



**United Nations Special Rapporteur on the rights of indigenous peoples,  
Victoria Tauli Corpuz**

**End of Mission Statement**

**17 March 2016**

In my capacity as United Nations Special Rapporteur on the rights of indigenous peoples I carried out a visit to Brazil from 7 to 17 March 2016 to identify and assess the main issues currently facing indigenous peoples in the country and to follow up on key recommendations made in 2008 by my predecessor James Anaya.

Over the last ten days I have travelled to Brasilia and to the States of Mato Grosso do Sul, Bahia and Pará. I met with representatives of the three branches of Government in Brasilia, as well the national and local offices of the Federal Prosecutors and FUNAI, the vice Governor of Mato Grosso do Sul and several officials from Famasul, delegates from European Union and Norwegian Embassies, UN officials, Amazon Treaty Cooperation Organization (ATCO) and staff of the National Bank for Economic and Social Development (BNDES), representatives of indigenous peoples, a wide range of civil society and human rights organizations working on indigenous peoples' rights, as well as other actors whose activities impact on their rights.

I visited the Guarani-Kaiowá people in Kurussu Ambá, Guayviry, and Taquara indigenous lands as well as in Reserva de Dourados and the Terena Council in Mato Grosso Do Sul; the Tupinambás in Serra do Padeiro and Tikum villages and also spoke to representatives of the Pataxos from Comexatiba Indigenous lands in Bahia. In Pará I visited the indigenous lands of the Juruna in the village of Muratu, Volta Grande, and met with representatives of the Parakanã from Apyterewa Indigenous land and of the recently contacted Arara people from Cachoeira Seca indigenous land. I also met with representatives of the Curuaia and Xipaya in Altamira. The situation of the indigenous peoples in the Tapajos river basin was also explained to me by the Munduruku, the Arara Vermelha, Apiaká, Arapiun, Borari and Tapuia peoples from Para. I also held meetings with the national network of indigenous peoples, APIB. In total I met representatives of more than 50 indigenous peoples, including the Yanomami, Maxakali, Manoki, and Ka'apor peoples in addition to the Rede de Corporação Amazonica. Numerous requests for visits were obtained from indigenous communities throughout the country who described their difficult situations, but due to time constraints I was unable to visit them all.



I am grateful to the Government of Brazil for its invitation and the full cooperation it has provided, and for allowing me to carry out my visit freely and in an independent manner. I would also like to express my deep gratitude to representatives of indigenous peoples who invited me to visit their communities, indigenous organizations and individuals who assisted me in organizing parts of my agenda, as well as to those who travelled from their communities in order to meet with me in various localities. I would also like to express my gratitude to the UN Country Team for their support in ensuring the success of my visit.

During the course of my visit, I have been provided with a large volume of information from indigenous peoples, civil society and Government representatives. Over the coming weeks, I will be reviewing this information in order to develop my report which I will present to the United Nations Human Rights Council in September. The purpose of the report is to assist indigenous peoples and the Government to find solutions to the ongoing challenges that indigenous peoples face in Brazil. In advance of this report I will provide some preliminary observations and recommendations on the basis of what I have observed during my visit. These do not reflect the full range of issues that were brought to my attention, nor do they reflect all of the initiatives on the part of the Brazilian government.

First of all, I wish to commend the government of Brazil for a number of measures and initiatives it has taken to ensure the realization of indigenous peoples' rights. These include, among others:

- the constructive and pro-active role of FUNAI and the federal public prosecutors, despite operating in difficult circumstances, in particular those working in local offices;
- the establishment of an internationally recognized legal and administrative framework for demarcation and the government's opposition to the proposed Constitutional amendment, PEC215, which would undermine this framework;
- a series of decisions by the Federal Supreme Court to prevent evictions of indigenous peoples, in particular in Mato Grosso do Sul, Sao Paulo, Bahia, Rio Grande do Sul and Parana;
- the organization of the first National Conference on Indigenous Policy and the establishment of the National Council for Indigenous Policy;
- the constructive engagement of the Minister of Culture with indigenous peoples, based on the recognition of the symbiotic relationship between their cultures and their territorial rights and the associated need for policies that are based on an understanding of their distinct ways of life.
- efforts to implement differentiated services for indigenous peoples in the areas of health and education as recommended by the UN Special Rapporteur in 2009, including the acknowledgment of the need to improve



the bolsa familia programme to avoid negative impacts on indigenous peoples' ways of life.

- the support Brazil has provided in the international arena for the protection of indigenous peoples' traditional knowledge;

I also wish to note the existence of good practices of indigenous peoples and proactive approaches they are taking to pursue the realization of their rights. These include: the development of consultation protocols, self-demarcation of lands, alliances formed with the quilombola and ribeirinho communities to strengthen land and self-governance rights; and self-protection of territories. All of these constitute steps towards self-management and regulation of their territories and the exercise of self-determination and autonomy as envisaged in ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. I also commend the active network of civil society organizations assisting indigenous peoples in their assertion of rights and the establishment of a National Rapporteur on Human Rights and Indigenous Peoples.

### **General observations**

My visit to Brazil was a follow up to the 2008 visit of my predecessor, James Anaya. It was also preceded by a series of requests on the part of indigenous peoples and a number of communications by the Special Rapporteur with the government of Brazil between 2010 and 2015 in relation to Mato Grosso do Sul, the Raposa Serra do Sol ruling, the construction of Belo Monte and concerns in relation to the rate of demarcation and killings of human rights defenders.

My overall initial impression following my visit is that Brazil has a number of exemplary constitutional provisions pertaining to indigenous peoples' rights and in the past it has been a world leader in the area of demarcation of indigenous peoples' territories. However, in the eight years following the visit of my predecessor, there has been a disturbing absence of progress in relation to the resolution of long standing issues of key concern to indigenous peoples and to the implementation of the Special Rapporteur's recommendations. Instead, there have been extremely worrying regressions in the protection of indigenous peoples' rights, a trend which will continue to worsen unless decisive action is taken on the part of the government to reverse it.

The challenges facing many indigenous peoples in the country are enormous. These challenges include proposals for constitutional amendment PEC215 and other legislation which undermines indigenous peoples' rights to lands, territories and resources; misinterpretation of article 231 and 232 of the Constitution in the Raposa Serra do Sol decision from the part of the Judiciary, introduction of the temporal framework and imposition of constraints on indigenous peoples' rights to possess and control their lands and natural resources; the stalling of



demarcation processes, including 20 demarcations pending Presidential ratification, such as that for Cachoeira Seca in the state of Para; the failure to protect indigenous peoples' lands from illegal activities; on-going evictions and constant threats of further evictions; profound and ever increasing impacts of mega-projects in or near indigenous peoples' territories; violence, killings, threats and intimidation perpetuated with impunity against indigenous peoples; lack of consultation in relation to policies, legislation and projects impacting on indigenous peoples' rights; inadequate provision of appropriate health care, education and social services, as evidenced by indicators related to youth suicide, cases of illegal adoption of indigenous children, infant mortality and alcoholism as well as the accelerated loss of indigenous languages. As a result, the risks facing indigenous peoples are more profound than at any time since the adoption of the Constitution in 1988.

These risks and challenges tend to be obscured from international attention and scrutiny due to the significant achievements in the area of indigenous peoples' rights which Brazil realized in the past, in particular in relation to land demarcation in the Amazon area, and by the progressive stance which it presents in relation to the promotion of indigenous peoples' rights in the international arena.

There is a misrepresentation of the reality of demarcation of indigenous peoples' land in the areas outside the Amazon and this fact informed my decision to visit those areas. I am particularly concerned about the distorted presentation in the media and by other actors of indigenous peoples as holding too much land relative to their population numbers, when in reality it is the agribusiness sector which possesses a disproportionate percentage of the country's landmass. Even where indigenous peoples have demarcated territories in the Amazon region, they lack effective control over their resources due to increasing invasions and illegal activities such as mining and logging. In this regard, I would like to express particular concern in relation to the health impacts of illegal mining and the use of mercury in Yanomami lands. The situation of the Yanomami is reflective of the integral relationship between indigenous peoples' health, education and cultural rights and the realization of their territorial and self-governance rights. Furthermore, the efforts of indigenous peoples to reclaim their lands, prevent evictions and protect their territories from illegal activities frequently place them in conflict scenarios, as is the case of the Guarani-Kaiowa and Terenas in Mato Grosso do Sul, the Pataxos in Bahia, the Arara and Parakana in Pará and Ka'apor in Maranhao.



## **Reprisals, threats and killings**

A matter of most pressing concern is the extent of documented and reported attacks on indigenous peoples. According to CIMI, in 2007, 92 indigenous leaders were killed, whereas by 2014 that number had increased to 138 killings, with Mato Grosso Do Sul being the state with the highest number of deaths.<sup>1</sup> Attacks and killings frequently constitute reprisals in contexts where indigenous peoples reoccupy ancestral lands following long periods waiting for the completion of demarcation processes. I find it extremely alarming that a series of these attacks, involving shootings and leading to the injury of indigenous peoples in the communities of Kurusu Amba, Dourados and Taquara in Mato Grosso Do Sul, followed my visits to these areas. Even more alarming is the fact that indigenous peoples are reporting that no State authority has yet gone to these areas. I decry these attacks and call on the Government to put an end to these human rights violations, investigate and bring their masterminds and perpetrators to justice.

In these visits numerous community members in Mato Grosso Do Sul showed me bullet wounds on their bodies, brought me to the places where their family members had been killed, and recounted incidents involving arbitrary arrests and criminalization of their leaders. The approval in Congress of the anti-terrorism law, which has been criticized by a number of UN Special Rapporteurs, increases the risk of such criminalization. Likewise in Bahia, I received detailed accounts of practices of torture and arbitrary arrests. Staff and members of State and civil society organizations which work in cooperation with indigenous peoples also provided me with disturbing accounts of a regular pattern of threats and intimidation.

While it is noteworthy that there is recognition by the State of the need to protect human rights defenders, including indigenous leaders and defenders of indigenous peoples' rights, the information I received from communities throughout the country indicates that the programmes to realize this remain inadequate in the context of indigenous peoples. There is also a lack of trust in the police forces, in particular the civil and border police and in some cases even the federal police, arising from the involvement of officials in cases of violence against indigenous peoples. In all cases impunity allows the practice of violence by private security forces, armed mercenaries and State forces to continue unabated. Numerous cases of violence against indigenous peoples in urban setting were also reported to me - an emblematic and particularly disturbing one being that of the beheading of a Kaingang baby in Santa Catarina on 31 December 2015. The failure to report this horrific case by the mainstream media

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<sup>1</sup> Abril Indígena 2008 <http://www.coiab.com.br/coiab.php?dest=show&back=noticia&id=69&tipo=N&pagina=451> and Conselho Indigenista Missionario (CIMI) 2014 Report on violence against indigenous peoples in Brazil<sup>52</sup>



is regarded by many people I spoke to as symptomatic of the growing prejudice against indigenous peoples among the general public.

## **Mega projects**

Even in contexts where direct physical violence was not reported by indigenous peoples they face profound threats to their existence. This arises from the actions and omissions of the State and private actors in the context of development projects imposed upon indigenous peoples without any consultation or attempt to obtain their free prior and informed consent in accordance with ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. The gravity of the situation is reflected in the ethnocide case presented in 2015 by the Federal Prosecutors Office (MPF) in Altamira. Among the major issues which were raised by indigenous peoples I visited and whose representatives I met surrounding these mega projects were:

- The failure to implement the conditions established and necessary mitigating measures for the Belo Monte project, including the strengthening of the local FUNAI presence, demarcation of Cachoeira Seca indigenous lands, as well as regularization and full protection of Apyterewa and Paquicamba indigenous lands, compensation for loss of livelihoods, and the establishment of monitoring units to protect indigenous lands. The cumulative effect of this inaction has been to threaten the very survival of the impacted indigenous peoples;
- The use of the “stay of preliminary court decisions” (suspensao de seguranca) by the judiciary in a growing number of development projects to prevent legal challenges by indigenous peoples;
- The licence issued for the Belo Sun gold mining project in close proximity to the Belo Monte dam in the absence of consultation and the lack of a cumulative assessment of environmental, social and human rights impacts on indigenous peoples;
- The lack of consultation and the absence of demarcation of indigenous lands impacted by the Tapajos dam complex;
- The lack of consultation in relation to bauxite mining and associated hydro-electric power plants, which taken together amount to a major industrial complex, on indigenous peoples and the quilombolas in Oriximina, Para;
- The pollution of the Rio Dolce by the collapse of the Minas Gerais dam and its impact on indigenous peoples such as the Krenak who are dependent on the river for their livelihoods and subsistence;
- The absence of consultation and consent for the installation of major transmission line projects inside constitutional protected demarcated lands, such as those of the Waimiri-Atroari in Roraima.



These and other cases demonstrate a lack of understanding on the part of the Government of the nature of good faith free prior and informed consultations with indigenous peoples which are required in order to obtain their consent and protect their rights in accordance with the State's duties affirmed in ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples.

### **Land demarcation**

A constant refrain from all the indigenous peoples I visited and met was the urgent need for demarcation processes to be completed, as this is fundamental to all other rights of indigenous peoples. The urgency to demarcate these territories is exacerbated by the rate of deforestation, destruction of rivers, and depletion of soil quality due to intensive mono-cropping and mining activities, rendering the land and waters incapable of supporting indigenous people's food sustainability into the future. This context of extended delays in demarcation, and the rapid destruction of the life supporting capacity of their lands, is effectively forcing indigenous peoples into a situation where the only option they feel is available to them to guarantee their long-term cultural and physical survival is to retake their lands before demarcation processes are concluded.

The current stagnation of the demarcation processes was attributed by those with whom I met to a combination of factors, including:

- delays due to debilitation and understaffing of FUNAI,
- the judicialization of almost all demarcation processes by non-indigenous persons holding State granted titles;
- the precedent established by the Supreme Court in the Raposa Serra do Sol case and further entrenched by the Attorney General in Portaria 303;
- the lack of political will on behalf of the Executive to ratify and protect demarcated lands, and
- on-going and long-running threats by the Legislative to reform the demarcation process and to modify environmental legislation that impact on indigenous lands overlapping areas of interest for exploitation.

One of the common themes that emerged in my conversations with different actors in the Executive branch of government was that the feeling of being hamstrung by the Judiciary and the Legislative branches of government in the execution of their role in the protection of indigenous peoples' rights. While such impediments undoubtedly exist, they do not constitute an acceptable excuse for paralysation of the demarcation processes and the associated debilitation of FUNAI. The Executive should instead be developing its own proactive proposals to assert indigenous rights to land, through a thorough examination of all



avenues available to it, in collaboration with indigenous peoples and a significantly strengthened and empowered FUNAI.´

## **Outlook and conclusions**

Brazil is currently undergoing a period of intense political and economic turbulence. One of the issues contributing to this crisis is the alleged governmental corruption in relation to mega projects, including the Belo Monte dam, and the fact that it appears likely that a significant driver for such projects was individual political and economic gain. Such individual gains come at the expense of indigenous peoples' rights and potentially their very cultural and physical survival. In addition, this political and economic crisis serves to render indigenous peoples' rights and issues invisible and less significant in the eyes of the public. It is also coupled by attempts in Congress to weaken the constitutional and legislative protections afforded to indigenous peoples' rights.

At the same time, the Judiciary is increasingly invoking a legal doctrine from the military era, in the form of stays of preliminary court decisions, thereby restricting indigenous peoples' access to the courts in the context of projects which have significant impacts on their rights. While not necessarily binding in other cases, land demarcation is nevertheless being significantly hindered by the Supreme Court ruling in Raposa Serra do Sol. Impunity in relation to serious violations of indigenous peoples' rights including killings of their leaders is pervasive, while the capacity and local presence of FUNAI, the only State institution which is trusted by indigenous peoples and proactively acts on their behalf, is being debilitated to the point where it may soon no longer be able to fulfil its mandate. Indeed, the current measures being proposed in relation to FUNAI run completely counter to the recommendations of the previous Special Rapporteur who, echoing the demand of all of the indigenous peoples I have met during my visit, stressed the fundamental importance of strengthening FUNAI in order for the State to be able to fulfil its legal obligations in relation to the protection of the rights of indigenous peoples.

Indigenous peoples from throughout the country have repeatedly stressed to me that the prolonged absence of effective protection by the State is pushing them to reclaim their lands in order to guarantee their survival. Many of them have even stated that if faced with evictions they will not leave their lands and are prepared to die there if necessary. In effect, through its paralysis the Brazilian state appears to be establishing the conditions for conflict which will ultimately have a devastating impact on indigenous peoples and society as a whole. Many of the indigenous peoples have also expressed concern about the situation of isolated indigenous peoples in Para, Mato Grosso, Maranhao, Rondonia and Amazonas, in particularly in light of threats to FUNAI which has developed an





internationally respected approach to the challenge of protecting these highly vulnerable peoples.

There would therefore appear to be a perfect storm on the horizon, in which a convergence of these and other factors will lead to the pursuit of economic interests in a manner that further subordinates the rights of indigenous peoples. The risk of ethnocidal effects in such contexts cannot be overlooked nor underestimated.

### **General recommendations**

Should the political will to do so exist, a window of opportunity still remains for Brazil to reverse this trend and to live up to the emblematic global benchmark which it set for protection of indigenous peoples in its 1988 Constitution. The wealth of knowledge in relation to indigenous peoples' rights and issues, both within the government, in particular in FUNAI and the Federal Prosecutors Office, and among civil society organizations working with indigenous peoples, and the dedication of these organizations and their staff to the indigenous cause is an enormous asset. This, coupled with the determination manifested by all of the indigenous peoples I met to maintain their cultures, their languages and to determine their own futures, as well as the proactive measures they are taking to this end, offers reason for hope for indigenous peoples and Brazilian society as a whole.

With this in mind I will develop a set of recommendations in my report to the Human Rights Council to help find solutions to ongoing challenges that indigenous peoples face. Given the time sensitive nature of some of the issues I would like to provide some preliminary recommendations on the basis of what I have observed during my visit.

- Immediate measures should be taken to protect the safety of indigenous leaders and to conclude investigations into all killings of indigenous peoples;
- Efforts should be redoubled to move beyond the current impasse in relation to land demarcation, as the urgently needed solutions are possible if the necessary political will exists;
- There is an immediate and pressing need to revisit the proposed cuts to FUNAI's budget and to ensure that local FUNAI offices are not the target of such measures and are instead strengthened to provide the core services which indigenous peoples and other organs of the State rely upon;
- The jurisprudence of the ILO supervisory bodies and the guidance of the Special Rapporteur in relation to the implementation of the right to prior consultations in relation to policies, legislation and projects potentially impacting on indigenous peoples' rights should be reviewed and followed.



Such consultations should be conducted in a manner that caters to the specificities of each indigenous people, as affirmed under ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples;

- The State should acknowledge and support the proactive measures that are being taken by indigenous peoples to realize their rights in practice in accordance with their right to self-determination;
- Dialogue should be initiated with indigenous peoples in relation to the possible conduct of a National Inquiry to probe allegation of violations of their rights, raise awareness and provide some redress for human rights violations;
- The effective participation of indigenous peoples in the determination of how my recommendations and those of my predecessor can be implemented and overseen should be facilitated.