

UNIVERSAL PERIODIC REVIEW (UPR/UN)

THE RIGHT TO FREE, PRIOR AND INFORMED
CONSULTATION AND CONSENT
AND THE AUTONOMOUS PROTOCOLS IN BRAZIL

org.

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preface

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**THE RIGHT TO FREE, PRIOR AND INFORMED CONSULTATION
AND CONSENT AND THE AUTONOMOUS PROTOCOLS IN BRAZIL**

**SERIES JUSDIVERSITY
AND SELF-DETERMINATION:
LEGAL ADVICES AND TECHNICAL REPORTS**



**CURITIBA
2024**



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Preface

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56. Rede Juruena Vivo
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1. II Meeting of the Observatory of Community Protocols, Brasília-DF, August 2022. Collection: Liana Amin Lima/ Observatório de Protocolos, 2022.
2. Meeting of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), Room of the Human Rights Council of United Nations (UN), Barceló Sculpture. Collection: Luis Donisete Grupioni/RCA, 2022.

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We dedicate this report to the Indigenous Peoples, Quilombolas and Traditional Communities of Brazil.

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PREFACE

In the 20th Century, the modern society organized in sovereign States had to establish an agreement so that the human rights would be respected. This subtle and recognized affirmation demands an obvious reflection: so, the human rights, namely, the rights of the human being to live, feed, dress, laugh, share emotions, cultures, and spirituality, weren't being respected? The sovereign States, created with powerful juridical structures and strong repressive apparatus, weren't sufficient to impose agreed conducts consistent with the human rights? Therefore, human society disrespected human rights? The answer, known long before the 20th Century but exposed radically during its first half, isn't just a "no": the State structures were and still are the first ones to violate humanity and its rights. To be clearer: the State violates human rights! Not only in its most radical violating expression, like fascism and Nazism, but also through the so-called liberal democracy. The State that was born through the fiction of being an instrument to guarantee rights is, structurally, violator of rights!

This first and obvious reflection isn't isolated and exceptional. The modern society, European and expansionist, organized a structure of control and repression, called State, to guarantee the colonial expansionism and, thus, to violate human rights abroad. The colonial process of domination of the so-called Americas and Africa and the comparison with orig-

inal societies of these continents emphasizes the trace of violations that couldn't result in other thing than fascist and Nazi violence, that seized Europe in the beginning of the 20th Century. A society that builds wealth through slavery must found its ethical principles in despise of others, the supremacy of a few and explicit anti-human violence. That's how the society was built as a modern, colonial, and capitalist society. The violation of rights inherent to it.

However, the reaction to the violation of rights and exposition to a system ethically untenable demanded deep transformations in the behavior and perception of permanently perpetrated injustice. The capitalist modernity only felt the weight of this structure of rights' violation when the colonial and racist injustice hit Europe. The human tragedy of Nazism and fascism, in the 20th Century, uncovered the shame of racism and the National States didn't have any alternative than to solemnly declare that human rights should be respected, which is another way of saying this respect didn't exist until then. It was a self-critique and self-analysis. In the beginning, only the human rights taken individually were timidly protected, especially those connected to freedom and physical integrity of each people and their private property. Then, little by little, collective rights, economic rights, social and cultural rights started being recognized. Even rights that were not so obvious such as housing, education and feeding were included in this list, revealing that they were being violated. And kept being violated.

There's a strange contradiction in this revelation and pre-occupation. The National States were the ones who in its own organization established the need to respect human rights, but there's no doubt that the disrespect is committed by the State itself and, for its omission, there are cases of disrespect by corporations and individuals. Therefore, the international worry in protecting human rights sounds as this self-critique or explicit recognizing of the failure of politics imposed by National States to protect rights. Of course, the central rights of capitalism, such as contract and private property, including the individual property of land, are permanently protected with strong structures, like the Judiciary Branch, and with firm repression by complex military forces. Indeed, it's exactly in the protection of individual rights that dwells most part of the violations of human rights. The State, acting to guarantee individual rights of property, violates human rights, specifically collective rights.

Thus, the United Nations decided to create a system of Protection of Human Rights, with lots of monitoring difficulties, so that the National States recognized it as fundamental rights. Yet, of course it wouldn't be sufficient to establish a list, as complete as it could be, to effectively guarantee the compliance of these rights. The same States that declare solemnly the recognition of human rights in UN's assemblies, when return home stir their wild dogs against the peoples, groups of people and social movements in the name of unspeakable interests.

To overcome the monitoring and repressive deficiency, the United Nations created, in 2006, an instrument of control called Universal Periodic Review, so that the interested parts can make denunciations of violation, evaluate the human rights situation, and verify the attitudes of National States. This instrument became very important for defenders of human rights for the improvement of the system because it's the path through which people can alert to the most subtle forms of violations. The Universal Periodic Review occurs in cycles of four and half years and in 2022, the fourth cycle was opened. Alongside the information of the States and official organisms, other interested parts, such as human rights institutions, organizations and groups of the civil society can act presenting other information, including divergences, that will be taken into consideration during the review.

For the first time, CEPEDIS and the Observatory of Community Protocols of Consultation decided to participate on the Universal Periodic Review, especially in the cases of violation to the right of free, prior, and informed consultation to traditional peoples regarding policies and activities that directly impact their rights of territories. The idea, since the beginning, was to keep this participation by collecting material along the cycle to inform the new cycle when it's open.

The present publication of the submitted document and its explanations is one of the ways we found to give continuity to this work of monitoring, denunciation and protection of col-

lective human rights of traditional peoples and communities within the Human Rights Council of UN. To initiate this work, it was necessary to make a preparatory formation course to the cadres who would dedicate to its elaboration. After this publication, that results in the first phase of the work submitted e under analysis by the Council, other preparation courses will be programed together with the formulation of specific projects for the next cycle. This publication is one of the basic materials for that. The reading of this book is recommended to everyone interested in monitoring the State and keeping alive the struggle for Collective Human Rights of Traditional Peoples and Communities.

Enjoy your reading!

Carlos Marés
Curitiba
October 2024

PART I

UNIVERSAL PERIODIC REVIEW (UPR) AND THE RIGHT TO PRIOR CONSULTATION IN BRAZIL

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This publication is a result of collective efforts aiming the completion of the Report of the Coalition between Indigenous Peoples, Quilombolas, Traditional Communities and Civil Societies Organizations, presented to the 4th monitoring cycle of Brazil in the Universal Periodic Review Mechanism (UPR) of the U.N. Human Rights Council, in March 2022.

Before we contextualize its elaboration and results, we would like to emphasize, since the beginning, the substantial collaboration of many experts, researchers, indigenous, quilombolas and traditional communities' leaders and representatives, just as different civil society organizations' members for the construction of this work. Without this collaboration, paramount for its consecution, it would not have been possible to reach the density and coverage brought by the information here disclosed.

Recognizing the importance of these data and the need to share it with all the interested parts in the discussion about the right to prior consultation and free, prior, and informed consent and self-determination, the Observatory of Autonomous

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Protocols considered its diffusion to the public. Therefore, this work passes through two moments. The first one is the moment when the report is produced; the second one is when some of the researchers proposed to organize the material that was sent to this publication. In the face of this last circumstance, we chose to rebuild the pluriverse paths that culminated in this report, highlighting the Observatory of Protocols' co-operation as well as the efforts, challenges and recommendations derived from the present release. The following pages will address these issues.

1. Brief remarks about the document's background

The articulation that preceded the Report, then published, deserves to be well described. One of its precedents is the presentation of the document entitled "*Statement about the ILO Convention 169 application to the Indigenous Peoples, Quilombolas and Traditional Communities in Brazil*", report submitted by the Observatory of Community Autonomous Protocols and by the Due Process of Law Foundation (DPLF), with subsidies to the Regional Thematic Audience of the Inter-American Commission of Human Rights (ICHR/OEA), "*The right to free, prior and informed consultation and consent to the indigenous peoples*", realized in October 9th 2020, during the 177th Part-Sessions of ICHR.

The document was embodied through an important overview based upon the experience of Brazil, Bolivia, Colombia, Peru, and Mexico regarding the treatment of the Right to Free, Prior and Informed Consultation and Consent (FPIC) of

indigenous peoples, quilombolas and traditional communities by the respective States. This opportunity made it possible to publicize several violations and strategies for claiming rights of the peoples, such as the multiple situations where the Community Protocols of Free, Prior and Informed Consultation and Consent were elaborated and/or mobilized.

In Brazil, the mobilization realized by the Observatory of Protocols together with the Articulation of Indigenous Peoples of Brazil (APIB), the National Coordination of Articulation of Quilombolas Black and Rural Communities (CONAQ), the National Network of Traditional Peoples and Communities (Rede PCTS) and other organizations and collectives⁷ contributed to the systematization presented by the ICHR, in its Thematic Report “*Right to self-determination of indigenous and tribal peoples*”, of December 2021, about *free, prior and informed consultation and consent* (item 5), just as “*Autonomous protocols of consultation and other instruments of consent and consultation*” (item 7), which we fully transcribed, as seen below:

⁷ The complete list of institutions that signed the report are the following: Rede de Povos e Comunidades Tradicionais do Brasil (REDE PCTS); Articulação dos Povos Indígenas do Brasil (APIB); Coordenação Nacional de Articulação das Comunidades Negras Rurais Quilombolas (CONAQ); Observatório de Protocolos Comunitários de Consulta e Consentimento Livre Prévio e Informado (UFGD/ PUCPR); Rede de Cooperação Amazônica (RCA); Rede Cerrado; Rede KÓDYA - Comunidades Organizadas da Diáspora Africana pelo Direito à Alimentação; Articulação Rosalino de Povos e Comunidades Tradicionais do Norte de Minas; Movimento dos Atingidos pela Base Espacial de Alcântara (MABE); Movimento dos Atingidos e das Atingidas por Barragem (MAB); Coalizão Negra por Direitos; Centro de Pesquisa e Extensão em Direito Socioambiental (CEPE-DIS); Associação Nacional das Defensoras e Defensores Públicos (ANADEP); Terra de Direitos; Instituto Socioambiental (ISA); Instituto de Pesquisa e Formação Indígena (Iepé); Operação Amazônia Nativa (OPAN); Conselho Indigenista Missionário (CIMI); Cáritas Brasileira; Federação de Órgãos para Assistência Social e Educacional (FASE).

Free, prior, and informed consultation and consent

176. The right of the indigenous and tribal peoples to prior consultation and consent before the measures that affects them occupies a central place in the relationship agenda between the State and the above-mentioned peoples. It has been, for years, a prominent right regarding the issues addressed by indigenous peoples in the face of the Inter-American system.

177. The right to free determination is the fundamental premise of the right to consultation and consent. The obligation of the States to guarantee to the indigenous peoples the right to free, prior, and informed consultation and consent whenever it disposes measures of any nature that affects them is established in the ILO Convention 169 (Article 6.1.a., 6.2. and 15.2), the UN declaration about indigenous peoples (Articles 2, 17, 19, 32, 36, 38) and the American Declaration of indigenous peoples (articles XX, XXIII, XXIX and XXVIII). In the Inter-American system, the ICHR and the Inter-American Court of Human Rights advanced in regulations about the matter and the specific safeguards about the right to free, prior, and informed consultation and consent through the guarantees set through the Inter-American instruments, such as the American Convention of Human Rights (CADH) (Article 21) and the American Declaration (Article XXIII). Furthermore, the Inter-American Court of Hu-

man Rights recognized that the obligation to consult constitutes a general principle of international law. Ensuring this right is one of the fundamental corollaries of cultural diversity and the right to free determination.

178. However, the Commission observes that there is not a unique form to practice this right. Consultation and consent were reframed by the indigenous and tribal peoples based upon their self-determination. The indigenous and tribal people carry out many different practices, processes, and mechanisms by exercising their autonomy. There are numerous experiences in the region that generated their processes of consultation through life plans, protocols of self-consultation, mandates, their own system of knowledges, *inter alia*. These exercises are based in the right to define how they wish to pursue the entitlement of their rights within their self-determination.

179. One of the mechanisms commonly applied is the elaboration of self-consultation protocols or community autonomous protocols of consultation and consent. Generally, it pertains to documents elaborated by the indigenous peoples themselves, where norms and procedures linked to the implementation of prior consultation are detailed. These instruments allow to contemplate a diverse collective identities, considering that they are directed to clarify the internal government of each people and to establish its rules concerning decision-making

processes and political representation. The protocols seek to inform the State about how it should dialogue with the peoples regarding the decisions that affect their rights.

180. In this context, the ICHR underscores that it corresponds to the States the duty to respect and guarantee, without discrimination, the consultation and consent exerted by the indigenous and tribal peoples, based upon their self-determination. The opposite may conduct to a homogenizing form of the mechanism of consultation with the indigenous and tribal peoples, that would not reflect the cultural diversity of each reality. Standardized processes should not be sought, even if based upon legislative measures, since it could standardize every people in a common pattern. Conversely, a constant intercultural dialogue should be pursued between the normative systems and the indigenous and tribal rights, the national law, and the international law of human rights.

181. By the other hand, the Inter-American Commission warns that, in some contexts, the recognition of the right to consultation in some national regulations have had counter-productive effects to the free determination of indigenous and tribal peoples. Aware of that, the ICHR considers that necessary measures should be adopted to fully ensure the exercise of free determination and autonomy of peoples with their broad participation whether through laws in this regard or not. In any event, it should

be recognized by the state institutions and cover its application to any action inside the indigenous territories. This entails that the States should abstain the use of concepts such as “public use”, “social interest”, or so, employed to benefit the private sector overriding the rights of communities and indigenous and tribal peoples. In plurinational states these practices reflect approaches that exclude peoples and communities, reproducing discriminatory practices and obstructing their right to the free determination of their lands and territories. Likewise, the judicial power and the High Courts play a fundamental role on ensuring the validity of this right. The judges should accomplish the principle of conventionality and attend the demands of every people founded on international standards of human rights.

182. The Commission reminds that the States are responsible to guarantee the right to consultation and consent, and this implies on the absolute impartiality of officials with eventual participation on these processes. The circumstances in which the public entity in charge of realizing the consultation is the same one that promotes extractive or energy projects are observed with concern, since it converts them in one-sided State actors that could privilege the interest of individuals. Another concern transmitted to the ICHR involves the cases where the States transfer obligations to the interested companies related to consultation processes. Frequently, the compa-

nies responsible to realize the procedures of consultation are directly interested in the advance of these extractive and energy projects. The Inter-American Commission of Human Rights emphasizes that, according to the responsibility of the companies to respect human rights, contained in the Guiding Principles on Business and Human Rights, the proper safeguards should be generated to respect the rights of indigenous and tribal peoples.

183. In contrast, as it has been witnessed for many years, the indigenous and tribal peoples and their traditional territories are being heavily impacted by projects made without consultation. These projects result in numerous evictions of indigenous and tribal communities from their land, putting at risk not only their right to free determination but also their traditional livelihoods, their way of living in harmony with nature, their culture and ethnic identity, forged in these territories through thousands of years.

184. The information received by the ICHR indicates that the consultations, when the State agrees to realize them, remain as a mere formality without real implications to the rights of indigenous and tribal peoples. In many cases, the processes of consultation are seen as an opportunity that limits the participation or negotiation regarding certain compensations. The ICHR was informed that the consultation processes end up favor-

ing certain correlations of interests adverse to the communities' particular systems, and this generates significant pressure. In some cases, these processes undermined the organizational structures of those collectives by generating divisions and confrontations amongst them. In other cases, the consultation is conducted as a mere formality due to the persistent imposition of development models which privilege activities of extractive nature over the collective interest of communities and their own vision of development. Such situation motivated indigenous peoples to declare the consultation processes "useless and unfeasible".

185. Other obstacles identified were the exclusion of certain matters (such as the consultation about legislative measures, infrastructure projects, mining concession) or specific zones considered "strategic areas" or similar. The identification of peoples also worries, since the consultation is often realized only with a segment of a particular people, which conditions the recognition of indigenous peoples concerning their inscription in each data base or official registration and causes the demand of recognition as indigenous peoples as a condition to the consultation. The lack of adequate processes to consultation and consent implies favoring investment and development projects rather than the right to free determination.

186. On the other hand, the Commission remembers that, in the international law of human rights, some

conditions are recognized as obligations to obtain consent: (i) forced removals of indigenous peoples from their lands and territories; (ii) storage and disposal of dangerous wastes in the territory of a community; and (iii) military activity. Additionally, in the Inter-American system, the ICHR and the Inter-American Court of Human Rights referred previously to the cases which demand obligatory consent when it comes to large scale projects. Regarding this issue, the Court determined that “when it comes to development or investment plans of large scale that would provoke greater impact inside a territory (indigenous or tribal), the State has the obligation, not only to consult the people, but also to obtain free, prior and informed consent according to the communities’ customs and traditions”. In this way, the indigenous people have the right to consent as a prerequisite for the development of activities that could put at risk their physical and cultural survival. Following this line, the Commission underlined that “large scale development or investment plans” covers the characteristics of the project which determine its magnitude or dimension and the human and social impact of the activity according to the circumstances of each indigenous or tribal people affected.

187. Beyond these factors, the substantive dimension of this right refers to the requisite of obtaining consent about the rights of indigenous peoples based upon

self-determination, which is recognized in the dispositions of the American Declaration on indigenous peoples and the UN Declaration about indigenous people mentioned above. Since the adoption of the ILO Convention 169, which presumed the overcoming of the assimilationist paradigm in the international normative, at least two perspectives of consultation and consent can be seen. On the one hand, an approach that establishes as its main principle the participation through previous consultation. On the other hand, there is a conception linked to the centralization of free determination and the modalities of participation and consent. The commission takes note that there is a broad set of international jurisprudence and statements in terms of human rights aiming the interpretation of the rights and obligations of the States linked to the respect of consent. Increasingly, the prior and informed consent have been accepted by judicial and quasi-judicial organisms as a milestone for any action that could be taken pertaining indigenous peoples, tribal communities, and their human rights.

188. The ex-Special Rapporteur on Indigenous Peoples James Anaya observed that “the declaration and many other international sources of authority, together with practical considerations, lead to a general rule in which the extractive activities shouldn’t take place inside the territories of indigenous peoples without their free, prior and informed consent”. Likewise, he underpinned

that the importance of obtaining consent ranges according to the particular circumstances of indigenous peoples, wherefore if the proposed measure is susceptible of generating direct and considerable effects against the life and territories of these collectives, the consent should result demandable. Similarly, Tauli-Corpuz, ex-Special Rapporteur, argued that the starting point to analyze the demand of consent is to evaluate if the substantial rights of each indigenous people is at risk. Thus, “each restriction of these rights, as well as the decision of proceeding without free, prior, and informed consent of the indigenous peoples, imposes to the State the burden of demonstrating the permissibility of the given according to international criteria of legality, necessity and proportionality related to a valid public end.

189. Moreover, the Committee on the Elimination of Racial Discrimination (CERD) urged the States to obtain free, prior, and informed consent from the indigenous and tribal peoples before the approval of any project that could affect their lands. By the same token, on its General Recommendation number 23 (1997), related to the rights of indigenous people, recommended to the States to guarantee that no legislation is approved, and that no decision is taken if it is going to directly affect the rights and interests of indigenous and tribal peoples without their free, prior and informed consent.

190. The ICHR considers that to enhance this frame of understanding that “consultation does not imply the right to veto” reflects a reductionist and simplified view of the matter and unawareness of the free determination of indigenous and tribal peoples. The term “veto” generates the impression that the decision is arbitrary, and it doesn’t take into consideration other points of view, therefore it is not compatible with the values of dialogue and mutual understanding that inspire a consultation process. The Commission observes with concern certain jurisprudential tendency, negative to the indigenous people, according to which the right to consent is qualified as the “right to veto”. The opposite would imply the assumption that the process of decision making by the State has the capacity of imposing certain activities or initiatives, what is inappropriate in a context of inclusive democracies. This weakens the self-determination as the capability of using, beneficiating, and taking decisions about traditional territories. Opposing to a decision that the indigenous and tribal peoples consider severely injurious to their rights isn’t a veto, is the exercise of free determination.

191. The ICHR considers that the State’s duty of consulting to obtain consent has a central role in the establishment and development of respectful relations based upon the rights between States and indigenous and tribal peoples and the facilitation of self-determined development

of indigenous and tribal peoples. As representatives of indigenous peoples highlighted in dialogues with the ICHR, the decision of conferring consent or not face to certain measure depends on its reflection of collective rights, the strengthening of culture and organization forms, and depends if it is ecologically sustainable or if it consolidates the well living of its population. The decisions based upon their own rights taken by the authorities of peoples regarding their territories should not have any kind of interference or pression derived from State organisms of private entities. Thereby, the requisite of obtaining such consent is necessary to the consolidation of fundamental rights, including the right to free determination (...).

7. Autonomous protocols of consultation and other instruments of consultation and consent

297. The indigenous and tribal peoples employed their own mechanisms to implement the consultation and consent, primarily through protocols of consultation, or autonomous community protocols of consultation. The ICHR received information about many initiatives on the part of indigenous and tribal peoples in this respect. One of the countries where this practice was undertaken is Brazil, where according to the report, since 2014, the construction of many protocols of consultation and consent were registered as documental, written, oral or audiovi-

sual materials by indigenous peoples, quilombolas and traditional communities. These peoples elaborated their own protocols to externalize to the State their respective rules, norms, and procedures regarding the realization of consultation, just as the organizational and decision-making forms of each people.

298. The commission, with satisfaction, takes note that, until the publication of this report, 13 protocols of quilombola communities, 25 of indigenous peoples, 1 joint protocol between indigenous people and quilombolas that share the same territory and 14 protocols of traditional communities are published or being build. Regarding the protocols of traditional communities, a diversity of collective identities is considered, such as extractive communities, fishers, riversides, gatherers of flowers and the Romaní Calon People. In the same way, many biocultural protocols were developed, relative to traditional knowledge and biodiversity issues.

299. Within regional meetings and answers to the survey of this report, the ICHR received the information about published protocols by other indigenous peoples or protocols that are still in process of elaboration in other countries. For example: the Protocol for Free, Prior and Informed Consultation through the vision of Uwotuja People of Venezuela, the Protocol for Free, Prior and Informed Consent of the Nahua Peoples in Honduras, as

well as other initiatives of the Lenca and Chorti people of Honduras to elaborate consultation protocols related to forest governance, and initiatives in Surinam to develop consultation protocols, between other examples. Moreover, representatives of the Maya people of Belize informed about a consultation protocol developed together with the Belize government regarding activities that impact their territorial rights.

300. The aforementioned demonstrates the growing interest of indigenous and tribal peoples in this kind of initiative to implement consultation and consent, in particular face to what they consider as state practices, laws and politics that doesn't guarantee effectively the consultation and consent in the context of extractive projects and similar threats that would affect their rights. The indigenous and tribal peoples base these protocols in their right to free determination and international instruments such as ILO Convention 169 and the Declarations of UN and OEA about indigenous peoples' rights. Some advances were informed about the recognition of consultation protocols in concrete cases, for example, the Supreme Court in Brazil recognized the binding quality of the Juruna people's protocol, suspending the mining project Belo Sun. Likewise, the Constitutional Court of Colombia, established that the consultations realized by the State about mining activities that would affect the Res-

guardo Cañamomo and *Lomaprieta* of the Embera Chamí people should be realized following their protocol and traditional procedures for decision-making processes.

301. The ICHR considers that the elaboration of autonomous protocols of consultation contributed to decentralize the interpretation and application of these instruments from the consultation made by the States, transforming them into instruments of autonomy and free determination of indigenous and tribal peoples. The processes of building protocols could help to reinforce the institutions and normative instruments of self-government and decision-making of these peoples, helping to strengthen the unity within peoples and communities and consolidating positions regarding the necessary measures to respect their rights.

302. Other practices include the incorporation of international standards about free, prior, and informed consent in indigenous peoples' own normative. There are many initiatives from the Spokane tribe in the United States, to apply the international standard of free, prior, and informed consultation and consent as a guiding principle to the codification of regulatory politics for fishing activities by individuals or indigenous peoples inside their reserve. Thus, state agencies or companies that seek to realize fishing activities in their lands should respect the final decision about this issue pertains to the Spokane

tribe, reaffirming their own comprehension about what is consultation and consent. According to the report, this affirmation of their right to consent objectives the recovery of their access to salmon, which has been an important part of the Spokane⁸'s economic and spiritual life.

The above paragraph was accompanied by footnotes which mentioned other participations of the Observatory of Community Protocols of Free, Prior and Informed Consultation and Consent and its contributions apart from the thematic hearing of October 9th, 2020:

496. Contribution of the Observatory of Community Protocols of Free, Prior and Informed Consultation and Consent in the regional meeting about the right to free determination (South America), May 11, 2021.

497 Contribution of the Observatory of Community Protocols of Free, Prior and Informed Consultation and Consent in the regional meeting about the right to free determination (South America), May 11, 2021. For more information about the consultation protocols of indigenous and tribal peoples of Brazil, as well as from other countries, see the Observatory's website (...).

⁸ The suppressed footnotes suppressed of the quote can be found in the original version of the text, available at: <https://www.oas.org/es/cidh/informes/pdfs/LibreDeterminacionES.pdf>. Access in August 09, 2023.

503 Contribution of the Observatory of Community Protocols of Free, Prior and Informed Consultation and Consent in the regional meeting about the right to free determination (South America), May 11, 2021.

Moreover, within the Report published by the Inter-American Commission of Human Rights in respect of the Thematic Hearing “*The right to free, prior and informed consultation and consent of indigenous peoples*” there’s the following excerpt:

During this regional audience representatives of peoples and indigenous organizations and African descendants of Brazil, Colombia, Mexico and Peru exposed the challenges on the implementation of the right to prior consultation and free determination of the indigenous, tribal and traditional peoples. Amongst the main problems, they mentioned that the States didn’t adopt effective measures to recognize and protect the ancestral territories of these peoples. They expressed special worries regarding the way that the prior consultation has been applied, denouncing that the consultation is neither prior nor consensual. In addition, denounced the role of certain States in the elaboration of draft bills and consultation regulations that reduce the international parameters on this issue. Still, denunciations were made about threats and aggressions against indigenous and tribal peoples defending their territories and free determination. In the audience, Alberto Brunori, Regional Representative

of the Regional Bureau for Central America from the United Nations High Commission, reiterated that prior consultation constitutes a genuine international obligation of the States. In turn, the ICHR reaffirmed that prior consultation constitutes a general principle of international law, and it is not an end but a way to guarantee other rights, such as free determination of indigenous peoples. The ICHR stressed the importance of not criminalizing indigenous and tribal peoples for summoning their rights and the possibility of recognition the part of the States of the autonomous protocols of consultation developed by such peoples⁹.

That report was built in a moment of various insecurities experienced by communities and traditional peoples in Brazil. In the country, indigenous peoples, Quilombola communities and traditional peoples and communities historically faced politics of genocide and ethnocide that were never eliminated from institutional practices and were brutally worsened during the Covid-19 pandemics. The pandemic, however, wasn't the main cause of this vulnerability of traditional peoples and communities. A whole set of dismantling and recoding were being held by the Federal Executive Power at the time, involving also a significative part of the National Congress, whose intentions were to deconstitute acquired rights by these groups in the re-

⁹ See: Anexo Comunicado de Imprensa 253/20. Available at: <https://www.oas.org/pt/cidh/prensa/notas/2020/253A.pdf>. Access in August 08, 2023.

cent history of the Brazilian democracy, considering the Federal Constitution of 1988.

We refer to the escalation of invasions against traditional territories, land grabbing, deforestation, mining, forced labor or equivalent to slavery conditions, tortures, sexual crimes, forced removals and executions of indigenous, Quilombolas and other peoples, as well as the advance of drug trafficking and illegal weapons commercialization within these areas. Furthermore, racist and discriminatory speeches given by public authorities against these peoples, wide conditions of negligence, omission and threat against the continuity of their existences which culminated not only in the recognition of explicit practices of harassment against public institutions that should guarantee the effectiveness of recognized rights, but also in the configuration of an unconstitutional state of things regarding socioenvironmental issues.

Many of these violations and violence are formally recognized by the Supreme Federal Court (STF) within the Non-compliance of Basic Principles (ADPF) 709, proposed by APIB and political parties, and ADPF 742, proposed by CONAQ and political parties. In both, the entities have achieved the obligation of the State in adopting measures of protection for the indigenous and traditional peoples, although the State itself offered resistance in the compliance of determinations¹⁰. Those are only some examples.

¹⁰ Some of the main measures required within the referred actions were related to cease the invasion of traditional territories, territorial protection, as well as the continuity of politics of recognition of these territories, just as vaccination to the indigenous and quilombola population as priority, considering the situation of extreme vulnerability of these ethnic-racial minority groups.

Besides, the right to free, prior, and informed consultation and consent kept being violated in several circumstances identified by signatory organizations of the Report. Enterprises were able to continue the procedures to its implementation, albeit during the pandemics the consultation processes stayed precarious or constrained by the state. Still, some processes were transferred to entrepreneurs and others, with multiple offenses to good faith, which constitutes an assumption for de consultation's validity. The right of peoples to FPIC was violated in successive cases, and their ways of living were put at risk according to the reports.

In fact, related to indigenous people the following topics were addressed: *i.* violations by the Legislative Power: Bill Number 191/2020. Mining in Indigenous Lands; *ii.* Threats to Territorial Rights and Violation of FPIC – cases of Kaya-bi, Munduruku and Apiaká people as well as Traditional and Riverside communities from the Teles Pires River; *iii.* Virtual consultations in the pandemics, contrasting the ILO Convention 169 (C169) and the Resolution 02/2020 of ICHR. In the case of Quilombola communities the following situations were reported: *i.* State omission regarding the recognition and titration of quilombolas lands; *ii.* Violations do FPIC and its worsening during the pandemics; *iii.* Quilombolas from Alcântara's case; *iv.* The case of quilombola communities affected by construction works of duplicating the highway BR-135 in the state of Maranhão; *v.* the case of quilombola communities affected

by transmission lines; and *vi*. The case of Quilombola communities of Oriximiná, in the state of Pará.

About the Traditional Peoples and Communities – broad category that, according to the Brazilian legislation, covers yard peoples and communities; gypsy peoples; artisanal fisherman; extractive communities; coast and marine extractives; *caiçaras*; *faxinalenses*; folk healers; islanders; *raizeiros* (related to extracting roots); *geraizeiros*; *caatingueiros*; *vazanteiros*; *veredeiros*; *sempre-vivas flowers' catchers*; *pantaneiros*; *marroqui-anos*; *Pomerano* people; *mangaba* catchers; *babaçu* coconut breakers; herdsman from Araguaia; communities of bottoms and latches of pasture; riversides; viners; *andirobeiros* (related to the tree *Andiroba*); *caboclos* and others – denounces were made about “attempts of weakening institutional spaces operating the destruction of the national politics regarding social participation and the exclusion of groups from the consultive and decision-making processes related to the construction and implementation of public policies directed to Traditional Peoples and Communities, directly affecting the lives of these groups, besides violating what's disposed in the ILO C169” (Report, 2020). Moreover, other situations were reported: *i*. violation cases against traditional territories in protected areas; *ii*. Traditional peoples and communities damaged by monocultures and pesticide contamination; and the highlighted point *iii*. Recognition of Traditional Peoples and Communities as subjects of C169 in jurisprudence.

The document seek to publicize the importance of Autonomous Community Protocols of free, prior and informed consultation and consent, found formally settled in the devices of the Federal Constitution of 1988, the ILO C169, the Declaration of the United Nations and the American Declaration about the Right of Indigenous Peoples, as well as in the exercise of autonomy and free determination and the right of these peoples and communities of being consulted according to their own organizations, institutions and political-juridical traditions (recognized in article 231, Federal Constitution/88 c/c article 6, C169 c/c articles 4, 18 and 19, UN Declaration about the Rights of Indigenous People). The attempts of overlapping general regulation about the issue were addressed, as well as restrictions to the Right to Free, Prior and Informed Consultation and Consent, violations to the FPIC and judicial decisions that recognize the juridical validity of protocols, such as *i.* Juruna (Yudjá) people case – Pará, Brazil; *ii.* Mura people case – Amazonas, Brazil; and *iii.* Irantxe-Manoki case – Mato Grosso, Brazil.

It is important to remember the requests that were made by the Inter-American Commission of Human Rights, which are: *i.* the ICHR should manifest about the need of National States to fulfill their obligations with the indigenous peoples, quilombolas and traditional communities implementing C169 as a fundamental legal framework for a new relationship between National States, Indigenous Peoples, Black Quilombola Communities and Traditional Communities in the Americas;

ii. That the ICHR manifest about the State's duty in recognizing, regulating, and titling traditional and collective territories and the obligation of the State in consulting peoples and communities, with guarantees to respect free, prior, and informed consent; *iii.* That the ICHR manifest about the duty of the State in consulting peoples and communities (and conducting the consultation processes) and that this obligation and responsibility of the State should never be transferred to companies interested in processes of environmental licensing regarding projects of infrastructure and development; finally, *iv.* That the ICHR manifest about the initiatives of governments in the region to realize virtual consultations, *on-line* and/or remote during the Covid-19 pandemics.

As specific requests for Brazil, the following were presented: that the ICHR manifest about the need of the Brazilian State to respect the self-recognition of indigenous peoples, quilombolas and other traditional communities and to recognize them as collective subjects of right regarding ILO C169; *ii.* That the ICHR manifest about the juridical nature and binding quality of the autonomous protocols of consultation, understanding the living experience of indigenous peoples, quilombolas and other traditional communities in Brazil and considering it an exercise of self-determination of peoples and disposition of good faith in the dialogue with National States, to guarantee juridical security to the parts involved in the consultation processes; *iii.* That the ICHR manifest concerning the need of the Brazilian State to observe the Resolution 01/2020 – “*Pandemics and Human Rights in*

the Americas” (approved by the ICHR in April 10, 2020), specially about the suspension of licensing processes for infrastructure works and productive and/or extractive projects that affect the territories of indigenous peoples, quilombolas and other traditional communities, due to the impossibility of carrying on with the FPIC processes; *iv*. That the ICHR manifest about the need of the Brazilian State not to promote and prevent any act of expulsion and forced eviction of traditional peoples and communities in territories claimed by them, although not officially recognized, specially face to the context of the Covid-19 pandemics; *v*. That the ICHR manifest about the need of the Brazilian State to recognize, regulate, and title every traditionally occupied territory and used by traditional peoples and communities of the country, recommending the suspension of every action and legal proposition that aims to transfer wastelands of the State; *vi*. That the ICHR monitors emblematic cases mentioned in the present Report, realizing audiences, visits, inspections, and specialist technical analysis.

Is also worth mentioning that, in 2020, we launched the “*Map of Community Autonomous Protocols*” – *virtual platform of the Observatory of Community Protocols*¹¹ where we provided a survey of protocols elaborated and publicized by indigenous peoples, black quilombola communities and other peoples and traditional communities in Brazil and other countries.

¹¹ Available at: <http://observatorio.direitosocioambiental.org/>.

2. Universal Periodic Review (UPR/UN) and the right to free, prior, and informed consultation and consent

Returning to the object of this publication, the Observatory of Community Protocols of Free, Prior and Informed Consultation and Consent, in March 31, 2022, submitted to the Human Rights Council of the United Nations a coalition report (civil society) to the 4th cycle of monitoring in Brazil, constant in the Mechanism of Universal Periodic Review (UPR/UN). With this objective, the report counted with a national network of representative organizations of indigenous peoples, quilombolas and traditional communities, research groups, human rights, and socioenvironmental organizations.

To update the cases for the present report, we realized on March 09, 2022, the first online module of the “*Extension Course about Universal Periodic Review (UPR/UN) and the Right to Prior Consultation of Traditional Peoples and Communities*”¹². In the opportunity, we invited peoples’ organizations and other partner organizations as a formation activity. We followed with conferences and online meetings to the second module, together with the organizations that confirmed interest to contribute in a collaborative way to the present coalition report.

¹² The course was realized through a partnership between the Observatory of Protocols, the Federal University of Grande Dourados – UFGD, the Pontifical Catholic University of Paraná – PUC-PR and the Network of Amazonic Cooperation – RCA. Matheus Hernandez (FADIR/ PPGFDH/ UFGD), Luis Donisete Grupioni (RCA/ Iepé); Carlos Marés (PUC-PR/CEPEDIS/Observatory of Protocols) and Liana Amin (UFGD/ Observatory of Protocols) participated as professors.

Between the organizations in coalition with the Observatory of Community Protocols, it's important to mention the Articulation of the Indigenous Peoples of Brazil (APIB), the National Coordination of Black Rural Quilombola Communities Articulation (CONAQ), the Network of Traditional Peoples and Communities of Brazil (REDE PCTS), the Amazon Cooperation Network (RCA), Cerrado Network, among others that cover 58 organizations of civil society.

Through a collective effort, the report points out violations to the right to free, prior, and informed consultation and consent (FPIC) of indigenous peoples, quilombolas and other traditional peoples and communities with the systematization of 82 cases of violations in the traditional territories (extractive and development projects), besides threats related to Bills such as PDL 177/2021, PL 191/2020, PL 490/2007, among others¹³.

It is important to highlight that this was the first systematization of FPIC violation cases in traditional territories of Brazil, realized by the civil society. This systematization contributes incisively not only to give visibility and denounce a reality of violations that, unfortunately, occurs in many regions of

¹³ The PDL 177/2021, proposed by Alceu Moreira (MDB-RS), deals with the authorization of the President of the Republic to denounce the ILO Convention 169; the PL 191/2020, proposed by the Executive, withdrawn from proceeding by the author. The text seeks to regulate the § 1 of art. 176 and § 3 of art. 231 of the Constitution to establish specific conditions to the realization of the research and mining decrees and hydrocarbons and exploitation of hydrological resources to generate electric energy in indigenous lands, besides instituting the compensation for restriction of indigenous lands usufruct, while the PL 490/2007, proposed by Homero Pereira (PR-MT), which seeks to regulate the art. 231 of the Federal Constitution, to dispose about recognition, demarcation and the use and management of indigenous lands; and changes the Laws number 11.460, of March 21, 2007; 4.132, of September 10, 1962; 6.001, of December 19, 1973.

Brazil and against various peoples, communities and biomes; but also, to provide data to rethink collective confrontation acts and strategies to guarantee the effectiveness of FPIC.

In this sense, the united efforts to the elaboration of this report were significant insofar as it produced internal results, generating political tools of collective action. Before that, through the network of researchers that the Observatory of Protocols congregates, we intend to continue this survey and the monitoring of cases. For this objective, we proposed the formation of regional Working Groups (GTs through biomes) during the 3rd Conference of the Observatory of Protocols, which occurred between September 13-16, 2023, in Brasília (federal district, Brazil).

In addition to the systematization of violation cases, the threats and risks involving state regulations about free, prior, and informed consultation and consent were appointed, with respect to the act of transferring to private companies the attribution of conducting and financing the consultation processes¹⁴. This situation contradicts the international parameters (ILO 169 Convention, UN Declaration about the Rights of Indigenous peoples and jurisprudence of Inter-American Court of Human Rights), because it regards an exclusive duty of the State.

14 About this topic, see: LUNELLI, Isabella Cristina; DA SILVA, Liana Amin Lima. *Estado de Coisas Inconstitucional no Brasil: a captura pelas empresas do dever estatal de consultar os povos e comunidades tradicionais diante dos procedimentos de licenciamento ambiental*. Direito e Práxis Magazine, v.14, n.1, p. 536-566, 2023.

Currently in Brazil, we have news about at least four initiatives to regulate the right of states to apply FPIC in the states of Pará (2018)¹⁵, Maranhão (2019, in effect)¹⁶, Paraná (2020, in effect) and Minas Gerais (2002, revoked in 2023)¹⁷. These discussions also were made in Bahia and Pernambuco.

Such regulations end up presenting restrictions to the right to consultation and consent, a right that emanates directly from the commitments assumed by the Brazilian State in international sphere through many human rights treaties, as well as the fundamental rights protected by the Constitution for indigenous peoples, quilombola communities and traditional peoples and communities in a broader way. For that matter, these state regulations lack from conventional and constitutional foundations materially and formally, restricting human rights standards, besides being elaborated and promulgated as violations to the prior consultation itself (considered “non-consulted norms”).

By demonstrating the scenario of the systematic violations to the rights of peoples by the Brazilian State – emphasizing the right to free, prior, and informed consultation and consent – 65 experiences were referenced regarding autonomous

¹⁵ Decree 1969, January 24, 2018. Governor’s office. Institutes de Studies Group responsible to suggest procedural rules orientated to the realization of free, prior and informed consultations to the traditional peoples and populations. DOE 33545, p. 5. January 25, 2018.

¹⁶ Decree of the State Secretariat of Environment and Natural Resources (SEMA) 76, May 22, 2019. Disposes about the previous participation of Traditional Populations and other alike organisms in the environmental license process.

¹⁷ Joint Resolution of the State Secretariat of Social Development and State Secretariat of Environment and Sustainable Development (SEMAD), 01/2022, revoked by the Joint Resolution SEDESE/SEMAD 02, May 23, 2023.

protocols (elaborated between 2014 and 2022)¹⁸ as an exercise of free determination of indigenous peoples, quilombolas and other traditional peoples and communities of Brazil as collective subjects of ILO Convention 169.

In this sense, the report took as a basis the recommendations about the rights of traditional peoples and communities receive in previous cycles of UPR to point out the present non-compliance of the Brazilian State, just as new matters were suggested related to the issue to justify the recommendations that will be presented to Brazil in the next cycles. Thus, we opted to transform the report in a book with this detailed presentation, so that this text and the report itself assist the complainant peoples, the human rights organizations, and the academic community to new and potent actions of defending rights.

Traditional peoples and communities

The indigenous peoples have a long-term history of participation in the international sphere demanding rights. The quilombola communities, in turn, have a more recent history of triggering the international system for human rights protection. Unlike these two experiences of major triggering of the system, other groups have an even more recent participation which, in the Brazilian context, have been recognized as the broad category of Traditional Peoples and Communities – TPC (PCT in

¹⁸ Data raised until March 31, 2022. For the present publication, we updated the survey according to documents available at the Map of Autonomous Protocols, launched and published in Brazil in August 22, 2023. 94 community protocols were accounted.

Portuguese)¹⁹. In fact, the participation of traditional peoples and communities in the construction of the report given to the UPR represented a milestone to the visibility of the TPCs on an international level. The construction of the report combined the participation of various peoples in a unique document, which demonstrated the importance of unified strategic litigation of the peoples of Brazil. Through this instrument, constructed by many hands (coalition), the traditional peoples and communities could externalize the situations of human rights violation that occurred in Brazil which the national State insists in not recognizing.

During the construction of the UPR, many segments of the peoples and communities around Brazil were mobilized. These peoples were able to externalize their main problems. The territorial rights of these communities and the absence of consultation face to private and State actions configured the main violated rights to be identified.

Many traditional communities until today do not have guarantee to access their territory and suffer with State slowness in processes of identification, certification, delimitation, and titling of territories. The construction of public policies and big entrepreneurships in traditional territories without consent substantiated in dramatic violations of ILO Convention 169.

¹⁹ According to the 3rd article, inc.I, Decree 6.040 of February 7th, 2007, which institutes the National Policy of Sustainable Development of Traditional Peoples and Communities, these peoples and communities are: *"groups culturally diverse that recognize themselves as such, holding particular social organization forms and that occupy and use territories and natural resources as a condition to their cultural, social, religious, ancestral and economic condition, deploying knowledge, innovation, and practices generated and transmitted by tradition"*.

For this reason, it's necessary to address the growing violation of rights of traditional peoples and communities internationally, in a perspective of strengthening the support networks to these communities.

Universal Periodic Review (UPR/UN): What is it?

The Universal Periodic Review (UPR) consists in a mechanism of international evaluation prepared every four years and a half between the 193 member countries to verify the compliance of obligations and commitments on the part of the States to elaborate the recommendations on the field of human rights.

Therefore, this mechanism expects that every member states of the UN pass through a periodic revision of their situation regarding human rights. The State under revision receives recommendations of other States and positions itself in relation to each recommendation, accepting it or not. Thus, this is a mechanism that aims to repair the traditional accusation of selectivity in the Human Rights System of UN, disposing on institutional level of devices through which every country passes indiscriminately. It's important to mention that this innovative mechanism was created precisely in the context of a reform in the Human Rights System of UN, culminating in the substitution of the former Human Rights Commission, in 2006, by the present Council of Human Rights, whose groundbreaking aura is due to the emergence of UPR.

This process of revision, according to its resolution of creation, is based upon the UN Letter, the Universal Declaration of Human Rights, besides other international documents

about human rights. The UPR pretends to be objective, clear, and non-selective, ensuring the participation of every interested part, including non-governmental organizations and national institutions of human rights. It is known that the initial intention of the Council to create a mechanism free of politicization is virtually impossible, considering that, since the organism is constituted by States, politics will always be present.

In each round of every four and a half years, 42 States pass through the review divided in three annual sessions, respecting an equitable geographic distribution. The UPR process has four phases. The first is the elaboration of reports; the second refers to the interactive dialogue; the third is the adoption of the final report; and the last phase is when the monitoring of the implementation of recommendations is realized, along with the preparation for the next review.

Everything starts with the delivery of the documentation to the Human Rights Council before the meetings in Geneva. The documents are basically the following: the national report of the reviewed country itself regarding its situation in terms of human rights, the UN reports, constituted by a synthesis of everything that the Human Rights mechanisms of UN (special rapporteurs, treaty bodies) produced about the reviewed country in the last four years and, finally, the reports of civil society and other interested parts with respect to the situation of human rights of the country that work as a legitimate counterpoint to the official speeches.

The national report contains information compiled by the State itself and expresses the main achievements and internal challenges in terms of human rights, summarized in 20 pages. Although it's not mandatory, the States are encouraged by the UN to organize the information as of a broad process of national consultation, counting with the participation of civil society.

The second base document refers to the reports of the UN summarized in 10 pages by the High Commissioner Office for Human Rights of the UN and are essentially based upon reports from the organisms of treaties and special procedures of the human rights system. Therefore, it represents the UN official voice in this process regarding the situation of the country.

The third report is from the civil society and the so called other interested parts (for example, other international organizations of human rights). This interested parts and the organizations of civil society prepare documents (individually or jointly) where they provide an overview of the situation of human rights which differs from the one provided by the State perspective. This information is submitted to the High Commissioner, responsible to check and compile it in a report of 10 pages.

The civil society report is an indispensable piece to effective and the effectiveness of the UPR, since it is the formal manifestation of counterpoints to the official speeches of the State, which usually praise more than reveal and assumes responsibility for systemic problems of human rights in their territories. It's worth noticing that, originally, these reports of civil society

were called *shadow-reports*, because they made a “shadow” on the official reports of governments. As an effort of redefining and considering the customary potential of these reports, the civil society started to refer to the reports as “light-reports”, precisely to point out the shining nature of these documents.

Both the report elaborated by States under revision and the two summaries drafted by the High Commissioner are presented until six weeks before the States’ review. Thus, the distribution, publication and translation are guaranteed in official UN’s languages.

At the end of this documentation remission to the Human Rights Council, the second phase of the UPR mechanism occurs. Synthetically, it consists of the participation and intervention of the reviewed State, Council members and observers. At this point, the States’ recommendations are pronounced to the countries that are passing through the review, called State Under Review (SUR).

During this UPR stage, the review is commanded by *Troikas*, a group of delegates or special rapporteurs of three different countries. They provide diplomatic assistance to the States in the processes of negotiation being reviewed. This *Troika* members are chosen through a raffle between members of the Human Rights Council. Each State under revision has a different *Troika* and the raffle of these rapporteurs happens just after the elections of member States of the Council. *Troika* elaborates a summarized report of the works with the participa-

tion of the State under review and with High Commissioner's assistance. One of the *Troika's* members shall be responsible to present the report publicly before its adoption.

In the regular session of the Human Rights Council, the interactive dialogue – second stage of the process – lasts for 3 hours. It's initiated by the delegation chiefs, almost always ministers of Human Rights and/or Justice, that begin exposing and defending the report of the reviewed State, addressing the main issues mentioned by other reports, considering a 30-minute length. Therefore, this is the moment when the State officially pronounces related to the topics raised by the recommendations.

After that, the other States, namely, the “reviewers”, emit their considerations, having at least one hour for the delegations to intervene. Between 40 to 65 States participate in the interactive dialogue and the limit to each intervention is short, until 2 minutes long maximum to State members. The so-called other interested parts expose their perspectives right after it, limited to one-minute length interventions depending on the speakers' agenda.

The last phase of the interactive dialogue of UPR embraces the emission of the elaborated recommendations to each country, which the reviewed State must answer in the following session. The High Commissioner, as above mentioned, shall prepare a synthetical report about the interactive dialogue phase and this report must be adopted and approved by the Human Rights Council, what consists on the third stage of UPR.

In this final report, the reviewed State must include its position of acceptance or not regarding each one of the received recommendations. It's also important to notice that in a strictly juridical point of view, there isn't any kind of sanctions to the States that doesn't fulfill the recommendations made through UPR. However, the mechanism had advances on its consolidation through the buildup of rounds, and the non-compliance of UPR recommendations generates growing moral, political and diplomatic constraints. Besides, also because of this buildup and institutional learning with respect to the use of UPR, specially through civil society, as recommendations issued in other UPR cycles, particularly the ones unfulfilled, start to appear in other spaces of incidence and litigation, substantiating the existence of a systematic and reiterated violation.

Back to the mechanical procedure, the main stage of UPR is the monitoring of the implementation of recommendations on State's domestic level. Each one of these cycles last four years and a half. Consequently, the implementations or not of the recommendations will serve as foundations to analyze the advances for other cycles and eventual progresses or setbacks in a medium term over situations of human rights in the countries, since the UPR has being, such as its name explains, a periodic beacon of monitoring.

The Universal Periodic Review differs from other mechanisms of human rights monitoring because it's the only one able to analyze the human rights situation in every member State of

the United Nations. The UPR has broader and more complex procedures when compared to other mechanisms of the UN system of human rights, since it's not confined to mere official documents sent to organisms responsible for analysis, and it's not limited to the emission of recommendations. It constituted itself as a tool to implement the recommendations through the periodic evaluation of progress (or regression) in human rights, i.e., with no delays yet according to a chronogram previously established and known by everyone.

Finally, because it has many stages and interaction situations, the UPR opens informal and innovative opportunities to the incidence of civil society actors, being able to, for example, substantiate delegations of other countries (considering their geopolitical weight face to the reviewed State) with the emission of specific recommendations, incisive and functional to the domestic political and juridical struggles.

Recommendations of UPR regarding the rights of traditional peoples and communities

In 2008, in the context of the first cycle (2008-2011), among the 15 recommendations accepted by Brazil, one of them, made by Korea, recommends an active focus on human rights violations against indigenous peoples, lack of public security and bad conditions of imprisonment.

Since the 2nd cycle (2012-2016), it's possible to verify a growth on the number of specific recommendations about the right to free, prior and informed consultation and consent and the

need to adequate the Brazilian State to international parameters of human rights regarding the treatment of ethnic-racial minority groups. In 2012, among the 18 recommendations received about the rights of traditional peoples and communities, we emphasize: i. 163 (Netherlands); ii. 164 (Norway); iii. 166 (Peru); iv. 167 (Slovakia); v. 31 (Cape Verde); vi. 169 (Germany).

During the Periodic Reviews (2008, 2012 and 2017), Brazil complied with the recommendations about the obligation of concluding the demarcation of indigenous lands, a process which, unfortunately, is still very far from being complete, although the Indian Statute (Law number 6.001, December 19, 1973) established that the Executive Power, in 5 years, should realize the demarcation of every indigenous land, a device repeated in the article 67 of the Transitory Constitutional Disposition Act of the Federal Constitution of 1988 that was unfulfilled.

In the 2nd cycle, Brazil complied with recommendation 165 proposed by Norway, which mentions not only the need to conclude the demarcations of indigenous territories, but emphasizes the need to conclude the demarcation of Guaraní Kaiowá territories, a people that, together with the Guaraní Nandeva, occupies the State of Mato Grosso do Sul, with less than one third of their traditional territories recognized and guaranteed constitutionally.

In the third cycle (2017-2021 [2022]), new recommendations were received and contumaciously unobserved by the Brazilian State with respect to the right to FPIC. The rec-

ommendations are the following: i. 51 (Netherlands); ii. 229 (Moldova); iii. 230 (Germany); iv. 231 (El Salvador); v. 232 (Estonia); vi. 233 (Iceland); vii. 240 (Norway). Still, since this last cycle is about the broad protection of these groups and the promotion of their rights, fundamental conditions to appropriate processes of consultation, it's worth mentioning that other recommendations can be considered related to the right to FPIC, although they don't cover it specifically: i. 35 (Uzbekistan); ii. 52 (Paraguay); iii. 53 (Sierra Leone); iv. 60 (Namibia); v. 220 (El Salvador); vi. 222 (Bangladesh); vii. 223 (Canada); ix. 224 (Philippines); x. 225 (Mexico); xi. 226 (Holy See); xii. 228 (Togo); xiii. 234 (Norway); xiv. 236 (Switzerland); xv. 237 (Peru); xvi. 238 (France); xvii. 239 (Cape Verde); xviii. 241 (Paraguay); xix. 242 (Moldova).

Besides the non-compliance, many social questions face setbacks contradicting received recommendations within UPR. In 2022, Brazil was evaluated in the 4th cycle (2022-2026) of the mechanism, a moment when it was verified if the recommendations were implemented or not, allowing to analyze if there were advances of retrocession. Thus, the Observatory of Protocols in coalition with other 58 associations sent its recommendations for the international complaint about disrespect to prior consultation and other violations suffered by the peoples.

Before that, at the end of our collective elaborated report, seven recommendations were listed and can be accessed at the Virtual Platform of the Observatory of Community Protocols.

PART II
THE RIGHT TO FREE, PRIOR AND INFORMED
CONSULTATION AND CONSENT AND
AUTONOMOUS PROTOCOLS IN BRAZIL
REPORT BY A COALITION OF INDIGENOUS
PEOPLES, QUILOMBOLAS, TRADITIONAL
COMMUNITIES AND CIVIL SOCIETY
ORGANIZATIONS

Joint submission for Brazil's fourth monitoring cycle in the UN Human Rights Council's Universal Periodic Review (UPR) Mechanism.

1. The plurality of traditional peoples and communities (TPCs) with ethnically and culturally differentiated identities existing in Brazil is safeguarded by the Federal Constitution of 1988, ILO Convention 169 on Indigenous and Tribal Peoples (C169), by the American Declaration on the Rights of Indigenous Peoples (OAS, 2016) and the United Nations Declaration on the Rights of Indigenous Peoples (UN, 2007).

2. The Brazilian State has been systematically acting contrary to the Recommendations that address the need to respect these Treaties and observe the rights of ethnic-racial minority groups, especially the right to free, prior and informed consultation and consent in cases of activities, works, undertakings, administrative measures or actions of other natures that directly impact the ways of doing, living and creating these groups and their conditions of physical, social and cultural reproduction.

3. From the 2nd cycle onwards, it is possible to verify specific recommendations on the right to Free, Prior and Informed Consultation and Consent (FPIC) and the need for the Brazilian State to adapt to international human rights standards concerning the treatment of ethnic-racial groups. Among the recommendations received, the following stand out: *i.* 163 (Holland); *ii.* 164 (Norway); *iii.* 166 (Peru); *iv.* 167 (Slovakia); *v.* 31 (Cape Verde); *vi.* 169 (Germany). In the 3rd cycle, new recommendations were received and, consistently, not observed by the Brazilian State about the right to FPIC: *i.* 51 (Holland); *ii.* 229 (Moldova); *iii.* 230 (Germany); *iv.* 231 (El Salvador); *v.* 232 (Estonia); *vi.* 233 (Iceland); *vii.* 240 (Norway). It is worth mentioning that other recommendations can be considered related, since they still deal with the broad protection of these groups and the promotion of their rights, fundamental conditions for appropriate consultation processes.²⁰

4. Due to the systematic violations practiced by the Brazilian State against ethnic-racial minority groups (indigenous peoples, quilombola communities and other traditional peoples and communities), especially regarding the right to FPIC, this report is presented.

²⁰ In the 3rd cycle, recommendations related to the right to the FPIC, but which do not specifically address it, are as follows: *i.* 35 (Uzbekistan); *ii.* 52 (Paraguay); *iii.* 53 (Sierra Leone); *iv.* 60 (Namibia); *v.* 220 (El Salvador); *vi.* 222 (Bangladesh); *vii.* 223 (Canada); *ix.* 224 (Philippines); *x.* 225 (Mexico); *xi.* 226 (Holy See); *xii.* 228 (Togo); *xiii.* 234 (Norway); *xiv.* 236 (Switzerland); *xv.* 237 (Peru); *xvi.* 238 (France); *xvii.* 239 (Cape Green); *xviii.* 241 (Paraguay); *xix.* 242 (Moldova).

Violations of the Right to FPIC and Non-compliance with the Recommendations

Violations of the Right to FPIC in Legislative, Administrative Measures and Decisions Affecting Indigenous Peoples, Quilombolas and Other Traditional Communities

5. At the legislative level, there are legislative measures that, by their content and form, violate the right of TPCs to prior consultation and social participation, essential for their perpetuation as such, and largely fail to observe recommendations 230 (Germany) and 233 (Iceland) of the previous cycle. As for the content, some measures aim to overcome the obligation of prior, free and informed consultation and consent and determine the closure of participatory spaces and instances in different areas.

6. C169 was enacted in the Brazilian State by Decree 5051, on April 19, 2004. However, on November 5, 2019, in the core of the organized dismantling of the collective rights of indigenous peoples, quilombolas and other traditional communities (TPCs) by the current government, Decree 5051/2004 was revoked by Decree 10088/2019, which aimed to group and consolidate all ILO conventions ratified by Brazil into a single standard. Although C169, since 2003, remains in force at the domestic level, the repeal of Decree 5,051 caused misinformation among many social actors about this instrument

of affirmation of the rights of ethnic minority groups, with the non-compliance of the Brazilian State, in addition to those already mentioned, recommendations (232, 222, 224 and 225).

7. Draft Decree-Law 177/2021²¹ is one of the clearest examples of violation of legislative measures. Its objective is to give authorization to the Federal President to denounce C169. The Observatory prepared a Technical Note, delivered to the Chamber of Deputies (CD), in which it points out a series of legal problems: a) untimeliness of the claim; b) violation of a stony clause; c) defect of initiative and hierarchical inadequacy of the instrument to the legal order; d) prohibition of the principle of retrogression in human rights; e) merit problems, such as lack of reasoning; f) damage to international relations and negotiations; and g) violation of the right of prior consultation as determined by C169.²²

8. Another project that violates the fundamental rights of indigenous peoples is Bill nº 490/2007, which establishes: a) the need for indigenous people to prove that they were on their lands on October 5, 1988 so that they can be demarcated; b) new stages in the demarcation process, with the sole purpose of making it endless; c) possibility of forced contacts with isolated

²¹ Available at: <<https://www.camara.leg.br/propostas-legislativas/2279486>> . Accessed on 05/25/2022.

²² Centro de Pesquisa e Extensão em Direito Socioambiental (CEPEDIS). Observatório de Protocolos Comunitários. Nota Técnica sobre o Projeto de Decreto Legislativo n. 177/2021 que propõe a denúncia da Convenção 169 da OIT (retirada do Estado brasileiro na ratificação e compromissos do tratado. Curitiba-PR, 11 de maio de 2021. Available at: <<http://observatorio.direitosocioambiental.org/pdl-177-2021/>>. Accessed on March 26, 2022.

indigenous people, to “intermediate public utility state action”, which could even be carried out by private organizations; d) possibility of mitigating the exclusive usufruct of indigenous people, so that third parties can carry out mining and farming activities; e) resumption of indigenous lands reserved in favor of the Union, in the event of “alteration of the cultural traits of the community or by other factors caused by the passage of time, be verified that the reserved indigenous area is not essential for the fulfillment of the purpose of guaranteeing their dignified subsistence and preservation of their culture.”²³.

9. One of the current severe threats is the Bill n. 191/2020 on Mining in Indigenous Lands, which aims to establish the specific conditions for carrying out research and mining of mineral and hydrocarbon resources and use of water resources for the generation of electricity and instituting compensation for the restriction of usufruct of ILs. The National Congress is processing this bill without prior consultation and participation of indigenous peoples. Also, it represents a serious threat to these people’s existence and setbacks in constitutional matters concerning their fundamental rights to the exclusive usufruct of natural assets in their territories, contradicting, in addition to those already mentioned, recommendations 238 (France) and 231 (El Salvador).

²³ See ATTACHMENT 2.

State Regulatory Attempts and Restrictions to FPIC

10. Given the diversity of experiences with autonomous TPCs protocols, an eventual general and national regulation or state regulations of the FPIC could homogenize the consultation processes and restrict this right in the country. Furthermore, state members' recent attempts to regulate the consultation have violated the right to prior consultation for the administrative act in question, disregarding recommendations 229 (Moldova) and 233 (Iceland), as shown below.

11. In the state of Pará, on October 10, 2019, through Decree No. 343/2019, the state government created a Working Group to build a State Plan for Prior, Free and Informed Consultations. The decree stated that the Working Group would have only 60 days to propose a State Plan for Free, Prior and Informed Consultations. The work of this Group operated without proper publicity and access. There was no participation of other segments of TPCs.²³

12. In the state of Maranhão, the Secretary of the Environment (SEMA) edited Ordinance n. 76 of May 22, 2019, through which it regulated the “prior participation of Traditional Populations and other related bodies, within the scope of the state Environmental Licensing process”. The administrative act was not submitted to the FPIC process and transferred the State's obligation to carry out the FPIC process to a company (environmental consultancy).

13. In the state of Paraná, in 2019, the Water and Land Institute (Instituto Água e Terra - IAT) approved Normative Instruction (IN) no. 07, of November 5, 2020, which “provides for the carrying out of free, prior and informed consultation with traditional peoples and communities and the manifestation of other related bodies, within the scope of the State Environmental Licensing process”.²⁴ This IN makes the same mistakes regarding the attribution of the entrepreneur/legal person responsible for the enterprise in the prior consultation procedure. The seriousness of this provision occurs with the transfer of the exclusive competence of the State to conduct the consultation process as if it were the responsibility of the entrepreneur.²⁵

Violations of the Right to FPIC of Traditional Peoples and Communities in Brazil

Indigenous People

14. Brazil has more than 305 indigenous peoples, 274 languages, and 114 records of isolated and recently contacted

²⁴ Protocolos autônomos de consulta e consentimento: um olhar sobre o Brasil, Belize, Canadá e Colômbia / Priscylla Joca; Biviany Rojas Garzón; Liana Amin Lima da Silva; Rodrigo Magalhães de Oliveira; Luis Donisete Benzi Grupioni. -- 1ª ed. -- São Paulo : Iepé - Instituto de Pesquisa e Formação Indígena : Rede de Cooperação Amazônica - RCA, 2021.p.196.

²⁵ Protocolos autônomos de consulta e consentimento: um olhar sobre o Brasil, Belize, Canadá e Colômbia / Priscylla Joca; Biviany Rojas Garzón; Liana Amin Lima da Silva; Rodrigo Magalhães de Oliveira; Luis Donisete Benzi Grupioni. -- 1ª ed. -- São Paulo : Iepé - Instituto de Pesquisa e Formação Indígena : Rede de Cooperação Amazônica - RCA, 2021. p. 198.

peoples' records. According to the demographic census carried out in 2010, 896,000 people declared themselves indigenous in Brazil. Of this total, 517 thousand (57.7%) lived in officially recognized Indigenous Lands (TIs) (IBGE, 2010). Those peoples inhabit 1,290 indigenous lands, of which 408 are homologated, and 821 are in the process of being regularized and/or claimed. In recent years, a large part of indigenous lands – demarcated or not – has been the target of illegal invasions and deforestation. Hundreds of indigenous peoples who live without land, on the sides of highways, between wire fences and asphalt, or camped on tiny parcels of state or municipal land, in degraded areas contaminated by pollution or pesticides. The first data from the 2022 Census on indigenous peoples, work carried out by the Brazilian Institute of Geography and Statistics (IBGE) with the support of the National Foundation of Indigenous Peoples showed that the country's indigenous population reached 1,693,535 people, the which represents 0.83% of the total population²⁶.

15. Within the scope of Brazilian institutional, with the current Government, indigenous peoples' main mechanisms of participation were extinguished, without prior consultation with these peoples, contrary to recommendation 230. The National Council for Indigenous Policy (CNPI) and the Forum of Presidents of the Indigenous Health Districts Councils (FP-

²⁶ Fundação Nacional dos Povos Indígenas. Dados do Censo 2022 revelam que o Brasil tem 1,7 milhão de indígenas.

CONDISI) were deactivated: Presidential Decree 9,759/2019 superseded the National Social Participation Policy and closed more than 700 collegiate bodies (forums, councils and commissions) through which civil society exercised its right to social participation. Especially in this context of the COVID-19 pandemic, the federal government has elaborated guidelines regarding indigenous health without submitting to social control of indigenous health.

16. Also, in disregard of recommendation 230, the right to prior, free and informed consultation and consent was recently used in a distorted and reverse way by the Brazilian government in a Technical Note, sent by the Ministry of Women, Family and Human Rights. This Note asked the President of the Republic to withdraw from the law the obligation of the Union, the Member States and Municipalities to provide drinking water, cleaning, hygiene and disinfection materials, ICU beds, lung fans and COVID-19 informational materials to indigenous peoples. Claiming the people had not been “directly consulted by the National Congress” on the need for such protective measures against COVID-19. The Federal Government has systematically denied assistance and health assistance to indigenous people on lands not formally recognized by the State, as is the case of the severe situation experienced by the Guarani and Kaiowá peoples, in the south of Mato Grosso do Sul.

17. Disrespecting recommendations 230, 231, 232 and 233 and the FPIC as a principle of international law, the Gov-

ernment of the state of Roraima filed the Direct Action of Unconstitutionality nº 5905, in 2018, before the Federal Supreme Court (STF) declare the legal-constitutional invalidity of article 6, 1, a), 2, article 13, 1 and 2, article 14, 1 and 2, article 15, 2 of C169 of the ILO. One of its arguments was that FPIC had caused structural damage to regional development. Still, according to it, ILO Convention 169 would disagree with the territorial regime of usufruct constitutionally guaranteed to indigenous peoples. It would also violate the public interest and the economic order provided by the Federal Constitution of 1988. Furthermore, it supports applying the time frame thesis to all indigenous lands, denying the indigenous right to the land grounded on ancestral and traditional occupancy and violating the people's right to consultation and consent.

18. In permanent violation of the FPIC and disregarding of recommendations 230 and 233, in the region formed by Matopiba, an acronym formed by the initials of the states of Maranhão, Tocantins, Piauí and Bahia, considered an area of agricultural expansion, the prior consultation is not, in general, applied. The Judiciary recently suspended environmental licenses for cultivating monocultures, such as soybeans, until the right to consultation was signed.

***Threats to Territorial Rights and Infringement of FPIC
(Disregard of Recommendation 230)***

Case of the Kayabi, Munduruku, Apiaká Peoples and Traditional and Riverside Communities [Ribeirinhos] of the Teles Pires River Region

19. The rights of indigenous peoples and traditional communities in the Teles Pires River region have been violated in the last 15 years by a complex of hydroelectric projects planned and implemented irregularly with the license and authorization of the Brazilian State. In the stretch affected by this complex live the Riverside communities, Pescadores, *Kayabi*, *Munduruku*, *Apiaká* and indigenous people in voluntary isolation. In this region, the Munduruku People is the only one that has had a FPIC Protocol since 2014.

“Virtual consultations” in the context of the pandemic. In disregard of recommendations 229, 231 and 232.

20. In the act of disregarding the Protocol of Prior Consultation and Consent of the Indigenous Peoples of the Oia-poque, the National Department of Transport Infrastructure (DNIT) carried out an “online consultation” with the representatives and indigenous leaders of the Oia-poque on the relocation of their villages and paving of BR 156 on the stretch that cuts through the Uaçá Indigenous Land, during the period of the Covid 19 pandemic. It happened when the disease had infected almost 500 people in the communities and claimed the

lives of 15 indigenous people, among other cases in Brazil in which there was no suspension of environmental licensing processes during the pandemic, violating international parameters such as Resolution n. 01/2020/IACHR.

Quilombola Communities

21. According to a survey released by the IBGE, Brazil has 5,972 quilombola communities²⁷, the National Coordination for the Articulation of Rural Black Quilombola Communities (CONAQ) recorded the existence of more than 6,300 quilombola communities. Until 1988, quilombola communities lived on the margins of official surveys. They did not have their own normative framework for their recognition as collective subjects of rights. The article 68 of the Transitional Constitutional Provisions Act (ADCT) of the 1988 Constitution recognized territorial rights. Decree No. 4,887/2003 recognized the right to self-attribution based on C169. It was confirmed by the Federal Supreme Court in the judgment of the Direct Action of Unconstitutionality n° 3239.

22. It is noteworthy that the right to prior consultation of quilombola communities, recognized in C169, in judgments of the Inter-American Court of Human Rights (eg. Case Sara-

²⁷ It is important to note that the same community can consist of several locations, according to local territorial characteristics. More information on the IBGE website. Available at: <<https://agenciadenoticias.ibge.gov.br/agencia-noticias/2012-agencia-de-noticias/noticias/27487-contracovid-19-ibge-antecipa-dados-sobre-indigenas-e-quilombolas>>. Accessed on: 27 Aug. 2020

maka v. Suriname, 2007), and other international human rights documents such as local and Afro-descendant communities, was cited by recommendation 51.

FPIC violations of quilombola communities and their worsening in the pandemic

24. In February 2020, the Government issued Decree No. 10,252 of 2020, which transferred the attribution of providing Environmental Licensing affecting Quilombola Territories from the National Institute of Colonization and Agrarian Reform (INCRA) to the Palmares Cultural Foundation (FCP) without the FPIC procedure. It should be noted that this measure, at the beginning of the Bolsonaro government, was taken concerning the National Indian Foundation (FUNAI). However the Federal Supreme Court considered the act to be unconstitutional.

Case of Quilombolas de Alcântara Threatened by the Space Base

25. The struggle of the quilombola communities of Alcântara for their traditional territory has been going on since the 1980s. As if the long and permanent history of institutional helplessness was not enough, in March 2019, the federal government signed a Technological Safeguards Agreement (AST)

with the United States of America for the commercial use of the Alcântara Space Base. Aware of the impacts of this agreement, the quilombola communities of Alcântara adopted a series of steps to have their territory titled and install the FPIC procedure²⁸. The communities prepared the *Basic Text of the Community Protocol on Prior, Free and Informed Consultation and Consent of the Quilombola Communities of Alcântara*²⁹. It so happens that, on March 26, 2020, during the Covid-19 pandemic, the Institutional Security Office of the Presidency of the Republic published Resolution No. 11, which expects a forced removal of 30 communities in Alcântara. The previous resolution violates the FPIC³⁰, as it entirely excludes the communities from the decision-making process and violates their territorial rights.

Case of Quilombola Communities affected by the duplication works of BR-135

26. The National Department of Transport Infrastructure (DNIT), a federal agency that currently implements the

²⁸ Letter from Alcântara to the National Congress. Available in: <http://www.global.org.br/blog/em-car-ta-ao-congresso-quilombosde-alcantara-denunciam-acordo-de-salvuardas-de-base-espacial/>.

²⁹ Base Document of the *Protocolo Comunitário sobre Consulta e Consentimento Prévio, Livre e Informado do Território Étnico de Alcântara*. Disponível: http://www.global.org.br/wp-content/uploads/2020/03/Protocolo_Alcantara_web_final.pdf.

³⁰ Quando o Estado não protege o seu povo/Shiraishi Neto, Joaquim [et al.]. Curitiba: Letra da Lei, 2021. Coleção Jusdiversidade e Autodeterminação: pareceres jurídicos e relatórios técnicos. Observatório de Protocolos Comunitários de Consulta e Consentimento Livre, Prévio e Informado. Available at: <http://observatorio.direitosocioambiental.org/wp-content/uploads/2021/06/livroQuilombolasDigital-1.pdf>. Accessed on March 26, 2022.

project to duplicate Highway BR-135 in the stretch between the municipality of Bacabeira and the municipality of Miranda do Norte, Maranhão, has been since 2017, seeking to start the duplication works without carrying out FPIC to quilombola communities located within the impact radius of the works, in clear breach of ILO C169 and Inter Ministerial Ordinance No. 60 of 2015. The affected communities decided to build their Consultation Protocol, which is being prepared with the Observatory's support.

Cases of Quilombola Communities Affected by Transmission Lines

27. According to the document sent by the FCP to INCRA within the scope of Administrative Process n. 54000.061259/2019-74, there were, until the beginning of 2020, 600 licensing processes in Brazil impacting Quilombola Territories. Of the total, 213 relate to the installation of Power Transmission Lines. In the state of Pará alone, 20 Transmission Lines affect the lives of more than 30 different quilombola communities, cutting and dividing areas and making the use of territories unfeasible. In general, there are no significant FPIC processes in affected communities.

Traditional Peoples and Communities

29. In addition to indigenous peoples and quilombolas, in Brazil there is a third category of culturally differentiated groups with their own ways of living and which are self-recognized as collective subjects of Convention 169. They are other Traditional Peoples and Communities (TPCs) which are culturally diverse and distinct among themselves.³¹ Estimates address 25 million people from different segments of traditional peoples and communities, occupying about 1/4 of the national territory³². In 2004, the Brazilian government began the process of recognizing the groups' identity, creating the National Commission for the Sustainable Development of Traditional Peoples and Communities (CNPCT). It then instituted the National Policy for Sustainable Development of Traditional Peoples and Communities (PNPCT), through Decree n. 6.040/2007, with the C169 as a landmark.

³¹ For example: Pantaneiros, Gipsy peoples, Coastal and Sea Extractive communities, Caiçaras, Baçaú Coconut Breakers, Artisanal Fishermen and Sempre Vivas flower catchers and Morroquianos.

³² ALMEIDA, A. W. B. Terras tradicionalmente ocupadas: processos de territorialização e movimentos sociais. *Revista Brasileira de Estudos Urbanos e Regionais*, v. 6, n. 1, p. 9, 2004. This data includes indigenous people, quilombolas and other segments that, jointly, compose traditional peoples and communities in Brazil.

Recognition of TPCs as Subjects of ILO C169 in Jurisprudence

30. As for the judicial precedents for the recognition of the other TPCs as subjects of C169, there are several cases of socio-environmental conflicts that were judicialized for the purpose of observing the right of FPIC to traditional communities, with emphasis on: (i) case involving artisanal fishing communities located in the Superagui National Park (Paraná);³³(ii) Case of Riverside Communities affected by the Manaus Naval Pole; (iii) Case of Riverside and Extractive Communities of the Islands of Abaetetuba (Pará)³⁴; (iv) the case of the Caiçaras Communities of Paraná³⁵; (v) the case of quilombola and traditional communities affected by the port terminal in the greater area of Maicá (Pará)³⁶; (vi) recognition of the traditional communities of the Lago Grande Agroextractive Settlement Project (PAE) in Santarém (Pará), and the prohibition of mining companies from entering without carrying out the CCPLI process and granting a mining license or authorization³⁷; (vii)

³³ Justiça Federal. 1a. Vara Federal de Paranaguá. Ação Civil Pública n. 5000742-88.2015.4.04.7008/PR. Decisão de 26 de maio de 2015.

³⁴ Ação Civil Pública n.º 0028538-38.2015.4.01.3900/PA (Naufrágio do Navio Haidar ocasionando o derramamento de óleo e a morte de carga viva - bois).

³⁵ Ação Civil Pública n.º 5002946-47.2011.404.7008/PR (Reforma e ampliação do cais de atracação do canteiro de obras da Techint Engenharia e Construção S/A, e da retro área adjacente, localizado no município de Pontal do Paraná/PR).

³⁶ Justiça Federal. Tribunal Regional Federal da 1a. Região. Processo n.º 0000377-75.2016.4.01.3902. Decisão de 24 de maio de 2016.

³⁷ Justiça Federal. Tribunal Regional Federal da 1a. Região. Processo n.º 1000362-21.2018.4.01.3902

recognition of the Amazon riverside people, in addition to the Arara, Juruna, Parakanã, Xikrin, Xipaia-Kuruaia, Kayapó and Araweté indigenous peoples, as affected by the Belo Monte HPP³⁸; among other cases.

31. It should be noted that the right to prior consultation of the group of peoples and traditional communities, recognized in C169 and other international human rights documents such as indigenous peoples and local and Afro-descendant communities, was mentioned by recommendation 51. It also refers to populations of traditional communities, including other traditional communities and quilombola communities.

32. In 2016, the National Commission for the Sustainable Development of Traditional Peoples and Communities was transformed into the National Council of Traditional Peoples and Communities (also CNPCT), through Decree No. 8.750/2016, expanding the composition and role of peoples and communities in their governance. Twenty-eight traditional peoples and communities represent the Council.

33. In April 2019, Decree no. 9,759, which extinguishes collegiate bodies and establishes new rules for their existence and functioning, was published. In practice, the Decree restricts the participation of civil society in the dialogue with the federal government regarding the construction and implementation of

– 2ª Vara da Justiça Federal em Santarém. Decisão de 29 de outubro de 2018.

³⁸ Justiça Federal. Tribunal Regional Federal da 1a. Região. Decisão em Apelação Cível nº 2006.39.03.000711-8/PA.

public policies. Given this, the Decree above was questioned in the Federal Supreme Court (STF), which issued an injunction stating that the Councils created or mentioned in laws can not be extinguished by a unilateral act of the Executive Power. At all costs, the government tries to curtail the participation of the most varied citizens in public spaces of discussion in defiance of the laws and the Federal Constitution of 1988.

34. Disrespecting recommendation 233, attempts to weaken institutional spaces are operating the deconstruction of the national policy of social participation and the exclusion of peoples/communities from the consultative and deliberative process of construction and implementation of public policies aimed at TPCs, directly affecting the lives of these groups, in addition to violating the provisions of ILO C169 regarding the definition of priorities and the obligation of specific processes of effective participation and prior consultation related to TPCs. In addition to the dismantling of spaces that guarantee social participation at an institutional level, the TPCs have historically suffered violence, especially to their territorial rights and the maintenance of their ways of life and physical and cultural reproduction, without due respect for the FPIC process, as the cases mentioned below:

Cases of violations of traditional territories in Conservation Units

35. Since 2015, the National Congress has proposed reclassifying the Canavieiras Extractive Reserve, a Nature Conservation Unit located in the state of Bahia, into another type of conservation unit that authorizes the construction of luxury hotels in the region, increasing the fishing and the establishment of shrimp farming, a highly toxic culture that is harmful to mangroves. Other examples demonstrate cases of direct expulsion through violent action by environmental agencies, as caiçara communities are facing in the Jureia region, São Paulo (e.g., Case 7, Annex 1). Another example is located in the state of Pará, where there is also a legislative project to review the category of the Mãe Grande de Curuçá Extractive Reserve, weakening the use of communities over their territories. In Tocantins and Maranhão, the babassu extractive reserves created in 1992 are still becoming effective. It has encouraged deforestation actions to mischaracterize the areas. Other cases also stand out, such as on the south coast of São Paulo, where Caiçara communities, even recognized by the law that creates the Jureia-Itatins Conservation Units Mosaic, face immediate expulsion processes through violent action by environmental agencies. There is also the case of traditional Pantanal communities, which, even after agreements and negotiations started in 2000, are undergoing the implementation of the Paraguay Paraná Waterway (HPP) implementation at an advanced stage. Recent policies for protected

areas, such as the “Adopt a park” program (Decree No. 10.673, of February 9, 2021) and the and the program of “Investment Partnerships of the Presidency of the Republic and their inclusion in the National Privatization Program” (Decree No. 10,673, of April 13, 2022), signal the dismantling of environmental policies in Brazil. In the same sense, some States have approved laws that grant private initiative to explore Conservation Units even overlapping traditional territories, as in the Alto Ribeira Tourist State Park. In none of these cases an adequate and meaningful process of FPIC was carried out.

Cases of Traditional Peoples and Communities affected by Mining

36. Mining ventures are threatening many TPCs. An example of this is in the traditional segment of Povos de Terreiro, located in Santo Amaro da Purificação, Bahia, which faces liabilities of 490 thousand tons of waste contaminated with heavy metals, especially lead and cadmium, left by *Companhia Mineradora de Chumbo*, currently *Companhia Plumbum Mining and Metallurgy Ltd.* Cases in the Juruena Basin/MT and in the State of Amazonas (Cases 58 and 62 - Annex 1) are also emblematic as they reveal the intensification of mining requirements in the current government, which defends the opening of ILs for mining. In none of these cases was there adequate and significant compliance with the FPIC.

Cases of Traditional Peoples and Communities Affected by Monocultures and Contamination by Pesticides

37. The Geraizeira traditional community of Vale das Cancelas, self-demarcated in 2015, with around 1,800 families, occupies a territory of 228 thousand hectares where it has been for over 150 years. The community has suffered since the 1970s with developments that have usurped and degraded its territory. The main complaints from the community are against monoculture companies and those that want to explore ore in the territory. Monoculture companies have used pesticides at levels that are highly harmful to human health and the land, causing severe health problems, as stated in the Report of the National Human Rights Council³⁹. The expansion of soy and eucalyptus monocultures in the Cerrado and pre-Amazon Maranhense has been affecting the lives of the peoples of the Cerrados and coconut breakers. In none of these projects, the FPIC was carried adequately and in good faith.

38. Against recommendation 51, the cases reported above demonstrate the total disrespect of the State and companies regarding compliance with C169, resulting in numerous human rights violations, such as: i) licensing process of megaprojects in traditional territories without guaranteeing FPIC to the TPCs present in the territory, ii) fires caused by agribusiness,

³⁹ BRASIL. Conselho Nacional dos Direitos Humanos - CNDH. Relatório sobre os direitos dos Povos e Comunidades Tradicionais. 2018. 42p.

iii) landowner conflicts; iv) mining; v) land grabbing. These factors cause imbalances, both in traditionality and in access to water, as springs, rivers and tributaries suffer from waste and the rampant use of pesticides.

AUTONOMOUS COMMUNITY PROTOCOLS FOR PRIOR, FREE AND INFORMED CONSULTATION AND CONSENT IN BRAZIL

39. The autonomous community protocols for prior, free and informed consultation and consent (from now on referred to as “protocols”) are oral or written documents prepared and published by indigenous peoples, quilombolas and traditional communities that explain rules and procedures related to the implementation of consultation processes and consent. The legality of these protocols, in Brazil, is based on norms recognized by the Brazilian State, such as the Federal Constitution of 1988, ILO Convention 169, the United Nations Declaration and the American Declaration on the Rights of Indigenous Peoples, as well as the exercise of autonomy and free determination and the right of these peoples and communities to be consulted following their own organizations, institutions and legal-political traditions (recognized in art. 231, CF/88 c/c art. 6, C169 c/c articles 4, 18 and 19, UNDRIP).

40. The elaboration of the autonomous protocols of FPIC has occurred amid serious situations of threats, viola-

tions of rights and socio-environmental conflicts, being these cases, mostly, related to: a) overlapping of conservation units of integral protection to traditional territories; b) installation of hydroelectric megaprojects and energy transmission lines; c) construction of ports and establishment of industrial zones; d) threat from mining companies; e) construction or duplication of highways and railways.

41. As for the autonomous protocols of FPIC, from 2014 to 2022, approximately 60 autonomous protocols were built (Annex 3).

Cases of violation of the FPIC and court decisions that recognize the legal validity of the protocols

(i) Case of the Juruna people (Yudjá) - Pará

42. *The Volta Grande Project* of the Canadian company Belo Sun Mining Corporation, linked to the Forbes & Manhattan bank, received a Prior License from the State of Pará to enable what would be the largest open-pit gold mine in Brazil. It's located in Volta Grande do Xingu, the region with the highest incidence of direct impacts from the Belo Monte Hydroelectric Power Plant. Belo Sun will impact the Juruna (Yudjá), Arara and Xikrin indigenous peoples of the Paquiçamba, Arara da Volta Grande and Bacajá Indigenous Lands, in addition to hundreds of riverside families and non-villaged indigenous

peoples. Faced with the absence of FPIC, Juruna people prepared their consultation protocol. In December 2017, the Federal Regional Court – 1st Region determined, in an unprecedented decision, that the consultation of affected indigenous people must take place following the indigenous consultation protocols. The decision represents a milestone in recognizing that the ways of deciding of each people affected by the enterprise must be observed, explained in the protocol, referring to it as a guiding instrument for the implementation of the FPIC (Annex 8).⁴⁰

(ii) Case of the Mura people – Amazonas

43. The Mura People, who inhabit the Madeira, Amazonas and Purus rivers, were threatened by the sylvinite exploration enterprise in the municipality of Autazes, in the state of Amazonas. Since 2009, the company Potássio do Brasil Ltda has been carrying out studies in the region and, in 2015, it received a Prior License from the State of Amazonas (IPAAM) without having carried out the FPIC, obtaining a license from FUNAI without the consent of the Mura people. In 2016, the MPF filed a public civil action for the annulment of the prior license and the suspension of any activity without prior consultation with the Mura People, who built their Consultation Protocol. They

⁴⁰ TRF1 - SEXTA TURMA. ACORDÃO 00025057020134013903, Desembargador federal Jirair Aram Meguerian, e-DJF1 DATA: 19/12/2017.

will be consulted, although the pressures and threats exerted by various actors on them seriously compromise the free and informed nature of the consultation process and disregard the norms contained in such Protocol (Case n° 1 of Annex 1).

State of Mato Grosso: the underestimation of socio-environmental impacts and the delegation of the obligation to carry out prior consultation to entrepreneurs

44. The government of the State of Mato Grosso, through its Secretary of State for the Environment (SEMA-MT), has been transferring to entrepreneurs the State's duty to carry out the prior consultation processes, through a precarious administrative instrument.⁴¹ This position has been supported by Judiciary, which in two decisions in public civil actions (ACP) reinforces this same violation of what governs Convention 169 of the ILO, in which the court recognized the right of consultation during all phases of the licensing. However, it wrongly condemned the entrepreneur in the obligation to carry out free, prior and informed consultation with indigenous populations.⁴²

⁴¹ Ordem de Serviço n.º 07/2019, da Secretária Adjunta de Licenciamento Ambiental e Recursos Hídricos, da Secretaria de Estado de Meio Ambiente, do Governo do Estado de Mato Grosso, datado de 08 de julho de 2019.

⁴² ACP n.º 0000387-03.2017.4.01.3606, 1ª Vara da Subseção Judiciária de Juína do TRF1: In the PCH case, Sacre 14, affecting indigenous people from TIs Irantxe, Tircatinga and Utiariti, due to the lack of consultation and irregularities in licenses, an action was filed by the Public Federal Ministry. ACP n. 1012598-33.2021.4.01.3600, 2ª Vara da Subseção Judiciária de Juína do TRF1: the same mistake is consolidating for the whole State of Mato Grosso (MT) through the Judiciary that, in decision from August 28th, 2020, extends de State's duties to companies in realizing prior consultation to all licenses in MT.

45. It is noteworthy that, in 2019, the Irantxe-Manoki people finalized their consultation protocol⁴³, and have been pointing out their disrespect for the State of MT, as in the Sacre-14 SHP.⁴⁴

46. This undertaking is in addition to others that threaten the territories of the peoples of the Juruena Basin, such as the PCHs in Rio do Sangue⁴⁵ and other projects in this hydrographic basin⁴⁶ (hydroelectric plants, infrastructure, mining, agribusiness), highlighting the HPP Castanheira⁴⁷. We emphasize that these projects have been planned without an adequate dimensioning of their impacts (cumulative and synergistic), which implies not observing the premise of information, in good faith, necessary for the right to prior consultation.

Indigenous and Traditional Peoples of Amazonas: BR-319

48. Inaugurated in the 1970s, the BR-319 highway connects Manaus, the capital of Amazonas to Porto Velho, Rondônia, crossing the interfluvium of the Madeira and Purus rivers' interfluvium one of the most sensitive regions for biodiver-

⁴³ To access the Consultation Protocol of the Manoki People, see: <https://amazonianativa.org.br/wp-content/uploads/2020/02/OPAN_Protocolo-consulta-Manoki_web-2.pdf. >.

⁴⁴ Case 24 of attachment 1.

⁴⁵ Case 56 of attachment 1.

⁴⁶ Case 58 of attachment 1.

⁴⁷ Case 43 of attachment 1.

sity conservation. The opening of the road posed a serious risk to these ecosystems and to more than 50 indigenous peoples and several traditional peoples such as quilombolas, riverine and extractive people. The BR-319 went through several implementation phases, which were never subjected to prior consultation processes. The environmental licensing process carried out by DNIT and Ibama, did not carry out any prior consultation with any of the 50 indigenous peoples and hundreds of traditional communities in the region (Case nº 68 of Annex 1).

RECOMMENDATIONS

In the face of the severe violation of the right to free, prior and informed consultation and consent of indigenous peoples, quilombolas and other traditional peoples and communities raised by the present report and attachments, the organizations of civil society formulate, to monitor the application of the right to free, prior and informed consultation and consent in Brazil, the following recommendations to the Brazilian State:

1. Respect the self-recognition and self-determination of indigenous peoples, quilombolas and other traditional communities, effectively recognizing them as rightsholder before the ILO Convention 169;
2. Recognize, regularize and promote the titration of

traditionally occupied territories, respecting the participation and previous consultation on administrative and judicial processes and guaranteeing full conditions of dignified existence to the indigenous peoples, quilombolas and traditional communities;

3. Recognize the obligation of the State to consult traditional peoples and communities regarding the right to free, prior and informed consultation and consent and conduct the process of consultation in a prior, free and informed way, considering the good faith of the consultant and its cultural adequacy before any legislative or administrative measure is taken that could affect indigenous people, quilombolas and traditional communities;

4. Implement, in a meaningful, effective and adequate way, the FPIC as a State policy, through the executive and legislative powers and the three levels of government (federal, state and municipal), in any administrative or legislative measures that may affect indigenous peoples, quilombolas and traditional communities, from the planning period of these measures to the execution, monitoring and closing phases of administrative and legislative acts, programs and infrastructure and development projects.

5. Not carry out forced removal of traditional peoples and communities from their territories and observe the right to consent and non-consent in cases that threaten the life, collective existence, physical, cultural and spiri-

tual integrity of the groups in question;

6. Recognize the concurrent competence of the Union and other States of the Federation concerning the duty to consult the peoples. Under no circumstances should this obligation be transferred to companies interested in licensing infrastructure, extractivism and development projects, under penalty of the nullity of the prior, free and informed consultation process;

7. Recognize the legal validity of the Autonomous Protocols of Free, Prior and Informed Consultation and Consent and their binding character for prior consultation processes, as an exercise of the free determination of peoples and willingness in good faith to dialogue with the National States.

**SIGNATORY ORGANIZATIONS OF THE COALITION
REPORT BETWEEN INDIGENOUS PEOPLES,
QUILOMBOLAS, TRADITIONAL COMMUNITIES
AND CIVIL SOCIETY ORGANIZATIONS**

Joint submission for Brazil's fourth monitoring cycle in the UN Human Rights Council's Universal Periodic Review (UPR) Mechanism

1. Observatório de Protocolos Comunitários de Consulta e Consentimento Livre, Prévio e Informado - Universidade Federal da Grande Dourados (UFGD)/ Pontifícia Universidade Católica do Paraná (PUCPR)

2. Articulação dos Povos Indígenas do Brasil (APIB)
3. Coordenação Nacional de Articulação das Comunidades Negras Rurais Quilombolas (CONAQ)
4. Rede de Povos e Comunidades Tradicionais do Brasil (REDE PCTS)
5. Rede de Cooperação Amazônica (RCA)
6. Rede Cerrado
7. Acesso - Direitos Humanos e Cidadania
8. Articulação Antinuclear do Ceará
9. Articulação dos Povos e Organizações Indígenas do Nordeste, Minas Gerais e Espírito Santo (APOINME)
10. Articulação Dos Povos Indígenas Da Região Sudeste (ArpinSudeste)
11. Articulação dos Povos Indígenas da Região Sul - ARPINSUL
12. Articulação Nacional das Mulheres Indígenas Guerreiras da Ancestralidade (ANMIGA)
13. Articulação Pacari de Plantas Medicinais do Cerrado (Raizeiras do Cerrado)
14. Articulação Sertão Antinuclear
15. Asociación Interamericana para la Defensa del Ambiente (AIDA)
16. ATY GUASU - Grande Assembleia Guarani e Kaiowá
17. Casa das Mulheres Manaus
18. Cáritas Brasileira Regional Pará
19. Cátedra Sérgio Vieira de Mello - Universidade Federal de Uberlândia (UFU)

20. Centro de Educação em Direitos Humanos - CEDH
21. Centro de Pesquisa e Extensão em Direito Socioambiental (CEPEDIS)
22. Centro de Trabalho Indigenista (CTI)
23. Clínica de Direitos Humanos da Amazônia (CIDHA) - Universidade Federal do Pará (UFPA)
24. Comissão Arns
25. Comissão Guarani Yvyrupa (CGY)
26. Comissão Pró Índio do Acre
27. Comitê de Combate à Megamineração - RS
28. Conselho do Povo Terena
29. Conselho Indígena Tapajós Arapiuns (CITA)
30. Conselho Indigenista Missionário (CIMI)
31. Conselho Pastoral dos Pescadores (CPP)
32. Cooperativa de Hortifrutigranjeiros do Vale do Moxotó
33. Coordenação das Organizações Indígenas da Amazônia Brasileira (COIAB)
34. Due Process of Law Foundation (DPLF)/ Fundação para o Devido Processo
35. Escritório de Defesa da Mulher (UPE)
36. Fórum dos Povos e Comunidades Tradicionais do Vale do Ribeira (FPCTVR)
37. Grupo de Estudos e Pesquisas Transdisciplinares (GEPT/ UPE)
38. HOMA - Centro de Direitos Humanos e Empresas - Universidade Federal de Juiz de Fora (UFJF)

39. Instituto de Pesquisa e Formação Indígena (IEPÉ)
40. Instituto de Pesquisa, Direitos e Movimentos Sociais (IPDMS)
41. Instituto Preservar
42. Instituto Socioambiental (ISA)
43. International Rivers
44. Memorial das Ligas e Lutas Camponesas
45. Movimento dos Atingidos pela Base de Alcântara (MABE)
46. Movimento pela Soberania Popular na Mineração (MAM)
47. Núcleo de Estudos da Amazônia Indígena - NEAI
48. Núcleo de Pesquisa e Estudos em Direitos Humanos (NUPEDH)
49. Observatório da Kuñangue Aty Guasu (O.K.A)
50. Observatório Fundiário Goiano (OFUNGO) - Universidade Federal de Goiás (UFG)
51. Observatório Interdisciplinar e Assessoria em Conflitos Territoriais - Projeto OBUNTU
52. Ocareté - Povos e Comunidades Tradicionais
53. Operação Amazônia Nativa (OPAN)
54. Organização da Juventude Indígena Pankará (OJIPA)
55. Organização dos Indígenas da Cidade
56. Rede Juruena Vivo
57. Terra de Direitos
58. Upper Amazon Conservancy/Conservación Alto Amazonas
Brazil, March 28, 2022



OBSERVATORY OF COMMUNITY PROTOCOLS OF FREE, PRIOR, AND INFORMED CONSULTATION AND CONSENT

“Observatory of Community Protocols of Free, Prior, and Informed Consultation and Consent: territorial rights, self-determination, and jusdiversity” is a network of researchers, representatives of traditional peoples and communities, and civil society organizations which collaboratively monitors cases of violation of the right to free, prior, and informed consultation and consent, as well as the verification of compliance and respect to the autonomous protocols of free, prior and informed consultation and consent in Brazil and other countries of Latin America. Since 2018, as an extension research joint project with Traditional Peoples and Communities, it’s linked to the Postgraduate Program in Law of the Pontifical Catholic University of Paraná (PUCPR), the Masters Program in Frontiers and Human Rights of the Federal University of Grande Dourados (UFGD) and the Research and Extension Center in Socioenvironmental Rights (CEPEDIS). Contact: observatorio@direitosocioambiental.org; Coordinator: Prof. Dr. Liana Amin Lima da Silva. lianasilva@ufgd.edu.br. Address: Street Quintino Bocaiúva, 2100 - Jardim da Figueira, Dourados - MS, 79824-140 - Faculty of Law and International Relations/ Federal University of Grande Dourados (FADIR/UFGD).



ARTICULATION OF INDIGENOUS PEOPLES OF BRAZIL (APIB)

APIB, which gathers organizations of indigenous peoples of Brazil, was formalized in 2005 with the objective of strengthening the union of indigenous people, the articulation between different regions and indigenous organizations of the country; unifying the struggles of indigenous peoples, the agenda of demands and claims, and the indigenous movement politics; and mobilizing peoples and indigenous organizations of the country against the threats and aggressions to indigenous rights. APIB is composed of seven regional organizations, representatives of indigenous peoples: APOINME, Conselho Terena, ARPINSUDESTE, Comissão Guarani Yvyrupá, ARPINSUL, ATY GUASU and COIAB.

Contact: apibbsb@gmail.com - <https://mobilizacaonaionalindigena.wordpress.com/>. Address: CLN 407 Bl. C Lojas 51/55 - 70.855-530 - Brasília-DF.



NATIONAL COORDINATION OF ARTICULATION OF BLACK RURAL QUILOMBOLA COMMUNITIES (CONAQ)

Created in May 12, 1996, CONAQ is a national non-profit organization which represents the quilombos of Brazil. Is composed by representatives of quilombola communities of 23 Brazilian states: Alagoas, Amapá, Bahia, Ceará, Espírito Santo, Goiás, Maranhão, Minas Gerais, Mato Grosso, Mato Grosso do Sul, Paraíba, Pará, Pernambuco, Piauí, Paraná, Rio Grande do Sul, Rio Grande do Norte, Rio de Janeiro, Rondônia, Sergipe, São Paulo, Santa Catarina and Tocantins. The objectives of CONAQ is to fight for collective use of territory, implementation of sustainable development projects, implementation of public policies considering the organization of quilombo communities; quality education coherent with the way of living in quilombos; protagonist and autonomy of quilombola women; the permanence of the youth in the quilombo and, above all, for the common use of Territory, natural resources and harmony with the environment. Contact and address: +55 061 9 9175-8299, conaqadm@gmail.com, <https://conaq.org.br/>. Endereço? Qe 24 Conjunto E, Guará II - Guará, Brasília - DF, 70297-400.

NETWORK OF TRADITIONAL PEOPLES AND COMMUNITIES OF BRAZIL (REDE PCTS)

The Rede PCTs of Brazil was instituted in 2019, aiming to create public policies to traditional peoples and communities of Brazil and to guarantee the social control of these policies. It's a network that embraces 28 ethnic groups - *Andirobeiros*, *Pantaneiros*, *Terreiro* Peoples and Communities/Peoples and Communities of African origin, *Caatingueiros*, *Geraizeiros*, Gypsy people, Coastal and Marine Extractive communities, *Caiçaras*, *Veredeiros*, *Pomerano* people, Extractivists, Breakers of *Babaçu* Coconut, *Retireiros* of Araguaia, Communities of *Fundo* and *Fecho de Pasto*, Indigenous peoples, Artisanal Fishermen, *Faxinalenses*, *Benzedeiras*, Mangaba collectors, *Retireiros* of *Araguaia*, Riverside people, *Viners*, *Caboclos* and *Quilombolas*, *Catchers of Sempre Vivas* Flowers and *Morroquianos* - which articulate in a network. The network is managed by a group of ten representations who are responsible to acquire the approval by the Congress of Decree number nº 6.040/2007, so that by law the 28 traditional segments are recognized, making possible for them to defend traditional territories and differentiated public policies. Contact: +55 (65) 99631-6824 E-mail: redepantaneirxs@gmail.com



AMAZON COOPERATION NETWORK (RCA)

The RCA, constituted in 2000, is a cooperation network whose mission is to promote cooperation and exchange of knowledge and experiences between indigenous organizations and indigenists in the Brazilian Amazon, to strengthen the autonomy of indigenous peoples and to increase sustainability. It is composed by 14 organization members: ATIX, AMAAIC, AMIM, APINA, FOIRN, Hutukara, CIR, OPIAC, Wyty-Catë, OGM, CPI-AC, CTI, Iepé and ISA.

Contact: luisdonisete@institutoiepe.org.br - www.rca.org.br. Address: Stree Professor Monjardino, 19 - 05625-160 – São Paulo – SP - Tel +55.11. 3746-7912.



CERRADO NETWORK

It was during the United Nations Conference about Environment and Development, realized in Brazil in 1992, also known as Eco-92 or Rio 92, that the Cerrado Network was born through a signature of Cerrados Treaty. The document defined the commitment between its signatures to face the threats which the biome was already suffering. Currently, the Cerrado Network is composed of more than 50 entities of civil society. Indirectly, it gathers more than 300 organizations which identify with the environmental cause of the biome. We are represented by indigenous peoples, *quilombolas*, babaçu coconut breakers, *vazanteiros*, *fundo e fecho de pasto*, artisanal fishermen, *geraizeros*, extractivists, *veredeiros*, *caatingueiros*, catchers of *Sempre Viva* flowers and family farmers, the true guardians of Cerrado's biodiversity. General coordination: Maria do Socorro Teixeira Lima/ Interstate Movement of Babaçu Coconut Breakers.

Contact: contato@redecerrado.org.br

PART III
AUTONOMOUS COMMUNITY
PROTOCOLS IN BRAZIL
LIST OF AUTONOMOUS PROTOCOLS FOR
INDIGENOUS PEOPLES, QUILOMBOLAS AND
TRADITIONAL COMMUNITIES IN BRAZIL

List revised and updated collaboratively by researchers and representatives of traditional peoples and communities who are members of the Observatory of Community Protocols for Consultation and Free Prior and Informed Consent: territorial rights, self-determination and jusdiversity (CNPq/ UFGD/ PUCPR/ CEPEDIS). The full text of the Community Protocols is available on the Autonomous Protocols Map at: <http://observatorio.direitosocioambiental.org/>.

Nº	Consultation Protocol and Free Prior and Informed Consent	Traditional peoples and communities	Year	Predominant Biome	State
1	Protocolo Comunitário Bailique: conhecer para proteger	Sociobiodiversidade	2013	Amazon	Amapá
2	Protocolo Biocultural Comunitário da Reserva Extrativista (Resex) do Riozinho do Anfrísio	Sociobiodiversidade	2013	Amazon	Pará

3	Protocolo Comunitário Biocultural das Raizeiras do Cerrado: Direito consuetudinário de praticar a medicina tradicional	Sociobiodiversidade	2014	Cerrado	Minas Gerais, Tocantins, Goiás e Maranhão
4	Protocolo de Serviços Ambientais dos Ashaninka da Terra Indígena Kampa do Rio Amônia	Sociobiodiversidade	2016	Amazon	Acre
5	Protocolo de Consulta e Consentimento Wajãpi	Indigenous	2014	Amazon	Amapá
6	Protocolo de Consulta Munduruku	Indigenous	2014	Amazon	Pará e Mato Grosso
7	Protocolo de Consulta dos Povos do Território Indígena do Xingu	Indigenous	2016	Amazon	Mato Grosso
8	Protocolo de Consulta Prévia do Povo Krenak	Indigenous	2017	Atlantic Forest	Minas Gerais
9	Protocolo de Consulta dos Povos Indígenas Munduruku e Apiaká do Planalto Santareno	Indigenous	2017	Amazon	Pará
10	Protocolo de Consulta Juruna (Yudjá) da Terra Indígena Paquichamba da Volta Grande do Rio Xingu	Indigenous	2017	Amazon	Pará
11	Protocolo de Consulta dos Povos Indígenas Jaminawa e Manxineru da Terra Indígena Mamoadate	Indigenous	2018	Amazon	Acre

12	Je'xime Arynatypy Nypykwatypy Waimiri Atroari Behe Taka/ Protocolo de Consulta ao Povo Waimiri Atroari	Indigenous	2018	Amazon	Amazonas/ Roraima
13	Protocolo de Consulta Prévia da Tekoa Itaxi Mirim	Indigenous	2018	Atlantic Forest	Rio de Janeiro
14	Protocolo de Consulta Prévia Livre e Informada do Povo Tupinambá	Indigenous	2018	Amazon	Pará
15	Protocolo de Consulta e Consentimento Terra Indígena Igarapé Laje “Komi Memem”	Indigenous	2019	Amazon	Rondônia
16	Protocolo de Consulta de Consentimento Terra Indígena Ribeirão We'Camai	Indigenous	2019	Amazon	Rondônia
17	Protocolo de Consulta dos Povos Indígenas do Oiapoque	Indigenous	2019	Amazon	Amapá
18	Trincheiras: Yandé Peara Mura. Protocolo de Consulta e Consentimento do Povo Indígena Mura de Autazes e Carreiro da Várzea, Amazonas: Nossa Defesa do Povo Mura de Autazes e Carreiro da Várzea	Indigenous	2019	Amazon	Amazonas

19	Yanomami yama kixë, Ye'kwana pëxë, Yë- makamayotima Proto- colo de Consultar siki/ Protocolo de Consulta dos Povos Yanomami e Ye'kwana	Indigenous	2019	Amazon	Ama- zonas/ Roraima
20	Protocolo de Consulta e Consentimento Povo Mura do Itaparanã (DHOWÁGAÉ THYARÁ WCHA- MUNY AKUÊ AKARUÁ Mura Thya Yankampuya)	Indigenous	2019	Amazon	Amazo- nas
21	Protocolo de Consulta e Consentimento Livre, Prévio e Informado do Povo Irantxe-Manoki	Indigenous	2019	Amazon/ Cerrado	Mato Grosso
22	Protocolo de Consulta do Povo Panará	Indigenous	2019	Amazon	Mato Grosso
23	Protocolo de Consulta dos Kayapó-Menk- ragnoti associados ao Instituto Kabu	Indigenous	2019	Amazon	Pará/ Mato Grosso
24	Protocolo de Consulta dos Povos Indígenas da Região Serra da Lua, Roraima/ PIX- AAKARY KIWIIN, Kayzyd Sannau Ai, Tuma'azuukary An Ipei Aimeakan Dunuzuin- hau At	Indigenous	2019	Amazon	Roraima

25	Protocolo de Consulta da Terra Indígena Campinas/Katukina do Povo Noke Koí (Katukina)/NOKE KO'Í PROTOCOLO TOKOMETO HICHATA	Indigenous	2020	Amazon	Acre
26	Protocolo de Consulta Prévia do Povo Warao em Belém/Protocolo Belém Eku Warao Jakotai Avitu Tuma	Indigenous	2020	Amazon	Pará
27	Protocolo Autônomo de Consulta e Consentimento dos Povos Indígenas do Tucumaque e Rio Paru d'Este	Indigenous	2020	Amazon	Pará
28	Protocolo de Consulta e Consentimento Rikbaktsa	Indigenous	2021	Amazon	Mato Grosso
29	Protocolo de Consulta Povo Munduruku/Tukuara	Indigenous	2021	Amazon	Pará
30	Protocolos Próprios de Consulta e Consentimento dos Povos Indígenas do Território Wayamu & Alto e Médio Jatapu e Jatapuzinho & dos rios Nhamundá e Baixo Japatu & dos rios Trombetas, Cachorro e Turuni	Indigenous	2021	Amazon	Pará/ Amazonas/ Roraima
31	Protocolo de Consulta Prévia do Povo Mbya Guarani do Rio Grande do Sul	Indigenous	2021	Atlantic Forest	Rio Grande do Sul

32	Protocolo de Consulta Prévia, Livre e Informada do Povo Arara da Terra Indígena Cachoeira Seca	Indigenous	2022	Amazon	Pará
33	Protocolo de Consulta do Arara Povo Indígena da TI Arara	Indigenous	2022	Amazon	Pará
34	Protocolo de Consulta Livre, Prévia e Informada da comunidade indígena da Aldeia Katurâma	Indigenous	2022	Atlantic Forest	Bahia/ Minas Gerais
35	Protocolo de Consulta Guarani - Litoral Norte de Santa Catarina	Indigenous	2022	Atlantic Forest	Santa Catarina
36	Protocolo de Consulta Livre, Prévia e Informada da Comunidade Indígena da Aldeia Naô Xohã	Indigenous	2022	Atlantic Forest	Minas Gerais
37	Protocolo de Consulta Prévia do Povo Kaxixó	Indigenous	2022	Atlantic Forest	Minas Gerais
38	Protocolo de Consulta Livre, Prévia e Informada dos Enawenê Nawê	Indigenous	2022	Cerrado	Mato Grosso
39	Protocolo de Consulta dos Povos e Comunidades Indígenas do Rio Negro (FOIRN), Amazonas	Indigenous	2022	Amazon	Amazonas

40	Protocolo de Consulta da Coordenadoria das Associações Indígenas da TI Alto Rio Negro e Xié Balaio — CAI-BARNX	Indigenous	2022	Amazon	Amazonas
41	Protocolo de Consulta dos Povos Indígenas do Médio e Baixo Rio Negro — Coordenadoria das Associações Indígenas do Médio e Baixo Rio Negro — CAIM-BRN	Indigenous	2022	Amazon	Amazonas
42	Protocolo de Consulta da Coordenadoria das Organizações Indígenas do Distrito de Iauaretê — COIDI	Indigenous	2022	Amazon	Amazonas
43	Protocolo de Consulta da Coordenadoria das Organizações Indígenas do Tiquié, Uaupés e Afluentes — DIAWII	Indigenous	2022	Amazon	Amazonas
44	Protocolo de Consulta dos Povos Baniwa e Koriapako — Organização Baniwa e Koriapako — NADZOERI	Indígenas	2022	Amazon	Amazonas
45	Protocolo de Consulta Povo Kumaruara	Indigenous	2023	Amazon	Pará
46	Protocolo Comunitário de Consulta Prévia e Consentimento Livre do Povo Aikewara	Indigenous	2023	Amazon	Pará

47	Protocolo de Consulta - Beiradeiros Montanha e Mangabal	PCTs	2014	Amazon	Pará
48	Protocolo de CPLI - Pescadores e Pescadoras do Município de Santarém – PA	PCTs	2017	Amazon	Pará
49	Protocolo de Consulta das Comunidades Ribeirinhas Pimental e São Francisco	PCTs	2017	Amazon	Pará
50	Protocolo de Consulta - Comunidade Tradicional da Ponta Oeste, Ilha do Mel.	PCTs	2017	Atlantic Forest	Paraná
21	Protocolo de Consulta aos Pescadores e Pescadoras Artesanais e Caiçaras de Guaraqueçaba-Paraná	PCTs	2017	Atlantic Forest	Paraná
52	Protocolo de Consulta Comunidade Agroextrativista do Pirocaba/ Abaetetuba – Pará	PCTs	2018	Amazon	Pará
53	Protocolo de Consulta aos Ilhéus e Ribeirinhos do Rio Paraná	PCTs	2018	Atlantic Forest	Paraná
54	Protocolo de CPLI - Reserva Extrativista do Rio Ouro Preto	PCTs	2019	Amazon	Rondônia
55	Protocolo de Consulta - Apanhadoras e Apanhadores de Flores Sempre Vivas -Macacos, Pé de Serra e Lavras	PCTs	2019	Cerrado	Minas Gerais

56	Protocolo de Consulta - Comunidade Caiçara da Enseada da Baleia	PCTs	2020	Atlantic Forest	São Paulo
57	Protocolo de Consulta - Tradição religiosa Ancestral de matriz africana REGIÃO 2 - Bacia do Rio Paraopeba	PCTs	2020	Atlantic Forest	Minas Gerais
58	Protocolo de Consulta - Povos Ciganos – Etnia Calon	PCTs	2020	Atlantic Forest	Minas Gerais
59	Protocolo de Consulta Prévia Livre e Informada - Pescadores e Pescadoras do Município de Aveiro - PA	PCTs	2021	Amazon	Pará
60	Protocolo de CPLI - Pescadores e Pescadoras do Município de Itaituba - PA	PCTs	2021	Amazon	Pará
61	Protocolo de Consulta aos Faxinalenses do Núcleo APF de Guarapuava - PR	PCTs	2021	Atlantic Forest	Paraná
62	Protocolo de Consulta das Comunidades Tradicionais de Nativos de Nova Brasília Comunidades de Brasília, Farol, Praia Grande e Fortaleza	PCTs	2021	Atlantic Forest	Paraná
63	Protocolo de Consulta e Consentimento dos Pescadores e Pescadoras Artesanais do Pantanal de Cáceres – MT (2022)	PCTs	2022	Pantanal	Mato Grosso

64	Protocolo Comunitário de Consulta Prévia, Livre, Informada, de Consentimento e Veto da Comunidade Tradicional Carroceira de Belo Horizonte e Região Metropolitana	PCTs	2022	Atlantic Forest/ Cerrado	Minas Gerais
65	Protocolo de Consulta dos Beiradeiros do Riozinho Anfrísio	PCTs	2023	Amazon	Pará
66	Protocolo Autônomo de Consulta e Consentimento do Assentamento Barra de Moitas do Rio Aracatiçu	PCTs	2023	Caatinga	Ceará
67	Protocolo Autônomo de Consulta e Consentimento do Assentamento Morro dos Patos	PCTs	2023	Caatinga	Ceará
68	Protocolo Comunitário de Consulta Prévia Comunidades Quilombolas e Apanhadoras de Flores Sempre Vivas Vargem do Inhaí, Mata dos Crioulos, Raiz e Braúnas	PCTs/Conjunto	2019	Cerrado	Minas Gerais
69	Protocolo De Consulta Livre, Prévia E Bem Informada Da Comunidade Tradicional De Rolim De Moura Do Guaporé Quilombolas, Indígenas Wajuru, Sakirabiar E Guarassuê	PCTs/Conjunto	2020	Amazon	Rondônia

70	Protocolo de Consulta Movimentos Sociais de Povos e Comunidades Tradicionais para as Cessões de Águas da União para a Aquicultura	PCTs/Conjunto	2021	Atlantic Forest	Rio de Janeiro/São Paulo/Paraná
71	Protocolo de Consulta Quilombola da Federação das Organizações Quilombolas de Santarém FOQS-STM/PA	Quilombolas	2016	Amazon	Pará
72	Protocolo de Consulta – Quilombolas de Abacatal/ Aurá	Quilombolas	2017	Amazon	Pará
73	Protocolo de consulta e consentimento - Associação das Comunidades Remanescentes de Quilombo do Alto Trombetas II	Quilombolas	2018	Amazon	Pará
74	Protocolo de Consulta Prévia, Livre, Informada e de Consentimento – Comunidade Quilombola Gibrié de São Lourenço	Quilombolas	2018	Amazon	Pará
75	Protocolo de Consulta Prévia, Livre, Informada e de Consentimento do Território Quilombola Laranjituba e África	Quilombolas	2018	Amazon	Pará
76	Protocolo de Consulta Prévia Livre e Informada - Quilombolas de Jambuçu/Moju-PA	Quilombolas	2018	Amazon	Pará

77	Protocolo Comunitário sobre Consulta e Consentimento Prévio, Livre e Informado (CCPLI) das Comunidades Quilombolas do território étnico de Alcântara/MA.	Quilombolas	2019	Amazon/Cerrado	Maranhão
78	Protocolo Comunitário de Consulta Prévia, Livre, Informada, de Consentimento e Veto - Território Quilombola Bom Remédio	Quilombolas	2020	Amazon	Abaetetuba-PA
79	Protocolo De Consulta Prévia, Livre e Informada dos Quilombos Passagem, Nazaré do Airi e Peafú do município de Monte Alegre - PA	Quilombolas	2020	Amazon	Pará
80	Protocolo de Consulta Prévia dos Territórios Quilombolas Vale do Ribeira - SP	Quilombolas	2020	Atlantic Forest	São Paulo
81	Protocolo de Consulta Prévia, Livre e Informada para o Trabalho de Reparação Integral - Comunidades Quilombolas de Brumadinho	Quilombolas	2020	Atlantic Forest	Minas Gerais
82	Protocolo de Consulta da Comunidade Quilombola da Pontinha	Quilombolas	2021	Atlantic Forest	Minas Gerais
83	Protocolo de Consultas às Comunidades Quilombolas do Paraná	Quilombolas	2021	Atlantic Forest	Paraná

84	Protocolo de Consulta e Consentimento Prévio, Livre, Informado e de boa-fé das Comunidades Quilombolas do Município de Santa Rita/ MA	Quilombolas	2022	Amazon/5% cerrado	Maranhão
85	Protocolo de Consulta Prévia, Livre e Informada e de Consentimento do Território Quilombola do Rio Itacuruçá Alto - Ilhas de Abaetetuba	Quilombolas	2022	Amazon	Pará
86	Protocolo de Consulta Prévia, Livre e Informada do Território Quilombola Sítio Conceição	Quilombolas	2022	Amazon	Pará
87	Protocolo de Consulta e Consentimento Prévio, Livre, Informado e de Boa- Fé das Comunidades Quilombolas do Território Oiteiro dos Nogueiras	Quilombolas	2023	Cerrado	Maranhão
88	Protocolo de Consulta Livre, Prévia e Informada dos Remanescentes de Quilombo da Serra dos Rafaéis	Quilombolas	2023	Caatinga, Cerrado e Mata Atlântica	Pernambuco/ Piauí/ Ceará
89	Protocolo de Consulta prévia, livre, esclarecida e de Boa Fé da Comunidade Quilombola de Santa Tereza (CRUZ da Tereza), no município de Coremas, no estado da Paraíba	Quilombolas	2023	Caatinga	Paraíba

90	Protocolo de Consulta Prévia, Bem Informada e de Consentimento Livre da Comunidade Quilombola de São José de Icatu	Quilombolas	2023	Amazônia	Pará
91	Protocolo Popular de Consulta e Consentimento Livre, Prévio e Informado do Território Quilombola do Vão Grande Mato Grosso	Quilombolas	2023	Amazon/ Cerrado	Mato Grosso
92	Protocolo de Consulta da Comunidade Quilombola de Graciosa - Bahia	Quilombolas	2023	Atlantic Forest	Bahia
93	Protocolo de Consulta Prévia, Livre e Informada e de Consentimento do Território Quilombola Subaé	Quilombolas	2023	Atlantic Forest	Bahia
94	Protocolo de Consulta do Território Quilombola Brejão dos Negros	Quilombolas	2023	Atlantic Forest	Sergipe
95	Protocolo Autônomo de Consulta e Consentimento da Comunidade de Icarai, em Amontada/CE	PCTs	2023	Caatinga	Ceará
96	Protocolo Autônomo de Consulta e Consentimento da Comunidade de Praia da Baleia, em Itapipoca/CE	PCTs	2023	Caatinga	Ceará

97	Protocolo Autônomo de Consulta e Consentimento da Comunidade da Praia da Apiques, em Itapipoca/CE	PCTs	2023	Caatinga	Ceará
98	Protocolo De Consulta Prévia Livre E Informada De Comunidades Tradicionais Ribeirinhas Em Contexto Da Área De Proteção Ambiental Metropolitana De Belém	PCTs	2023	Amazon	Pará
99	Protocolo de Consulta e Consentimento Prévio, Livre, Informado e de Boa-fé das Comunidades Veredeiras do Norte de Minas Gerais	PCTs	2023	Caatinga	Minas Gerais
100	Protocolo Quilombola de Consulta e Consentimento Prévio, Livre e Informado de Boa-Fé do Território de Joaquim Maria - Miranda do Norte	Quilombolas	2023	37% in the Amazon biome and 63% in the Cerrado biome	Maranhão
101	Protocolo de Consulta e Consentimento Prévio, Livre e Informado de Boa-fé dos Territórios Quilombolas de Pedrinhas 1, Pedrinhas 2, Queluz, Capaúba, Teso Grande, Cumbi e Centro de Isidoro no Município de Anajatuba/MA	Quilombolas	2023	Amazon	Maranhão

102	Protocolo Autônomo de Consulta e Consentimento do Povo Tremembé da Barra do Mundaú, em Itapipoca/CE	Indigenous	2023	Caatinga	Ceará
103	Protocolo Comunitário de Consulta e Consentimento das Comunidades Extrativistas, Ribeirinhos e Pescadores do Rio Tocantins: do Pedral do Lourenção até a Ilha do Bógea	PCTs/Conjunto	2023	Amazon	Tocantins

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