public and the news media of indigenous issues, and by opposing political forces.**

**72. Within the framework of constitutional protection of indigenous land, Brazil has developed an exemplary model for securing indigenous land rights from which other countries have much to learn. Under this model, the Government has demarcated and registered substantial areas of land, while many other areas of traditionally-occupied**

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<sup>12</sup> Censo Escolar INEP 2005

<sup>13</sup> Ibid.

indigenous land remain to be demarcated and registered amid a number of challenging factors.

73. A problem often to be confronted in the process of recognizing and securing indigenous land is non-indigenous occupation of the land. This problem is especially pervasive in areas outside of the Amazon region where there is heavy non-indigenous settlement, including in the agribusiness belt in southwestern Brazil. Tensions between indigenous peoples and non-indigenous occupants have been especially acute in the state of Mato Grosso do Sul, where indigenous peoples suffer from a severe lack of access to their traditional lands, extreme poverty and related social ills; giving rise to a pattern of violence that is marked by numerous murders of indigenous individuals as well as by criminal prosecution of indigenous individuals for acts of protest.

74. Even when indigenous lands are already demarcated and registered, indigenous peoples' rights over lands and natural resources are often threatened by non-indigenous occupation and invasion. Illegal occupation and invasion of indigenous lands, for natural resource extraction or other activities, causes a myriad of adverse consequences for the indigenous communities concerned, including in areas of health and physical security, with violent confrontation in many cases a feature of the non-indigenous presence.

75. There is an apparent lack of full harmonization of the Government's priorities for economic development with the existing laws, policies and government commitments aimed specifically at benefiting indigenous peoples. This problem is manifested by the absence of adequate consultation with indigenous peoples on the planning and execution of major development projects such as dams and natural resource extraction activities that affect them.

76. Indigenous peoples of Brazil rank low in all human development indicators, including access to health, education, and justice. In this regard, the Special Rapporteur welcomes the myriad efforts being made by FUNAI, FUNASA, and the Ministry of Education, among other government agencies, to improve the socio-

economic conditions of indigenous communities. Further efforts are needed to combat the scarcity and lack of efficient use of resources devoted to much-needed programs, and to enhance the inclusion of indigenous peoples in roles in governmental agencies and in the delivery of services.

## **V. Recommendations**

**To the Government of Brazil:**

### *Awareness raising*

77. In partnership with indigenous peoples, and with the support of the United Nations, the Government should develop and implement a national campaign of education on indigenous issues and respect for diversity, highlighting ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples and the Government's commitment to these instruments. This campaign should target and seek to involve policy makers at all levels, the general public, educational institutions and the news media.

### *Self-Determination*

78. Every effort should be made to enhance the control of indigenous peoples over their communities, territories and natural resources; including providing effective recognition of indigenous peoples' own institutions of authority and customary laws, to the extent compatible with universal human rights standards.

79. Relevant government agencies should, to the extent possible, facilitate greater decision-making power by indigenous peoples over the delivery of government services in their communities, and assist them to develop the capacity to effectively exercise that power.

80. FUNAI's programmes should all have a specific orientation to support and build capacity for the exercise of indigenous self-determination and, to that end,

should continue to increase indigenous representation within its own leadership and technical staff.

81. All efforts should be made to enhance indigenous peoples' representation in legislative, executive, and judicial institutions at the local, state and federal levels; and indigenous peoples should be accorded the juridical personality necessary for them to act on their own in public proceedings and to enforce their collective rights.

82. The Government should ensure adequate consultations with indigenous peoples in regard to all legislative or administrative decisions affecting them, in accordance with applicable international standards. To this end a law or other appropriate mechanism should be developed to define a procedure for consulting with indigenous peoples. This procedure should itself be developed in consultation with indigenous peoples and should apply, inter alia, in regard to the development projects and natural resource extraction activities having direct impacts on indigenous peoples, including such activities that are within or outside of demarcated indigenous lands.

#### *Demarcation and Protection of Lands*

83. FUNAI should be ensured adequate funding and staff to proceed effectively with the process of demarcating and registering indigenous lands, in accordance with the applicable laws, regulations and international standards.

84. Measures should be taken to improve the mediation capacity of FUNAI and other relevant governmental institutions to deal with conflicting interests in relation to indigenous land and resources, and to work with state and local governments to implement such mechanisms and ensure protection from discrimination and equal opportunities to indigenous peoples in this regard.

85. In exercising whatever powers they have with regard to indigenous lands, all public institutions and authorities, at both the federal and state levels, should be aware of and conform their conduct to the relevant provisions of Convention 169 and

of other applicable international instruments which provide protection of indigenous peoples' rights in lands and natural resources; and these protections should be strengthened by domestic legislation.

### *Health*

86. The Ministry of Health, in consultation with FUNAI and indigenous peoples, should continue efforts to improve the delivery of health services to indigenous peoples, especially in remote areas, with attention to the special health needs of indigenous women and children. Every effort should be employed to enhance indigenous peoples' participation in the formation of health policy and delivery of services, including with a view to better incorporating traditional indigenous health practices. All medical professionals should be provided with comprehensive medical training that includes traditional methods employed and that is provided in the language of the community.

### *Education*

87. Further efforts should be made by FUNAI, the Ministry of Education, state and municipal educational authorities and local partners to improve the quality and availability of education to indigenous children and youth, including through the incorporation of indigenous systems of teaching, cross-cultural curricula, and bilingual programming into the education of indigenous children and youth; and to strengthen the participation of indigenous communities and their authorities in educational programming. Adequate and transparent funding for teachers, materials, and infrastructure for indigenous education should be secured.

88. Affirmative action programs for facilitating access by indigenous people to higher education should be strengthened in universities across the country.

89. Opportunities for skills training that would enhance the capacity of indigenous individuals and communities to be self-sufficient and to manage their own affairs should be developed and extended widely to indigenous peoples.



*Security Enforcement*

90. Federal, state and local authorities are urged to take further, coordinated measures to secure the safety of indigenous individuals and communities and the protection of their lands, in consultation with them, especially in areas with elevated incidences of violence. Authorities should ensure that persons who have committed crimes against indigenous individuals are swiftly brought to justice.

91. Measures should be taken to ensure that police and military personnel operating in indigenous areas are adequately trained and do not discriminate against indigenous peoples, and that they are disciplined for inappropriate or illegal action against indigenous peoples.

92. Law enforcement authorities should take care to avoid prosecuting indigenous individuals for alleged criminal activity when that activity is in fact part of a legitimate act of protest, for example, for the recovery of land; and any pending prosecutions for acts that were or related to acts of protest should be reviewed.

*Law and Policy Reform*

93. In consultation with indigenous peoples, new legislation should be adopted and existing laws reformed as necessary to implement ILO Convention 169, in light of the United Nations Declaration, and to generally harmonize Brazil's laws and policies with the principles and objectives of the Convention.

94. All Government economic and infrastructure development initiatives that may affect indigenous peoples should be reviewed and reformed as necessary to ensure that they are consistent with Convention 169 and the Declaration.

95. The Bolsa Família programme should be reviewed and reformed as necessary to ensure that its benefits extend equitably and effectively to indigenous peoples.

**To the United Nations Country Team (UNCT):**

**96. The UNCT in Brazil should consider employing an indigenous peoples' rights focal point, if not a team, in order to better incorporate the specific needs of indigenous peoples' into its programming. This should be done with a priority to include indigenous staff in the UNCT.**

**97. The UNCT should consider strengthening its relationship with FUNAI, potentially through initiatives that include, but are not limited to, collaboration on projects and training programs with a human rights based approach to development for indigenous peoples.**

**To indigenous peoples and their organizations:**

**98. Indigenous peoples and their organizations should consider devoting efforts to working with educational institutions and civil society organizations to develop strategies to engage political actors, the news media, the business community and others, with a view toward raising awareness on indigenous issues and improving or strengthening relations with non-indigenous sectors.**

**99. Indigenous peoples should endeavour to strengthen their capacities to control and manage their own affairs and to participate effectively in all decisions affecting them, in a spirit of cooperation and partnership with Government authorities and non-governmental organizations with which they choose to work.**

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